# CHILE 2021 HUMAN RIGHTS REPORT EXECUTIVE SUMMARY

Chile is a constitutional multiparty democracy. On November 21, the country held presidential elections and concurrent legislative elections that observers considered free and fair. President-elect Gabriel Boric won a runoff election on December 19 and was to take office March 11, 2022.

The Carabineros (national uniformed police) and the Investigative Police have legal responsibility for law enforcement and maintenance of order, including migration and border enforcement, within the country. The Ministry of the Interior and Public Security oversees both forces. Civilian authorities generally maintained effective control over the security forces. There were credible reports that members of the security forces committed abuses.

Significant human rights issues included credible reports of: arbitrary or unlawful killings; cruel, inhuman, and degrading treatment by law enforcement officers; violence against indigenous persons; trafficking in persons; and violence against lesbian, gay, bisexual, transgender, queer, and intersex persons.

The government took steps to identify, investigate, prosecute, and punish officials who committed human rights abuses and corruption.

# Section 1. Respect for the Integrity of the Person

# a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings

There were isolated reports that the government or its agents committed arbitrary or unlawful killings. On February 5, in Panguipulli, Los Rios Region, police shot and killed a street juggler who allegedly refused to participate in an identity check. The police officer claimed he used his weapon in legitimate self-defense. The incident sparked violent protests, including arson attacks against several municipal buildings. Prosecutors charged the officer with homicide. A hearing was scheduled for December 17 to review the investigation. On October 18, a man died while in the custody of Carabineros at a police station in San Fernando, in the O'Higgins Region. According to the National Institute of Human Rights (INDH), Carabineros allegedly strangled the man and left him unconscious in his cell. The INDH brought a criminal complaint, and prosecutors charged the police officer allegedly responsible for abuse resulting in death. The officer was fired and placed in pretrial detention.

### **b.** Disappearance

There were no reports of disappearances by or on behalf of government authorities.

# c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

Although the constitution and law prohibit such practices, there were occasional reports of excessive force, abuse, and degrading treatment by law enforcement officers or members of military patrols deployed during the State of Catastrophe declared due to the COVID-19 pandemic.

On May 24, prosecutors arrested and charged nine members of the army with torturing five individuals in October 2020, citing the specific article in the criminal code that defines torture as intentionally inflicting serious pain or suffering with the aim to intimidate, coerce, punish, or reduce the willpower of a victim. The soldiers allegedly detained and bound the victims during the COVID-19 curfew, drove them to a forest, beat them, and simulated an execution. At the end of the year, the case was open, and the soldiers remained in pretrial detention.

In August 2020 prosecutors arrested and charged the police officer who shot Gustavo Gatica with a riot-control shotgun in November 2019, blinding Gatica in both eyes. As of December 6, the case against the officer remained open. On September 20, the government issued an update to regulations on the use of force by security forces in public-protest situations, with input from the INDH and the National Defender for Children's Rights, to incorporate preventive measures and dialogue during peaceful protests to protect the right of freedom of assembly.

Human rights groups reported that impunity was a problem in the security forces, especially the Carabineros. The Investigative Police (PDI) and Public Prosecutor's

Office investigate whether security force killings were justifiable, and they pursue prosecutions in cases of alleged unlawful killings. The INDH, an independent government authority that monitors complaints and allegations of abuse, may file civil rights cases alleging arbitrary killings. As of November 12, the National Prosecutor's Office reported that 3,433 investigations into abuses committed by law enforcement agents during 2019-20 protests remained open and that it had formally charged 153 members of the security forces. By November, 14 individuals, all Carabineros, were convicted. According to human rights observers, the slow pace and small number of prosecutions relative to the number of accusations stemming from the social unrest created a perception that those accused of abuses did not face effective accountability. The government increased training for Carabineros on crowd control techniques and human rights.

### **Prison and Detention Center Conditions**

According to the INDH and other observers, conditions in some prisons were poor due to antiquated infrastructure, overcrowding, substandard sanitary infrastructure, and inadequate water supplies. Human rights organizations reported that violence and abuse occurred in prisons.

**Physical Conditions:** The prison population was unevenly distributed across the prison system, with approximately 50 percent of prisons operating beyond maximum capacity, while others were underpopulated. Overpopulation and inadequate facilities frequently led to comingling of pretrial detainees and convicted prisoners. The INDH reported that prisoners were often confined to their cells for most of the day, a practice that did not allow sufficient time for exercise or participation in rehabilitation and readjustment programs. On September 2, the INDH filed a protective measure for prisoners of the Araucania Region's Pitrufquen Detention Center who had no overnight access to sanitary facilities in their cells.

Prisoner and human rights groups investigated alleged abuse and use of excessive force against detainees, and media covered some of the allegations. On September 15, prosecutors accused a prison guard of sexually abusing a female suspect while she was being transported from her detention control hearing to pretrial detention. As of October 29, the guard was in pretrial detention and an investigation was

pending.

Administration: Independent government authorities, including the INDH, generally investigated credible allegations of mistreatment. The government usually monitored and investigated prison and detention center conditions.

**Independent Monitoring:** The government permitted prison visits by independent human rights observers, and such visits took place at both government and privately operated facilities.

### d. Arbitrary Arrest or Detention

The constitution prohibits arbitrary arrest and detention and provides for the right of any person to challenge the lawfulness of his or her arrest or detention in court. The government did not always observe these requirements. On January 28, the Temuco Appellate Court accepted a protective measure brought by the INDH on behalf of a seven-year-old girl who was arbitrarily detained by the PDI on January 7. The court instructed the PDI to refrain from arbitrary and illegal actions against this or other minors.

### **Arrest Procedures and Treatment of Detainees**

Only public officials expressly authorized by law may arrest or detain citizens, and they generally did so openly, with warrants based on sufficient evidence brought before an independent judiciary. Authorities must immediately inform a prosecutor of an arrest and generally did so.

The prosecutor must open an investigation, receive a statement from the detainee, and ensure that the detainee is held at a local police station until the detention control hearing. Detention control hearings are held twice daily, allowing for a judicial determination of the legality of the detention within 24 hours of arrest. Detainees must be informed of their rights, including the right to an attorney and the right to remain silent until an attorney is present. Public defenders are provided for detainees who do not hire their own lawyer. Authorities must expedite notification of the detention to family members. If authorities do not inform detainees of their rights upon detention, the judge may declare the process unlawful during the detention control hearing. The law allows judges to set bail, grant provisional liberty, or order continued detention as necessary for the investigation or the protection of the prisoner or the public.

The law affords detainees 30 minutes of immediate access and subsequent daily access to a lawyer (in the presence of a prison guard) and to a doctor to verify their physical condition. Regular visits by family members are allowed.

### e. Denial of Fair Public Trial

The constitution provides for an independent judiciary, and the government generally respected judicial independence and impartiality.

### **Trial Procedures**

The constitution and law provide for the right to a fair and public trial, and an independent judiciary generally enforced that right.

Defendants enjoy a presumption of innocence and have a right of appeal. They have the right to be informed promptly of charges, to have time to prepare their defense, and not to be compelled to testify or admit guilt. Three-judge panels form the court of first instance. The process is oral and adversarial. Defendants have the right to be present and consult with an attorney in a timely manner. Judges rule on guilt and dictate sentences. Defendants have the right to free assistance from an interpreter. Court records, rulings, and findings were generally accessible to the public.

The law provides for the right to legal counsel. Public defenders' offices across the country provided professional legal counsel to anyone seeking such assistance. When human rights organizations or family members requested assistance, the nongovernmental organization (NGO) Corporation for the Promotion and Defense of the Rights of the People and other lawyers working pro bono assisted detainees during interrogation and trial. Defendants may confront or question adverse witnesses and present witnesses and evidence on their behalf, although the law provides for unidentified witnesses to testify in secret in certain circumstances.

For crimes committed prior to the implementation of the 2005 judicial reforms,

criminal proceedings are inquisitorial rather than adversarial. Human rights violations committed during the 1973-90 military dictatorship are investigated under inquisitorial proceedings and prosecuted by appellate justices supported by the judiciary's Office for Coordination on Grave Human Rights Violations Cases.

### **Political Prisoners and Detainees**

There were no reports of political prisoners or detainees.

### **Civil Judicial Procedures and Remedies**

In civil matters there is an independent and impartial judiciary that permits individuals to seek civil remedies for human rights violations. The civil justice system retained antiquated and inefficient procedures, which resulted in civil trials lasting years, sometimes decades. Administrative and judicial remedies are available for alleged wrongs. Individuals and organizations may appeal adverse domestic decisions domestically or to regional human rights bodies. Cases involving violations of an individual's human rights may be submitted through petitions by individuals or organizations to the Inter-American Commission on Human Rights. The commission may submit the case to the Inter-American Court of Human Rights, which in turn may order civil remedies, including fair compensation to the injured individual.

# f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence

The constitution prohibits such actions, and there were no reports that the government failed to respect these prohibitions.

# Section 2. Respect for Civil Liberties

## a. Freedom of Expression, Including for Members of the Press and Other Media

The constitution provides for freedom of expression, including for members of the press and other media, and the government generally respected this right. An independent press, an effective judiciary, and a functioning democratic political

system combined to promote freedom of expression, including for members of the media.

**Violence and Harassment:** On July 7, PDI agents allegedly targeted journalists Vicente Rojas Lopez and Felipe Garcia with rubber bullets during a disturbance while Lopez and Garcia were covering the funeral procession of activist Luisa Toledo Sepulveda that passed in front of PDI headquarters in Santiago. No formal investigation was opened.

### **Internet Freedom**

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports that the government monitored private online communications without appropriate legal authority.

### Academic Freedom and Cultural Events

There were no government restrictions on academic freedom or cultural events.

### b. Freedoms of Peaceful Assembly and Association

The law provides for the freedoms of peaceful assembly and association, and the government generally respected those rights.

### c. Freedom of Religion

See the Department of State's *International Religious Freedom Report* at <u>https://www.state.gov/religiousfreedomreport/</u>.

### d. Freedom of Movement and the Right to Leave the Country

The constitution provides for freedom of internal movement, foreign travel, emigration, and repatriation; and the government generally respected these rights.

### e. Status and Treatment of Internally Displaced Persons

Not applicable.

### f. Protection of Refugees

The government cooperated with the Office of the UN High Commissioner for Refugees and other humanitarian organizations in providing protection and assistance to refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern.

Access to Asylum: The law provides for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees, including access to education and health care.

# Section 3. Freedom to Participate in the Political Process

The law provides citizens the ability to choose their government through free and fair periodic elections held by secret ballot and based on universal and equal suffrage.

### **Elections and Political Participation**

**Recent Elections:** The country held concurrent presidential and legislative elections on November 21, which observers considered free and fair. On December 19, in free and fair elections, voters chose Gabriel Boric, who was to take office on March 11, 2022.

On May 15-16, voters elected 155 members of the constitutional convention and voted for regional governors, mayors, and municipal councilors. The country held runoff elections for governors on June 13 and official presidential primaries on July 18. Observers considered the elections free and fair.

The constitutional convention began on July 4 and was scheduled to conclude by July 2022. Delegates elected Mapuche indigenous rights activist Elisa Loncon as president. On October 7, the convention approved four main statutes covering general regulations, ethics, indigenous participation and consultation, and citizen participation. Convention rules prohibit denial of crimes against humanity committed during the Pinochet regime and alleged human rights abuses during the 2019 civil unrest. Rules also established nonbinding indigenous consultations requiring the country "to recognize, specify, respect, promote, protect, and

guarantee all its obligations with the different preexisting indigenous peoples and nations, all of which emanate from subscribed international obligations."

**Participation of Women and Members of Minority Groups:** No laws limit participation of women or members of minority groups in the political process, and they did participate. The rules for the election in May of members for the constitutional convention stipulated gender parity and, from a total of 155 seats, included 17 seats reserved for representatives of indigenous groups. The Mapuche minority group, which represents approximately 13 percent of the population, has historically been underrepresented in government.

# Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for corruption by officials, and the government generally implemented the law effectively. There were isolated reports of government corruption during the year.

**Corruption:** On July 26, the former mayor of the San Ramon municipality, Miguel Angel Aguilera, was accused of repeated bribery, illicit enrichment, and money laundering and was placed in pretrial detention. The case was under investigation at year's end.

Prosecutors brought charges against former army officials accused of corruption. In an August 6 pretrial hearing, prosecutors requested a 15-year sentence for former army commander in chief Juan Miguel Fuente-Alba for embezzlement of public funds and money laundering. The National Prosecutor's Office also filed a motion seeking a 10-year sentence for Fuente-Alba's wife for her role in concealing the use of public funds. A trial date was set for March 2022.

# Section 5. Governmental Posture Towards International and Nongovernmental Investigation of Alleged Abuses of Human Rights

Domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights

cases, including multiple investigations into abuses during the 2019-20 civil unrest. Government officials were cooperative and responsive to their views.

**Government Human Rights Bodies:** The INDH operated independently and effectively, issued public statements and an annual report, and proposed changes to government agencies or policies to promote and protect human rights. The Senate and Chamber of Deputies have standing human rights committees responsible for drafting human rights legislation.

# Section 6. Discrimination and Societal Abuses

### Women

**Rape and Domestic Violence:** The law criminalizes rape of men or women, including spousal rape. Penalties for rape range from five to 15 years' imprisonment, and the government generally enforced the law.

The law criminalizes some forms of both physical and psychological domestic violence and protects the privacy and safety of the victim making the charge of rape or domestic violence.

Family courts handle cases of domestic violence and penalize offenders with monetary fines and other sanctions, such as eviction of the offender from the residence shared with the survivor, restraining orders, confiscation of firearms, and court-ordered counseling. Cases of habitual psychological abuse and physical abuse are prosecuted in the criminal justice system. Penalties are based on the gravity of injuries and range from 61 days' to 15 years' imprisonment. Murder in the context of domestic violence is defined as femicide in the criminal code, and penalties range from 15 years to life in prison. The government generally enforced the laws against domestic violence effectively.

The Ministry of Women and Gender Equality had a victim's assistance and protection program that operated psychological, legal, and social assistance centers and shelters throughout the country and maintained an emergency hotline.

Violence against women and girls, including rape and femicide, was a significant problem. Reports to police and prosecutors of domestic violence were less

frequent than in previous years due to public health measures restricting movement to prevent the spread of COVID-19, thus making it more difficult for victims to report.

On September 6, Jessica del Carmen Gonzalez Toledo was found dead of stab wounds in her home after coworkers filed a missing-person report. Police found and arrested her partner at the scene. The man was charged with femicide and placed in pretrial detention.

On November 28, well known environmental activist Javiera Rojas was found dead in Calama, in the Antofagasta Region. Police reported her body was found with hands and feet bound. On December 2, two men, including her partner with whom she lived, were charged with murder and placed in pretrial detention.

On November 26, Hugo Bustamante and Denisse Llanos were convicted for the August 2020 rape and murder of 16-year-old Ambar Cornejo, Llanos's daughter, and were sentenced to life imprisonment. Bustamante, who was Denisse Llanos's partner, had prior convictions for killing a previous partner and her nine-year-old son in 2005 and was freed on parole in 2016. Both were given additional sentences for multiple other crimes, including for sexually abusing Ambar's brother.

**Sexual Harassment:** Workplace sexual harassment is a civil but not criminal offense; penalties are outlined exclusively in the labor code. By law sexual harassment in the workplace is cause for immediate dismissal from employment. The law requires employers to define internal procedures or a company policy for investigating sexual harassment. Employers may face fines and additional financial compensation to victims if it is shown the company did not follow its policy on sexual harassment. The law provides protection to those affected by sexual harassment by employers and coworkers. The law provides severance pay to individuals who resign due to sexual harassment if they have worked at least one year with the employer.

Sexual harassment in public spaces is a crime. The law defines any words or gesture of a sexual nature designed to intimidate or humiliate another person as harassment. The law also covers audiovisual recordings of an individual's genital

area or private parts without consent. Depending on the severity of the crime, penalties range from 61 days' to five years' imprisonment and monetary fines.

**Reproductive Rights**: There were no reports of coerced abortion or involuntary sterilization on the part of government authorities.

The national health service provided contraception and reproductive health services. Access to sexual and reproductive health services and information was limited in remote regions, which especially affected poor women.

On February 23, the government fined the pharmaceutical company responsible for supplying defective or improperly packaged birth control pills distributed by public health clinics during 2020. The defective pills allegedly caused at least 170 unwanted pregnancies. The government withdrew the pills from the market in September 2020 but did not publicize the problem or warn women using the potentially defective pills. On March 28, the National Corporation of Consumers and Users sued two laboratories, Silesia and Andromaco, in a Santiago civil court for reparation for economic and moral consequences to the affected mothers.

The government's National Service for Women and Gender Equality provided access to medical, legal, and psychological services for victims of sexual violence. Emergency contraception was available at pharmacies without a prescription. The National Service operated specialized centers for victims of sexual violence in Santiago, Valparaiso, and Concepcion, 110 centers nationwide for victims of gender-based violence, and a toll-free victims' hotline. The National Service for Minors (SENAME) provided assistance and shelters for victims younger than 18.

**Discrimination:** Although women possess most of the same legal rights as men, local human rights organizations reported that the government did not enforce the law effectively and that discrimination persisted in employment, pay, ownership and management of businesses, and education.

Certain laws defining the marital relationship enable discrimination. The most common marital arrangement is "conjugal society," which provides that a husband has the right to administer joint property, including his wife's property, without consultation or written permission from his wife, but a wife must demonstrate that her husband has granted his permission before she is permitted to make financial arrangements. Legislation was pending despite a 2007 agreement with the Inter-American Commission on Human Rights to modify the conjugal society law to give women and men equal rights and responsibilities in marriage. The law provides that, unless a woman is married under the separate-estate regime or a joint-estate regime, she may not enter into a commercial partnership agreement without permission from her husband, while a man may enter into such an agreement without permission from his wife.

Despite a law providing for equal pay for equal work, one-third of women were paid less than men, according to an organization specializing in market and consumer data. The Ministry of Women and Gender Equality oversaw protecting women's legal rights and was specifically tasked with combatting discrimination against women.

### Systemic Racial or Ethnic Violence and Discrimination

Equal treatment and nondiscrimination are explicitly protected in the constitution, and the labor code specifically prohibits discrimination. There were reports of discrimination against racial minorities and immigrants in public health and education. The government implemented training programs for public officials on assisting immigrants, incorporated interpreters into offices, and provided information in languages other than Spanish, specifically Haitian Creole. Some Haitians reported xenophobia and discrimination in their local communities. Several municipal governments implemented plans for assisting migrants with public services.

### **Indigenous Peoples**

Although the constitution does not specifically protect indigenous groups, indigenous peoples have the right to participate in decisions affecting their lands, cultures, and traditions, including the exploitation of energy, minerals, timber, and other natural resources on indigenous lands. According to human rights organizations, indigenous peoples encountered serious obstacles to exercising these civil and political rights, including the right to use natural resources in their territories, to political participation, and to nondiscrimination and equal access to justice. While indigenous lands were demarcated, some indigenous Mapuche and Rapa Nui communities demanded restitution of privately and publicly owned traditional lands. On November 9, a third consecutive state of emergency was declared in the southern regions of Araucania and Biobio, in which there were large populations of Mapuche, to allow the military to support law enforcement to address increased violence in these areas. Some indigenous groups criticized the decision as a government failure to meet the social, territorial, and economic demands of Mapuche activists.

The law recognizes nine indigenous groups in the country and creates an administrative structure to provide specialized programs and services for the economic, social, and cultural development of these peoples.

Indigenous persons experienced societal discrimination, including in employment. There were reports of incidents in which they were attacked and harassed. There were reports of police abuse of Mapuche individuals and communities, including children. The INDH brought petitions to protect the constitutional rights of Mapuche individuals, including children and adolescents, in cases of excessive use of force by security forces.

On March 22, the Temuco Appellate Court accepted a protective remedy brought by the National Children's Rights Defender on behalf of three adolescents who experienced cruel, inhuman, and degrading treatment at the hands of the PDI during a police operation in January in the Mapuche community of Temucuicui in the southern Araucania Region.

On April 29, Alberto Curamil, a Mapuche environmental activist, was injured by police who reportedly chased his truck and opened fire with riot weapons after Curamil participated in a protest against an arson attack on a Mapuche home. As of December 6, an investigation was pending.

On May 5, the Supreme Court upheld the January 28 homicide conviction and 16year sentence of policeman Carlos Alarcon for the killing of Mapuche community leader Camilo Catrillanca. Alarcon, six other police, and one civilian employee were convicted for crimes ranging from homicide and attempted homicide to obstruction of justice, falsification of and tampering with evidence, and malfeasance in a 2018 shooting in Temucuicui.

## Children

**Birth Registration:** Citizenship is derived by birth within the country's territory and from one's parents or grandparents. There were no reports that birth registration was denied on a discriminatory basis.

**Child Abuse:** There are laws against child abuse, but it remained a persistent problem. The law renders persons convicted of child sexual abuse permanently ineligible for any position, job, career, or profession in educational settings requiring direct and habitual contact with children younger than age 18. The law also includes a public registry of these sex offenders.

In March the National Defender for Children's Rights began the investigation of a complaint regarding the alleged mistreatment of a child in the Carlos Antunez shelter run by SENAME in Santiago. In a videorecording shot by neighbors and later shared in social media, social media users heard a child screaming and crying. Neighbors stated that SENAME authorities did not act on their first complaint.

**Child, Early, and Forced Marriage:** The legal minimum age of marriage is 18 (16 with parental consent).

**Sexual Exploitation of Children:** The law prohibits all forms of human trafficking and prescribes penalties ranging from five years to 15 years in prison, plus fines, for trafficking offenses. Child sex-trafficking cases were often prosecuted under a different law, which provides lesser penalties. Due to sentencing guidelines for first-time offenders that provide automatic parole for any sentence of less than five years' confinement, many convicted traffickers received weak sentences, hampering efforts to deter traffickers and hold them accountable.

Sexual relations with minors ages 14 to 17 may be considered statutory rape depending on the circumstances. Sex with a child younger than age 14 is considered rape, regardless of consent or the victim's gender. Penalties for statutory rape range from five to 20 years in prison. Child pornography is a crime. Penalties for producing child pornography range from 541 days to five years in prison.

Commercial sexual exploitation of children and adolescents was a problem, and

children were victims of sex trafficking with and without third-party involvement. Children were also used in the production of pornography.

**Institutionalized Children:** SENAME continued implementing a restructuring begun after investigations of the 2017 death of an 11-year-old child in SENAME custody revealed systemic problems of abuse and neglect in SENAME shelters. The restructuring included closing traditional shelters for vulnerable children and replacing them with family-style residences. The first family-style residences opened in 2019 in Valparaiso and Santiago. In 2020 SENAME opened additional residences in Santiago, Arica, and Biobio. During 2021 SENAME did not open new residences but continued construction on a total of 13 new residences located in the regions of Santiago, Maule, Biobio, and the Araucania.

**International Child Abductions:** The country is a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. See the Department of State's *Annual Report on International Parental Child Abduction* at <u>https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data/reported-cases.html</u>.

### Anti-Semitism

The Jewish community had approximately 18,000 persons.

On May 19, protesters outside the embassy of Israel in Santiago burned Israeli flags and distributed flyers featuring a swastika imposed on a Star of David. On May 23, an individual who claimed to be Palestinian assaulted an orthodox rabbi.

Although the Communist Party mayor of Recoleta, Daniel Jadue, lost his presidential bid, Jewish leaders feared that his fierce opposition to Israel advanced the agenda of delegitimizing the right to self-determination of the Jewish people. Jadue had previously accused Jews of controlling media and referred to the Jewish community as the "Zionist community."

### **Trafficking in Persons**

See the Department of State's *Trafficking in Persons Report* at <u>https://www.state.gov/trafficking-in-persons-report/</u>.

### **Persons with Disabilities**

Persons with disabilities cannot access education, health services, public buildings, and transportation on an equal basis with others. While the law requires universal and equal access to these services, information, and communications, such access was limited, and most public buildings did not comply with legal accessibility mandates. The public transportation system, including many metro stations and most buses, particularly outside Santiago, did not adequately provide accessibility for persons with disabilities. National government communications via television were interpreted into sign language, but not all forms of government information and communications, including information from regional and local governments, were provided in accessible formats.

On October 11, during a protest in Santiago, a man in a wheelchair was hit by a high-pressure water stream from a Carabineros water cannon, overturning his chair and causing him to fall. The National Service for Disabilities solicited information from Carabineros, who opened an internal investigation.

The law prohibits discrimination against persons with physical, sensory, intellectual, and mental disabilities, and the government generally enforced these provisions. Nonetheless, persons with disabilities suffered de facto discrimination in employment and occupation, education, housing, and health care. Children with disabilities attended public and private school with their peers and in segregated schools. According to the Tacal Foundation, only 50 percent of children with disabilities completed eighth grade; 10 percent finished high school; and 5 percent entered tertiary education, with only 1 percent of those obtaining a university degree. In comparison, prior to the COVID-19 pandemic, 88 percent of all students finished high school.

On November 1, an update to the labor inclusion law, promulgated in October 2020, went into effect. The law stipulates that employers adopt measures to include workers with disabilities into their workforce; the law includes an annual reporting requirement. Of 7,000 companies that under the previous law should have employed persons with disabilities as 1 percent of their workers, only 1,700 companies had done so as of November, according to the Tacal Foundation.

### Acts of Violence, Criminalization, and Other Abuses Based on Sexual Orientation and Gender Identity

The law prohibits discrimination against persons based on sexual orientation or gender identity in housing, employment, and access to government services. The government generally enforced these laws effectively. At times, however, authorities appeared reluctant to use the full recourse of antidiscrimination laws, including charging assailants of lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) victims with a hate crime, which would elevate criminal penalties.

Violence against LGBTQI+ individuals continued. In July the Movement for Homosexual Integration and Liberation (MOVILH) reported humiliating treatment and homophobia towards a patient at the San Pablo de Coquimbo Hospital. A doctor discharged the patient less than 24 hours after surgery and without checking the state of the patient's postoperative recovery.

In March, MOVILH reported that in 2020 it received 1,266 reports of violence or discrimination due to sexual orientation or gender identity, the highest number in the history of their annual report and a 15 percent increase from 2019. The cases included six killings, police abuse, discrimination in the workplace, and hate campaigns. The most common discriminatory acts reported to MOVILH were verbal abuse and discrimination in public services, such as police operations, public education, and health services.

The law grants transgender citizens aged 14 and older the right to have gender markers on government-issued identity cards and university diplomas changed to reflect their gender identity. In May, MOVILH reported that more than 50 persons had reported difficulties in changing their name and gender with the civil registry and delays in receiving their new identity cards.

On December 9, President Pinera signed into law the Marriage Equality Act, with broad bipartisan support from the Congress. Since 2015 civil unions provided same-sex couples with many but not all the benefits of married couples, such as the right to adoption. Under the new law, all families have the right to the same benefits and protections.

# Section 7. Worker Rights

### a. Freedom of Association and the Right to Collective Bargaining

The law provides for the rights of workers, with some limitations, to form and join independent unions of their choice, bargain collectively, and conduct strikes. The law also prohibits antiunion practices and requires either back pay or reinstatement for workers fired for union activity.

Workers in the private sector and in state enterprises have the freedom to unionize without prior approval. Police, military personnel, and civil servants working for the judiciary are prohibited from joining unions. Union leaders are restricted from being candidates or members of Congress. The Labor Directorate, an independent government authority under the Ministry of Labor, has broad powers to monitor unions' financial accounts and financial transactions. For example, unions must update their financial records daily, and ministry officials may inspect the records at any time.

The law prohibits public employees from striking, although they frequently did. While employees in the private sector and workers in formal and regulated collective bargaining units have the right to strike, the law places some restrictions on this right. For example, an absolute majority of workers, rather than a majority of those voting, must approve strikes.

The law also prohibits employees of 101 specific private-sector companies, largely providers of services such as water and electricity, from striking, and it stipulates compulsory arbitration to resolve disputes in these companies. Additionally, workers employed by companies or corporations whose stoppage would cause serious damage to the health, economy, or security of the country do not have the right to strike.

Employers may not dismiss or replace employees for being involved in a strike. Unions must provide emergency personnel to fulfill the company's "minimum services." Those include the protection of tangible assets and the company's facilities, accident prevention, ensuring the supply of essential public services, and ensuring the prevention of environmental and sanitary damages. The law extends unions' rights to information, requiring large companies to disclose annual reports, including balance sheets, statements of earnings, and audited financial statements. Large companies must provide any public information required by the Superintendence of Securities and Insurance within 30 days of the date when the information becomes available. Smaller companies must provide the information necessary for preparing collective bargaining processes.

The law extends collective bargaining rights to intercompany unions, provided they represent workers at employers having 50 or more employees and falling within the same economic rubric or activity. An absolute majority of all covered workers must indicate through secret ballot that they agree to be represented by an intercompany union in collective bargaining. Intercompany unions for workers at micro or small businesses (i.e., with fewer than 50 workers) are permitted to bargain collectively only when the individual employers all agree to negotiate under such terms.

The law does not provide for collective bargaining rights for workers in public institutions or in a private institution that received more than 50 percent of its funding from the state in either of the preceding two years, or whose budget was dependent upon the Defense Ministry. The law also does not provide for collective bargaining in companies whose employees are prohibited from striking, such as in health care, law enforcement, and public utilities. The law extends bargaining rights to apprentices and short-term employees. Executives, such as managers and assistant managers, are prohibited from collective bargaining.

The government enforced applicable laws effectively, and penalties were commensurate with those for other laws involving denials of civil rights, such as discrimination. Nevertheless, the Labor Directorate commented on the need for more inspectors. Penalties were not sufficient to deter violations. Companies are generally subject to sanctions for labor violations, which vary according to the severity of the case. Companies may receive "special sanctions" for infractions, which include antiunion practices. Freedom of association was generally respected.

Employers sometimes did not respect the right to collective bargaining. NGOs and unions reported that companies sought to inhibit the formation of unions and avoid

triggering collective bargaining rights, especially among seasonal agricultural workers and in key export sectors such as mining, forestry, and fishing. These companies used subcontracts and temporary contracts and obtained several fiscal registration or tax identification numbers when increasing the size of their workforce. Subcontracted employees earned lower wages than regular employees performing the same task, and many contractors failed to provide formal employment benefits, such as social security, health care, and pensions.

In August workers at the top lithium producer Albermarle went on strike after accusing their employer of discriminatory contracts and salary inequality. On September 15, the Albermarle Salar Workers Union reached an agreement with Albermarle for a new 36-month labor contract. Workers returned to their jobs immediately following the settlement.

Labor courts may require workers to resume work upon a determination that a strike, by its nature, timing, or duration, causes serious risk to the national economy or to health, national security, and the supply of goods or services to the population. Generally, a back-to-work order should apply only when a prolonged strike in a vital sector of the economy might endanger public safety or health, and it should apply only to a specific category of workers.

### b. Prohibition of Forced or Compulsory Labor

The law prohibits forced or compulsory labor but does not criminally prohibit forced labor except when it results from human trafficking. Penalties were commensurate with those for analogous crimes, such as kidnapping. NGOs reported many government officials responsible for identifying and assisting victims had limited resources and expertise in identifying victims of labor trafficking. Additionally, judges often suspended or commuted sentences. The government worked to prevent and combat forced labor through its interagency antitrafficking taskforce, which included international organizations and local NGOs. The task force published and began implementation of its 2019-22 national action plan.

Labor trafficking continued to occur. Some foreign citizens and children were subjected to forced labor in the mining, agriculture, construction, street vending, garment, domestic service, and hospitality sectors. Some children were forcibly employed in the agricultural, industrial, and service sectors, as well as in the illegal drug trade (see section 7.c.).

Also see the Department of State's *Trafficking in Persons Report* at <u>https://www.state.gov/trafficking-in-persons-report/</u>.

### c. Prohibition of Child Labor and Minimum Age for Employment

The country conforms to international standards, which dictate the minimum age for employment or work is 15. The law sets the minimum age for employment at 18, although it provides that children ages 15-17 may work with the express permission of their parents or guardians if the child attends school. Children may perform only light work that does not require hard physical labor or constitute a threat to health or the child's development. The law prohibits all the worst forms of child labor. Prohibitions related to the use of children for illicit activities do not meet international standards because they only criminalize supplying children with drugs or inducing children to use drugs.

Ministry of Labor inspectors enforced regulations in the formal economy effectively but did not enforce regulations in or inspect the informal economy. Infractions included contracting a minor younger than 18 without the authorization of the minor's legal representative, failing to register a minor's contract with the ministry, and contracting a minor younger than 15 for activities not permitted by law. Criminal penalties for the worst forms of child labor, such as commercial exploitation of children, were commensurate with those for analogous crimes such as kidnapping.

The government devoted considerable resources and oversight to child labor policies. The Ministry of Labor and Social Welfare, through the Program Against Child Labor, led efforts to eradicate the worst forms of child labor.

Multiple government agencies participated in the National Advisory Committee to Eradicate Child Labor. The committee met regularly and brought together civil society organizations and government agencies in a coordinated effort to raise awareness, provide services to victims, and protect victims' rights. The Worst Forms of Child Labor Task Force, a separate entity, maintained a registry of cases and a multisector protocol for the identification, registration, and care of children and adolescents who were victims of commercial sexual exploitation. The National Tourism Service's hotel certification procedures, developed in collaboration with the National Service for Minors, included strict norms for preventing the commercial sexual exploitation of children. This included special training for National Tourism Service staff charged with assessing and certifying hotels.

Some children were subjected to commercial sexual exploitation and the worst forms of child labor. Authorities identified a significant number of children involved in illicit activities, including drug trafficking and theft; some children may have been victims of child sex trafficking. Children also engaged in dangerous tasks in agriculture.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at <u>https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings</u>.

### d. Discrimination with Respect to Employment and Occupation

The law and regulations prohibit employment discrimination based on race, sex, age, civil status, union affiliation, religion, political opinion, nationality, national extraction, social origin, disability, language, sexual orientation, gender identity, HIV-positive status or other communicable diseases, refugee or stateless status, ethnicity, or social status. The government and employers cannot discriminate because of refugee status, stateless status, or ethnicity, but workers must have a work permit or be citizens to hold contracted jobs.

The law provides civil legal remedies to victims of employment discrimination based on race, ethnicity, nationality, socioeconomic situation, language, ideology, political opinion, religion, belief, association or participation in union organizations or lack thereof, gender, sexual orientation, gender identity, marriage status, age, political affiliation, personal appearance, and sickness or physical disability. For all public agencies and for private employers with 100 or more employees, the law requires 1 percent of jobs be reserved for persons with disabilities.

The government enforced the applicable law effectively, and penalties were

commensurate with other laws related to civil rights. Authorities generally enforced the law in cases of sexual harassment, and there was no evidence of police or judicial reluctance to act. Companies may receive "special sanctions" for infractions such as denying maternity leave. Discrimination in employment and occupation continued to occur. Indigenous persons continued to experience societal discrimination in employment. Statistics regarding rates of discrimination faced by different groups were not available.

### e. Acceptable Conditions of Work

Wage and Hour Laws: The national minimum wage exceeded the poverty level. The law sets the legal workweek at six days or 45 hours. The maximum workday is 10 hours (including two hours of overtime pay). The law provides exemptions from restrictions on hours of work for some categories of workers such as managers; administrators; employees of fishing boats; restaurant, club, and hotel workers; drivers; airplane crews; telecommuters or employees who work outside of the office; and professional athletes. The law mandates at least one 24-hour rest period during the workweek, except for workers at high altitudes, who may exchange a work-free day each week for several consecutive work-free days every two weeks. Annual leave for full-time workers is 15 workdays, and workers with more than 10 years of service are eligible for an additional day of annual leave for every three years worked. Overtime is any time worked beyond the 45-hour workweek, and workers are due time-and-a-half pay for any overtime performed. The Labor Directorate, an agency under the Ministry of Labor and Social Welfare, is responsible for enforcing minimum wage and other labor laws and regulations; penalties were commensurate with those for similar crimes. As of July the directorate had 374 inspectors who conducted both regular and unannounced workplace visits. Inspectors can impose penalties for violations of labor, social security, and occupational safety and health (OSH) laws.

**Occupational Safety and Health:** The law establishes OSH standards, which are applicable to all sectors. Special safety and health norms exist for specific sectors such as mining and diving. The National Service for Geology and Mines is further mandated to regulate and inspect the mining industry. The law does not regulate the informal sector. By law workers may remove themselves from situations that endanger health or safety without jeopardy to their employment, and authorities

effectively protected employees in this situation.

The Health Ministry and the Labor Ministry administered and effectively enforced OSH standards. Penalties for violations of OSH laws were commensurate with those for similar crimes, such as negligence. The law establishes fines for noncompliance with labor regulations. Companies may receive "special sanctions" for infractions such as causing irreversible injuries to an employee.

**Informal Sector:** A July-September survey by the Statistics National Institute revealed that informal employment represented 27.7 percent of total employment, an increase of 4.2 percentage points from 2020. Impacted sectors included wholesale and retail trade (informal employment up by 30.6 percent) and construction (informal employment up by 62.3 percent). Regarding new jobs in the informal sector, self-employed workers were up by 48.1 percent, domestic service workers were up by 46.7 percent, and jobs with employers were up by 39.3 percent. Combined, those three categories represented the majority of new jobs in the informal sector.

The government provided economic and social measures such as the Emergency Family Income program to those affected by the COVID-19 pandemic, including workers in the informal economy. As of January, the government provided other types of social assistance in the form of cash payments to low-income families and unemployed workers. In September the government began paying an incentive to companies for hiring women, young workers, men aged 55 years and older, persons with disabilities, and workers retired due to a disability.

# **CHILE 2020 HUMAN RIGHTS REPORT**

## **EXECUTIVE SUMMARY**

Chile is a constitutional multiparty democracy. In 2017 the country held presidential elections and concurrent legislative elections, which observers considered free and fair. Former president (2010-14) Sebastian Pinera won the presidential election and took office in March 2018.

The Carabineros and the Investigative Police have legal responsibility for law enforcement and maintenance of order, including migration and border enforcement, within the country. The Ministry of the Interior and Public Security oversees both forces. Civilian authorities generally maintained effective control over the security forces. Members of the security forces committed abuses.

On October 25, the country held a plebiscite, which observers considered free and fair, in which a majority approved the drafting of a new constitution.

Significant human rights issues included reports of arbitrary or unlawful killings; torture by law enforcement officers; violence against indigenous persons; and violence against lesbian, gay, bisexual, transgender, and intersex persons.

The government took steps to identify, investigate, prosecute, and punish officials who committed human rights abuses.

# Section 1. Respect for the Integrity of the Person, Including Freedom from

# a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings

There were isolated reports that the government or its agents committed arbitrary or unlawful killings. On October 18, during a protest in Santiago marking the anniversary of the 2019 social unrest, Anibal Villarroel was shot and killed, allegedly by Carabineros. The case was under investigation at year's end.

The Investigative Police and Public Prosecutor's Office investigate whether security force killings were justifiable and pursue prosecutions. The National Institute of Human Rights (INDH), an independent government authority that monitors complaints and allegations of abuse, may file civil rights cases alleging arbitrary killings. As of October prosecutions of one soldier and one marine arrested for killings during the 2019 social unrest and investigations into three other killings--two allegedly by Carabineros and one by a soldier--continued.

### **b.** Disappearance

There were no reports of disappearances by or on behalf of government authorities.

In October a Supreme Court hearing was held in the 1985 disappearance case of U.S. citizen Boris Weisfeiler.

# c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

Although the constitution and law prohibit such practices, there were reports of excessive force, abuse, and degrading treatment by law enforcement officers. Since widespread protests and civil unrest that began in 2019 and continued into January and February, the INDH filed nearly 2,500 criminal accusations that law enforcement officials committed acts of torture or cruel treatment during detention of protesters or criminal arrests, including accusations of sexual abuse or assault. In July the National Prosecutor's Office announced it had received more than 8,800 allegations of abuse by security forces between October 18, 2019, and March 31. Of these, more than 1,000 allegations were for abuse of minors and nearly 400 for sexual violence. As of October the National Prosecutor's Office reported that 4,681 investigations remained open and that it had formally charged 75 members of security forces and had requested hearings to charge 22 more. Of those charged, one case had resulted in a conviction by October.

On March 29, during a protest in the Santiago neighborhood of Villa Francia, a woman who claimed she was not in involved in the protest was stopped by Carabineros and allegedly beaten, despite complying with orders and declaring that she was pregnant. She was taken to a police station, where she suffered a

miscarriage, and was transferred to a hospital, where medical personnel allegedly mistreated her. She was taken back to the police station and only released when the prosecutor arrived. On April 2, the INDH filed a criminal complaint of torture, which remained under investigation as of October.

During the civil unrest, more than 200 civilians suffered eye trauma due to Carabineros' use of shotguns loaded with nonlethal pellets, according to the INDH. On July 23, a man lost his eye in the city of Renca after being shot, allegedly by a member of the Investigative Police. The INDH filed a criminal suit for torture, prosecutors opened an investigation, and as of October the accused officer remained under house arrest.

In August prosecutors arrested and charged the officer who shot Gustavo Gatica with a riot-control shotgun in November 2019, blinding him in both eyes. As of October the case against the officer remained open. In April the government issued new regulations on the use of force by security forces, including police and armed forces, to limit the use of shotguns and other nonlethal ammunition during protests.

Human rights groups reported that impunity was a problem in the security forces, especially the Carabineros. The INDH, Investigative Police, and public prosecutors investigated many of the abuses and brought criminal charges, but court closures and delays due to the COVID-19 pandemic slowed investigations. The Carabineros quickly fired many officers accused of abuses and administratively sanctioned others. The slow pace and small number of prosecutions relative to the number of accusations stemming from the social unrest created a perception that those accused of abuses did not face effective accountability. The government increased training for Carabineros officers on crowd control techniques and human rights.

### **Prison and Detention Center Conditions**

According to the INDH and other observers, conditions in some prisons were poor, due to antiquated infrastructure, overcrowding, substandard sanitary infrastructure, and inadequate water supplies. Human rights organizations reported that violence,

including torture, occurred, as well as an entrenched practice of unsanctioned punishment.

**Physical Conditions:** The prison population was unevenly distributed across the prison system, with approximately 50 percent of prisons operating beyond maximum capacity, while others were underpopulated. Overpopulation and inadequate facilities led to comingling of pretrial detainees and convicted prisoners as a common practice. The INDH reported that prisoners were often confined to their cells for the majority of the day, a practice that did not allow sufficient time for exercise or participation in rehabilitation and readjustment programs.

Prisoner and human rights groups continued to investigate alleged abuse or use of excessive force against detainees, and media covered some of the allegations.

On April 16, the government passed a law to commute the sentences of 1,860 elderly prisoners, pregnant women, and women with infant children, releasing them to house arrest to limit their exposure to COVID-19. Prisoners convicted of violent crimes and crimes against humanity were not eligible.

Administration: Independent government authorities, including the INDH, generally investigated credible allegations of mistreatment. The government usually investigated and monitored prison and detention center conditions.

**Independent Monitoring:** The government permitted prison visits by independent human rights observers, and such visits took place at both government and privately operated facilities.

### d. Arbitrary Arrest or Detention

The constitution prohibits arbitrary arrest and detention and provides for the right of any person to challenge the lawfulness of his or her arrest or detention in court. The government did not always observe these requirements.

### **Arrest Procedures and Treatment of Detainees**

Only public officials expressly authorized by law may arrest or detain citizens, and they generally did so openly with warrants based on sufficient evidence brought

before an independent judiciary. Authorities must immediately inform a prosecutor of an arrest and generally did so.

The prosecutor must open an investigation, receive a statement from the detainee, and ensure that the detainee is held at a local police station until the detention control hearing. Detention control hearings are held twice daily, allowing for a judicial determination of the legality of the detention within 24 hours of arrest. Detainees must be informed of their rights, including the right to an attorney and the right to remain silent until an attorney is present. Public defenders are provided for detainees who do not hire their own lawyer. Authorities must expedite notification of the detention to family members. If authorities do not inform detainees of their rights upon detention, the judge may declare the process unlawful during the detention control hearing.

The law allows judges to set bail, grant provisional liberty, or order continued detention as necessary for the investigation or the protection of the prisoner or the public.

The law affords detainees 30 minutes of immediate and subsequent daily access to a lawyer (in the presence of a prison guard) and to a doctor to verify their physical condition. Regular visits by family members are allowed.

Persons detained during protests that violated curfews or restrictions on public gatherings put in place due to the COVID-19 pandemic were often released without charge and without a detention control hearing, and thus without a formal determination whether the arrest was lawful.

### e. Denial of Fair Public Trial

The constitution provides for an independent judiciary, and the government generally respected judicial independence and impartiality.

### **Trial Procedures**

The constitution and law provide for the right to a fair and public trial, and an independent judiciary generally enforced that right.

Defendants enjoy a presumption of innocence and have a right of appeal. They have the right to be informed promptly of charges, to have time to prepare their defense, and not to be compelled to testify or admit guilt. Three-judge panels form the court of first instance. The process is oral and adversarial, defendants have the right to be present and consult with an attorney in a timely manner, and judges rule on guilt and dictate sentences. Defendants have the right to free assistance from an interpreter. Court records, rulings, and findings were generally accessible to the public.

The law provides for the right to legal counsel, and public defenders' offices across the country provided professional legal counsel to anyone seeking such assistance. When human rights organizations or family members requested assistance, the nongovernmental organization (NGO) Corporation for the Promotion and Defense of the Rights of the People and other lawyers working pro bono assisted detainees during interrogation and trial. Defendants may confront or question adverse witnesses and present witnesses and evidence on their behalf, although the law provides for unidentified witnesses to testify in secret in certain circumstances.

For crimes committed prior to the implementation of the 2005 judicial reforms, criminal proceedings are inquisitorial rather than adversarial. As of September, one inquisitorial criminal court remained open.

### **Political Prisoners and Detainees**

There were no reports of political prisoners or detainees.

### **Civil Judicial Procedures and Remedies**

In civil matters there is an independent and impartial judiciary, which permits individuals to seek civil remedies for human rights violations; however, the civil justice system retained antiquated and inefficient procedures, which resulted in civil trials lasting years, if not decades. Administrative and judicial remedies are available for alleged wrongs. Individuals and organizations may appeal adverse domestic decisions domestically or to regional human rights bodies. Cases involving violations of an individual's human rights may be submitted through petitions by individuals or organizations to the Inter-American Commission on

Human Rights, which in turn may submit the case to the Inter-American Court of Human Rights. The court may order civil remedies, including fair compensation to the individual injured.

# f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence

The constitution prohibits such actions, and there were no reports that the government failed to respect these prohibitions.

# **Section 2. Respect for Civil Liberties, Including**

### a. Freedom of Expression, Including for the Press

The constitution provides for freedom of expression, including for the press, and the government generally respected this right. An independent press, an effective judiciary, and a functioning democratic political system combined to promote freedom of expression, including for the press.

**Violence and Harassment:** On May 1, Carabineros arrested a large group of journalists covering a Labor Day protest in Santiago. Despite the journalists' claims of possessing appropriate credentials exempting them from COVID-19 restrictions, the Carabineros accused them of violating limits on public gatherings and transported them to a police station. Several of the journalists continued broadcasting during their arrests, and videos showed Carabineros using water cannons and pepper spray against members of the press.

### **Internet Freedom**

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports that the government monitored private online communications without appropriate legal authority.

### Academic Freedom and Cultural Events

There were no government restrictions on academic freedom or cultural events.

### **b.** Freedoms of Peaceful Assembly and Association

The law provides for the freedoms of peaceful assembly and association, and the government generally respected those rights.

### c. Freedom of Religion

See the Department of State's *International Religious Freedom Report* at <u>https://www.state.gov/religiousfreedomreport/</u>.

### d. Freedom of Movement

The constitution provides for freedom of internal movement, foreign travel, emigration, and repatriation; and the government generally respected these rights.

### e. Status and Treatment of Internally Displaced Persons

Not applicable.

### f. Protection of Refugees

The government cooperated with the Office of the UN High Commissioner for Refugees and other humanitarian organizations in providing protection and assistance to refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern.

Access to Asylum: The law provides for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees, including access to education and health care.

**Durable Solutions:** In 2018 the government announced a Democratic Responsibility visa for Venezuelans fleeing the humanitarian crisis in Venezuela. In June 2019 the government halted visa-free entry for nonimmigrant Venezuelans. Under the government's immigration reform, the Democratic Responsibility Visa is the primary means for Venezuelans to work or establish legal residency in Chile. In 2018 the government began facilitating the voluntary repatriation of more than 1,200 Haitians to Port-au-Prince under its Humanitarian Plan for Orderly Returns

program. Haitians wishing to participate must sign a declaration agreeing not to return to Chile within nine years of departing.

# Section 3. Freedom to Participate in the Political Process

The law provides citizens the ability to choose their government through free and fair periodic elections held by secret ballot and based on universal and equal suffrage.

### **Elections and Political Participation**

**Recent Elections:** The country held concurrent presidential and legislative elections in 2017, both of which observers considered free and fair. The centerright candidate, Sebastian Pinera, won the 2017 runoff election against the centerleft independent candidate Senator Alejandro Guillier.

On October 25, the country held a plebiscite, which observers considered free and fair, in which a majority approved the drafting of a new constitution.

**Participation of Women and Members of Minority Groups:** No laws limit participation of women or members of minority groups in the political process, and they did participate. The constitutional convention to be elected in April 2021 requires gender parity.

The Mapuche minority group, which represents approximately 13 percent of the population, has historically been underrepresented in government. In 2017 two candidates from the Mapuche indigenous group were elected to congress--one to the 43-seat Senate and one to the 155-seat Chamber of Deputies (see section 6, Ethnic Minorities).

# Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for corruption by officials, and the government generally implemented those laws effectively. There were isolated reports of government corruption during the year.

**Corruption:** On June 1, prosecutors requested a 26-year sentence for Karim Chahuan, a city council member in the town of La Calera, Valparaiso, for drug trafficking, influence trafficking, falsification of public documents, obstruction of justice, and violations of the state security law. Chahuan was accused of using his position to obtain fraudulent documents for vehicles used in drug trafficking and other crimes and of being a gang ringleader. As of September he was in preventive detention awaiting trial.

**Financial Disclosure:** Law and regulation require income and asset disclosure by appointed and elected officials. Declarations are made available to the public, and there are administrative sanctions for noncompliance.

# Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses of Human Rights

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases, including multiple investigations into abuses during the civil unrest. Government officials were cooperative and responsive to their views.

**Government Human Rights Bodies:** The INDH operated independently and effectively, issued public statements and an annual report, and proposed changes to government agencies or policies to promote and protect human rights. The Senate and Chamber of Deputies have standing human rights committees responsible for drafting human rights legislation.

# Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

### Women

**Rape and Domestic Violence:** The law criminalizes rape of men or women, including spousal rape. Penalties for rape range from five to 15 years' imprisonment, and the government generally enforced the law.

The law criminalizes both physical and psychological domestic violence and protects the privacy and safety of the victim making the charge of rape or domestic violence.

Family courts handle cases of domestic violence and penalize offenders with monetary fines and other sanctions, such as eviction of the offender from the residence shared with the survivor, restraining orders, confiscation of firearms, and court-ordered counseling. Cases of habitual psychological abuse and physical abuse are prosecuted in the criminal justice system. Penalties are based on the gravity of injuries and range from 61 days' to 15 years' imprisonment. Murder in the context of domestic violence is defined as femicide in the criminal code, and penalties range from 15 years to life in prison. The government generally enforced the laws against domestic violence effectively.

The Ministry of Women and Gender Equality had a victims' assistance and protection program that operated psychological, legal, and social assistance centers and shelters throughout the country and maintained an emergency hotline.

Violence against women and girls, including rape and femicide, was a significant problem. Police and prosecutor reports of domestic violence were lower than in previous years, presumably due to difficulties for victims presented by public health measures restricting movement to prevent the spread of COVID-19. Calls to the Ministry of Women and Gender Equality's gender violence hotline increased 80 percent between March and April. Reports of rape reached a 10-year high in 2019.

On August 6, the body of a 16-year-old girl who had been missing for one week was found buried under the house of her mother's partner in the Valparaiso region. She had been raped and killed. On August 10, the alleged perpetrator was arrested and held in pretrial detention. He had prior convictions for killing a previous partner and her nine-year-old son in 2005 and was freed on parole in 2016. On September 23, the girl's mother was arrested for her alleged participation in the killing. An investigation remained open at year's end. On August 22, Carabinera Norma Vasquez was found dead in the trunk of a car in Linares. Her boyfriend, former Carabineros second lieutenant Gary Valenzuela Ramos, was arrested and placed in pretrial detention. Carabineros dismissed Valenzuela Ramos and opened

an internal investigation on July 30, after Vasquez filed a sexual harassment charge against him. An investigation remained open at year's end.

**Sexual Harassment:** Workplace sexual harassment is not a criminal offense, with penalties outlined exclusively in the labor code. By law sexual harassment in the workplace is cause for immediate dismissal from employment. The law requires employers to define internal procedures, or a company policy, for investigating sexual harassment, and employers may face fines and additional financial compensation to victims if it is shown the company policy on sexual harassment was not followed. The law provides protection to those affected by sexual harassment by employers and coworkers. The law provides severance pay to individuals who resign due to sexual harassment if they have completed at least one year with the employer.

Sexual harassment in public spaces is a crime. The law defines any verbal or gesture of a sexual nature designed to intimidate or humiliate another person as harassment, and it includes audiovisual recordings of an individual's genital area or private parts without consent. Depending on the severity of the crime, penalties range from 61 days' to five years' imprisonment and monetary fines.

**Reproductive Rights**: Couples and individuals have the right to decide the number, spacing, and timing of their children. Individuals had the information to do so, free from discrimination, coercion, and violence.

The national health service provided contraception and reproductive health services, but access to sexual and reproductive health services and information was limited in remote regions, which especially affected poor women. Emergency contraception was available at pharmacies without a prescription. During the year defective or improperly packaged birth control pills distributed by public health clinics allegedly caused at least 170 unwanted pregnancies, according to NGOs and media reports.

The law permits abortion only in cases of rape, severe danger to the health of the mother, or a nonviable pregnancy. Cultural and societal objections to abortion and contraception remained widespread, and NGOs reported that many women who

met the legal conditions necessary to terminate their pregnancies nonetheless faced obstacles in doing so.

The National Service for Women and Gender Equality provided access to medical, legal, and psychological services for victims of sexual violence. It operated three specialized centers for victims of sexual violence in Santiago, Valparaiso, and Concepcion as well as 110 centers nationwide for victims of gender-based violence and a toll-free victims' hotline. The National Service for Minors provided assistance and shelters for victims under the age of 18.

**Coercion in Population Control:** There were no reports of coerced abortion or involuntary sterilization on the part of government authorities.

**Discrimination:** Although women possess most of the same legal rights as men, the government did not enforce the law effectively, and discrimination in employment, pay, ownership and management of businesses, and education persisted. Certain laws defining the marital relationship enable discrimination. The most common marital arrangement is "conjugal society," which provides that a husband has the right to administer joint property, including his wife's property, without consultation or written permission from his spouse, but a wife must demonstrate that her husband has granted his permission before she is permitted to make financial arrangements. Legislation remained pending years after a 2007 agreement with the Inter-American Commission on Human Rights to modify the conjugal society law to give women and men equal rights and responsibilities in marriage. The commercial code provides that, unless a woman is married under the separate-estate regime or a joint-estate regime, she may not enter into a commercial partnership agreement without permission from his wife.

Despite a law providing for equal pay for equal work, women are 37 percent less likely than men to receive an equal wage for similar work, according to an organization specializing in market and consumer data. The Ministry of Women and Gender Equality is in charge of protecting women's legal rights and is specifically tasked with combatting discrimination against women.

## Children

**Birth Registration:** Citizenship is derived by birth within the country's territory and from one's parents or grandparents. There were no reports that birth registration was denied on a discriminatory basis.

**Child Abuse:** There are laws against child abuse, but it remained a persistent problem. The law renders persons convicted of child sexual abuse permanently ineligible for any position, job, career, or profession in educational settings requiring direct and habitual contact with children younger than age 18. The law also includes a public registry of these sex offenders.

In April the government ordered the closure of the National Service for Minors (SENAME) shelter Residencia el Nido in the municipality of Hualpen. The Talcahuano prosecutor's office opened an investigation into the former shelter director, who allegedly authorized adults to enter the residence and sexually abuse the children in exchange for money. The Talcahuano prosecutor's office opened an investigation into other staff members at the shelter to determine their possible involvement. The National Prosecutor's Office, Justice and Human Rights representative in the Bio-Bio Region, and National Defender for Children's Rights initiated legal actions against the alleged perpetrators and asked the local court to relocate 23 children from the shelter.

**Child, Early, and Forced Marriage:** The legal minimum age of marriage is 18 (16 with parental consent).

**Sexual Exploitation of Children:** The law prohibits all forms of human trafficking, prescribing penalties ranging from five years and one day to 15 years in prison, plus fines, for trafficking offenses. Nevertheless, child sex-trafficking cases were often prosecuted under a different law, Article 367 of the penal code, which provides lesser penalties. Due to sentencing guidelines for first-time offenders that provide automatic parole for any sentence of less than five years' confinement, many convicted traffickers received weak and inadequate sentences, which hampered efforts to deter and hold traffickers accountable.

Sexual relations with minors between the ages of 14 and 18 may be considered statutory rape depending on the circumstances; sex with a child younger than age 14 is considered rape, regardless of consent or the victim's gender. Penalties for

statutory rape range from five to 20 years in prison. Child pornography is a crime. Penalties for producing child pornography range from 541 days to five years in prison.

Commercial sexual exploitation of children and adolescents was a problem, and children were victims of sex trafficking with and without third-party involvement. Children were also used in the production of pornography.

**Institutionalized Children:** SENAME continued implementing a restructuring, begun after investigations following the death of an 11-year-old child in SENAME custody in 2017 revealed systemic problems of abuse and neglect in SENAME shelters. The restructuring included closing traditional shelters for vulnerable children and replacing them with family-style residences. The first family-style residences opened in 2019 in Valparaiso and Santiago. During the year SENAME opened additional residences in Santiago, Arica, and Biobio.

**International Child Abductions:** The country is a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. See the Department of State's *Annual Report on International Parental Child Abduction* at <u>https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data/reported-cases.html</u>.

# Anti-Semitism

The Jewish community numbers approximately 18,000 persons. Jewish community leaders reported concern over the tone of social media postings they perceived as threatening. The commentary that leaders found offensive primarily referenced frustration with Israeli government policies and did not specifically mention either Jewish individuals or Chilean Jews.

In July the mayor of the city of Recoleta made anti-Semitic statements in a radio interview, alleging a "Zionist conspiracy" to control the media. Central government officials widely condemned the comments. In October during a march in Santiago by groups opposed to the drafting of a new constitution, photographs published in the media showed some groups using anti-Semitic symbols, slogans, and salutes.

## **Trafficking in Persons**

See the Department of State's *Trafficking in Persons Report* at <u>https://www.state.gov/trafficking-in-persons-report/</u>.

## **Persons with Disabilities**

The law prohibits discrimination against persons with physical, sensory, intellectual, and mental disabilities, and the government generally enforced these provisions. Persons with disabilities suffered forms of de facto discrimination. The law provides for universal and equal access to buildings, information, and communications. Most public buildings did not comply with legal accessibility mandates. The public transportation system, particularly outside Santiago, did not adequately provide accessibility for persons with disabilities. In recent years, however, the Metropolitan Mobility Network, the main system of public transportation within Santiago, instituted changes to improve compliance with the law, including new ramp systems and elevators at certain metro stations, as well as improved access to some buses. Nevertheless, many metro stations and most buses remained inaccessible to persons with physical disabilities.

In September Marcelo Delgado, a computer technician with disabilities, filed a complaint alleging discrimination and aggression at his former place of employment. According to Delgado, he was attacked and bullied by coworkers and faced discriminatory repercussions from the company's human resources department after reporting the incident, leading to his firing. As of October the Labor Directorate continued to investigate the complaint.

In April a public hospital in the Puente Alto municipality of Santiago refused to release a baby to its biological father due to the father's disability. Despite the fact the father worked and lived independently, the hospital claimed he was incapable of caring for the child and petitioned a family court to send the child to foster care. The father sued, with support of a disability rights NGO, and in November obtained custody of his child.

## Members of National/Racial/Ethnic Minority Groups

Equal treatment and nondiscrimination are explicitly protected in the constitution, and the labor code specifically prohibits discrimination. There were reports of discrimination against racial minorities and immigrants in the public-health and education systems. The government implemented training programs for public officials on assisting immigrants, incorporated interpreters into offices, and provided information in languages other than Spanish, specifically Haitian Creole. Several municipal governments implemented plans for assistance to migrants in public services.

## **Indigenous People**

Although the constitution does not specifically protect indigenous groups, indigenous peoples have the right to participate in decisions affecting their lands, cultures, and traditions, including the exploitation of energy, minerals, timber, or other natural resources on indigenous lands. Indigenous peoples, however, encountered serious obstacles to exercising these civil and political rights, including the right to use natural resources in their territories, to political participation, and to nondiscrimination and equal access to justice. While indigenous lands were demarcated, some indigenous Mapuche and Rapa Nui communities demanded restitution of privately and publicly owned traditional lands.

The law recognizes nine indigenous groups in the country and creates an administrative structure to provide specialized programs and services to promote economic, social, and cultural development of these peoples.

Indigenous persons experienced societal discrimination, including in employment; there were reports of incidents in which they were attacked and harassed. There were numerous reports of police abuse against Mapuche individuals and communities, including against children. The INDH brought petitions to protect the constitutional rights of Mapuche individuals, including children and adolescents, in cases of excessive use of force by security forces. On June 10, the INDH filed a writ of constitutional protection of the rights of the Mapuche community We Newen in Collipulli, Araucania Region, after receiving allegations from 16 community members, including seven children, regarding excessive use of force during police raids, searches without a warrant, and indiscriminate use of

antiriot weapons, including tear gas and water cannons, during a 10-day period in May.

On August 18, the Ministry of Justice and Human Rights announced it had reached an agreement with imprisoned Mapuche religious leader Celestino Cordova to end a 107-day hunger strike. Cordova, who was serving an 18-year sentence for his role in a 2013 double murder, demanded he be released to house arrest for the duration of the COVID-19 pandemic. On August 13, the Supreme Court denied that request. Under the terms of the agreement, the government allowed Cordova a one-day visit to his *rehue* (traditional altar). The government agreed to create dedicated areas for traditional Mapuche medicinal and religious ceremonies in prisons with a significant number of indigenous prisoners. After further negotiations, groups of imprisoned Mapuches in three other prisons (totaling 26 individuals) ended their hunger strikes later in August.

The trial for the 2018 Carabineros killing of Camilo Catrillanca, a Mapuche community leader in Temucuicui in the southern Araucania Region, was postponed until October due to the COVID-19 pandemic. Seven Carabineros and one civilian employee were charged with homicide, attempted homicide, obstruction of justice, falsification of and tampering with evidence, and malfeasance.

# Acts of Violence, Criminalization, and Other Abuses Based on Sexual Orientation and Gender Identity

Violence against lesbian, gay, bisexual, transgender, and intersex (LGBTI) individuals continued. On August 24, the Movement for Homosexual Integration and Liberation (MOVILH), a leading gay rights NGO, reported a physical attack on a gay couple in Valparaiso by a neighbor. The couple alleged the neighbor had harassed and threatened them in the past, and they had not made a complaint due to fear of retribution. MOVILH filed a legal complaint, and as of October the case was under investigation.

In November 2019 MOVILH and the INDH filed legal actions protesting the treatment of Alberto Faundez, whom police arrested in October 2019 on suspicion of theft. Upon discovering that he was gay, police allegedly physically assaulted him in the detention center, forced him to strip naked in front of other prisoners,

and subjected him to homophobic insults. An investigation was pending at year's end.

In March, MOVILH reported it tracked 1,103 reports of violence or discrimination due to sexual orientation or gender identity during 2019, the highest number in the history of their annual report and a 58 percent increase from 2018. The cases included five deaths and 32 reports of police abuse, the majority of which occurred in the context of the 2019 social unrest. The most common discriminatory acts reported to MOVILH were verbal abuse and discrimination in public services, such as police operations, public education, and health services. In August, MOVILH published a survey showing a majority of LGBTI parents experienced discrimination in public services, with the civil registry identified as the most frequent institution where discrimination occurred, followed by social services agencies, schools, and medical care.

Antidiscrimination laws exist and prohibit discrimination based on sexual orientation or gender identity in housing, employment, and access to government services. The government generally enforced these laws effectively. A law that went into effect in December 2019 grants transgender citizens age 14 and older the right to have gender markers on government-issued identity cards and university diplomas changed to reflect their gender identity. On June 8, family courts recognized the filiation of a two-year-old boy with his nonbiological lesbian mother and ordered the civil registry to update the child's birth certificate accordingly. The couple had a civil union agreement and underwent the assisted fertilization procedure together. The civil registry previously had never issued a birth certificate recognizing a child's two mothers. On November 13, the government agreed to open an interagency unit to address violence against LGBTI persons, improve victims' assistance, train public servants and police, and create antidiscrimination campaigns.

Law enforcement authorities appeared reluctant to use the full recourse of a 2012 antidiscrimination law, including charging assailants of LGBTI victims with a hate crime, which would elevate criminal penalties as permitted under the law.

# Section 7. Worker Rights

## a. Freedom of Association and the Right to Collective Bargaining

The law provides for the rights of workers, with some limitations, to form and join independent unions of their choice, bargain collectively, and conduct strikes. The law also prohibits antiunion practices and requires either back pay or reinstatement for workers fired for union activity.

Workers in the private sector and in state enterprises are provided the freedom to unionize without prior approval. Police, military personnel, and civil servants working for the judiciary are prohibited from joining unions. Union leaders are restricted from being candidates or members of congress. The Labor Directorate (DT), an independent government authority under the Ministry of Labor, has broad powers to monitor unions' financial accounts and financial transactions. For example, unions must update their financial records daily, and ministry officials may inspect the records at any time.

The law prohibits public employees from striking, although they frequently did, including health-care workers striking for better working conditions and personal protective equipment in public hospitals amid a surge of COVID-19 patients between May and July. While employees in the private sector and workers in formal and regulated collective bargaining units have the right to strike, the law places some restrictions on this right. For example, an absolute majority of workers, rather than a majority of those voting, must approve strikes.

The law also prohibits employees of 101 private-sector companies, largely providers of services such as water and electricity, from striking, and it stipulates compulsory arbitration to resolve disputes in these companies. In addition workers employed by companies or corporations whose stoppage would cause serious damage to the health, economy, or security of the country do not have the right to strike.

Employers may not dismiss or replace employees involved in a strike. Unions must provide emergency personnel to fulfill the company's "minimum services." Those include the protection of tangible assets and of the company's facilities, accident prevention, servicing the population's basic needs, ensuring the supply of

essential public services, and ensuring the prevention of environmental and sanitary damages.

The law extends unions' rights to information, requiring large companies to disclose annual reports including balance sheets, statements of earnings, and audited financial statements. Large companies must provide any public information required by the Superintendence of Securities and Insurance within 30 days following the date when the information becomes available. Smaller companies must provide information necessary for the purposes of preparing the collective bargaining process.

While the law prior to the 2017 labor reform provided for collective bargaining rights only at the company level, the reform extended such rights to intercompany unions, provided they represent workers at employers having 50 or more employees and falling within the same economic rubric or activity. An absolute majority of all covered workers must indicate through secret ballot vote that they agree to be represented by an intercompany union in collective bargaining. Intercompany unions for workers at micro or small businesses (i.e., with fewer than 50 workers) are permitted to bargain collectively only when the individual employers all agree to negotiate under such terms. The law does not provide for collective bargaining rights for workers in public institutions or in a private institution that receives more than 50 percent of its funding from the state in either of the preceding two years, or whose budget is dependent upon the Defense Ministry. It also does not provide for collective bargaining in companies whose employees are prohibited from striking, such as in health care, law enforcement, and public utilities. Whereas the previous labor code excluded collective bargaining rights for temporary workers or those employed solely for specific tasks, such as in agriculture, construction, ports, or the arts and entertainment sector, the revised labor standards eliminate these exclusions, extending bargaining rights to apprentices and short-term employees. Executives, such as managers and assistant managers, are prohibited from collective bargaining.

The government effectively enforced applicable laws, and penalties were commensurate with those for other laws involving denials of civil rights, such as discrimination. Nevertheless, the DT commented on the need for more inspectors.

Penalties were not sufficient to deter violations. Companies are generally subject to sanctions for violations to the labor code, according to the severity of each case. Companies may receive "special sanctions" for infractions, which include antiunion practices. NGOs reported cases in labor tribunals took an average of three months to resolve. Cases involving fundamental rights of the worker often took closer to six months. NGOs continued to report it was difficult for courts to sanction companies and order remedies in favor of workers for various reasons, including if a company's assets were in a different name or the juridical entity could not be located.

Freedom of association was generally respected. Employers sometimes did not respect the right to collective bargaining. NGOs and unions reported that companies sought to inhibit the formation of unions and avoid triggering collective bargaining rights, especially among seasonal agricultural workers and in key export sectors such as mining, forestry, and fishing, by using subcontracts and temporary contracts as well as obtaining several fiscal registration or tax identification numbers when increasing the size of the workforce. In addition subcontracted employees earned lower wages than regular employees performing the same task, and many contractors failed to provide formal employment benefits, such as social security, health care, and pensions.

Labor courts may require workers to resume work upon a determination that a strike, by its nature, timing, or duration, causes serious risk to the national economy or to health, national security, and the supply of goods or services to the population. Generally, a back-to-work order should apply only when a prolonged strike in a vital sector of the economy might endanger public safety or health, and it should apply only to a specific category of workers. In March labor court proceedings were temporarily suspended due to the COVID-19 pandemic, until safety protocols were put in place allowing remote hearings.

# b. Prohibition of Forced or Compulsory Labor

The law prohibits forced or compulsory labor. The government generally enforced the law effectively. Penalties were commensurate with those for other analogous serious crimes, such as kidnapping. NGOs reported many government officials responsible for identifying and assisting victims had limited resources and

expertise to identify victims of labor trafficking. In addition judges often suspended or commuted sentences. The government worked to prevent and combat forced labor through its interagency antitrafficking taskforce, which included international organizations and local NGOs. The task force published and began implementation of the 2019-22 national action plan.

Labor trafficking continued to occur. Some foreign citizens were subjected to forced labor in the mining, domestic service, and hospitality sectors. Some children were forcibly employed in the agriculture, industry, and services sectors, as well as drug trade (see section 7.c.).

Also see the Department of State's *Trafficking in Persons Report* at <u>https://www.state.gov/trafficking-in-persons-report/</u>.

## c. Prohibition of Child Labor and Minimum Age for Employment

The country conforms to international standards, which dictate the minimum age for employment or work should be no less than 15. The law sets the minimum age for employment at 18, although it provides that children between 15 and 18 may work with the express permission of their parents or guardians as long as they attend school. They may perform only light work that does not require hard physical labor or constitute a threat to health or the child's development. The law prohibits all of the worst forms of child labor.

Ministry of Labor inspectors effectively enforced regulations in the formal economy but did not inspect or enforce such regulations in the informal economy. Infractions included contracting a minor younger than age 18 without the authorization of the minor's legal representative, failure to register a minor's contract with the ministry, and contracting a minor younger than 15 for activities not permitted by law. Penalties were commensurate with those for analogous serious crimes, such as kidnapping.

The government devoted considerable resources and oversight to child labor policies. The Ministry of Labor and Social Welfare, through the Program Against Child Labor, led efforts to fulfill obligations of the Convention on the Rights of the Child to eradicate the worst forms of child labor. Since 2014 the ministry's efforts

focused on designing and implementing the National Strategy for the Prevention and Eradication of Child Labor and the Protection of Adolescent Workers 2015-25.

In September the Committee for the Eradication of Child Labor of the Aysen Region held a virtual workshop for staff from the Rights Protection Offices with the participation of the six teams existing in the region: Rio Ibanez, Cochrane, Chile Chico, Coyhaique, Aysen, and Cisnes. The workshop led by the Regional Ministerial Secretariat of Labor and Social Welfare and the INDH focused on the consequences produced by the COVID-19 pandemic on child labor in the southern region.

Multisector government agencies continued to participate in the National Advisory Committee to Eradicate Child Labor. The committee met regularly throughout the year and brought together civil society organizations and government agencies in a coordinated effort to raise awareness, provide services to victims, and protect victims' rights. The Worst Forms of Child Labor Task Force, a separate entity, maintained a registry of cases and a multisector protocol for the identification, registration, and care of children and adolescents who are victims of commercial sexual exploitation. The National Tourism Service's hotel certification procedures, developed in collaboration with the National Service for Minors, included strict norms for preventing the commercial sexual exploitation of children. This included special training for National Tourism Service staff charged with assessing and certifying hotels.

Child labor continued to be a problem in the informal economy and agriculture, primarily in rural areas. Higher numbers of violations occurred in the construction, industrial manufacturing, hotels and restaurants, and agriculture sectors.

In urban areas it was common to find boys carrying loads in agricultural loading docks and assisting in construction activities, while girls sold goods on the streets and worked as domestic servants. Children worked in the production of ceramics and books and in the repair of shoes and garments. In rural areas children were involved in caring for farm animals as well as in harvesting, collecting, and selling crops, such as wheat. The use of children in illicit activities, which included the production and trafficking of narcotics, continued to be a problem. Commercial

sexual exploitation of children also continued to be a problem (see section 6, Children).

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at <u>https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings</u>.

## d. Discrimination with Respect to Employment and Occupation

The law and regulations prohibit employment discrimination based on race, sex, age, civil status, union affiliation, religion, political opinion, nationality, national extraction, social origin, disability, language, sexual orientation, or gender identity, HIV-positive status or other communicable diseases, refugee or stateless status, ethnicity or social status. The government and employers do not discriminate on the basis of refugee, stateless status, or ethnicity, but workers must have a work permit or be citizens to hold contracted jobs. The law also provides civil legal remedies to victims of employment discrimination based on race, ethnicity, nationality, socioeconomic situation, language, ideology or political opinion, religion or belief, association or participation in union organizations or lack thereof, gender, sexual orientation, gender identification, marriage status, age, affiliation, personal appearance, and sickness or physical disability. A 2017 law addresses matters related to persons with disabilities. For all public agencies and for private employers with 100 or more employees, the law requires 1 percent of jobs be reserved for persons with disabilities.

The government effectively enforced the applicable law, and penalties were commensurate to other laws related to civil rights. Authorities generally enforced the law in cases of sexual harassment, and there was no evidence of police or judicial reluctance to act. Companies may receive "special sanctions" for infractions such as denying maternity leave. Discrimination in employment and occupation continued to occur. Indigenous persons continued to experience societal discrimination in employment. Statistics regarding rates of discrimination faced by different groups were not available.

## e. Acceptable Conditions of Work

The national minimum wage exceeded the poverty level. The law sets the legal workweek at six days or 45 hours. The maximum workday is 10 hours (including two hours of overtime pay), but the law provides exemptions for hours of work restrictions for some categories of workers, such as managers; administrators; employees of fishing boats; restaurant, club, and hotel workers; drivers; airplane crews; telecommuters or employees who work outside of the office; and professional athletes. The law mandates at least one 24-hour rest period during the workweek, except for workers at high altitudes, who may exchange a work-free day each week for several consecutive work-free days every two weeks. Annual leave for full-time workers is 15 workdays, and workers with more than 10 years of service are eligible for an additional day of annual leave for every three years worked. Overtime is considered to be any time worked beyond the 45-hour workweek, and workers are due time-and-a-half pay for any overtime performed.

The law establishes occupational safety and health (OSH) standards, which are applicable to all sectors. Special safety and health norms exist for specific sectors, such as mining and diving. The National Service for Geology and Mines is further mandated to regulate and inspect the mining industry. The law does not regulate the informal sector. By law workers may remove themselves from situations that endanger health or safety without jeopardy to their employment, and authorities effectively protected employees in this situation.

The DT is responsible for enforcing minimum wage and other labor laws and regulations, and penalties were commensurate with those for similar crimes. The Ministries of Health and Labor administered and effectively enforced OSH standards. Penalties for violations of OSH laws were commensurate with those for similar crimes, such as negligence. The law establishes fines for noncompliance with labor regulations, including for employers who compel workers to work in excess of 10 hours a day or do not provide adequate rest days. Companies may receive "special sanctions" for infractions such as causing irreversible injuries to an employee.

The DT did not employ a sufficient number of labor inspectors to enforce labor laws effectively throughout the country, particularly in remote areas. NGOs commented that inspectors and labor tribunal judges needed more training and that

a lack of information and economic means generated an inequality between parties in cases before the tribunals. Penalties were not sufficient to deter violations, especially with larger employers. The DT worked preventively with small and medium-sized businesses to assist in their compliance with labor laws.

Minimum wage violations were most common in the real estate and retail sectors. The sectors with the most infractions in OSH standards were construction, retail, and industrial manufacturing. The service sector experienced the most accidents during the year. Immigrant workers in the agricultural sector were the group most likely to be subject to exploitative working conditions.

# Chile

Chile has taken initial steps to reform the national police, the Carabineros, prompted by complaints of serious abuses against protesters in 2019. Substantial changes to the police disciplinary system and protocols are still needed.

In October 2020, Chileans voted to establish a convention to write a new constitution. Members began work in July 2021 and have a year to present a new text, which is to be submitted to popular plebiscite.

Chile faces important human rights challenges related to prison conditions, accountability for past abuses, and protecting the rights of migrants, refugees, women, children, Indigenous people, and lesbian, gay, bisexual, and transgender (LGBT) people.

#### Police Reform

Hundreds of complaints of use of excessive force against protesters and ill-treatment of detainees since 2019 have prompted efforts to reform the police.

The Chilean National Human Rights Institute (INDH) reported 460 cases of eye injuries allegedly caused by police from October 2019 through March 2020. The Salvador Hospital in Santiago reported treating 182 cases of ocular trauma caused by kinetic impact projectiles that appeared to have been fired by police anti-riot guns between October and November 2019.

In November 2019, at Human Rights Watch's recommendation, the Carabineros temporarily suspended the use of anti-riot shotguns—which use less lethal ammunition— except when there was risk to life. In July 2020, however, the Carabineros updated its protocol on these shotguns in a way that leaves ample room for abuse. The protocol says their use should be "preferably," but not exclusively, defensive; it also allows the use of shotguns in defense of police stations, which could include when protesters throw rocks at a police building. The protocol does not specify what type of less lethal ammunition may be used, thus allowing the same type of kinetic impact projectiles that caused hundreds of eye injuries in 2019 and 2020; does not say at what distance from protesters police should shoot; and in some circumstances even allows shooting anywhere on the body.

In January 2020, the Carabineros adopted a protocol on body cameras that gives officers complete control to start and stop recording. It requires them to start recording right before they open fire with an anti-riot shotgun, meaning they would not record a video of the prior situation, which could show whether the use of force was permissible or not. The protocol also establishes that recordings are to be kept secret, even from victims of excessive police force, unless prosecutors or judges request access within a short 30-day period, after which most recordings will be deleted.

The Ministry of Interior has met with nongovernmental organizations (NGOs), experts, and the Carabineros to discuss amending police protocols, including a 2019 protocol that allows the police to add teargas to water cannons without having previously performed a public study on its health impact.

The government has also introduced several police reform bills that would increase oversight and transparency but do not overhaul the Carabineros' disciplinary regime, which does not guarantee independent and impartial investigations.

The Attorney General's Office launched 8,581 investigations on alleged police abuses committed from October 2019 to March 2020. By January 2021, it had closed more than 35 percent of them without pressing charges. As of September, only five Carabineros had been convicted, the National Human Rights Institute reported.

Carabineros opened 1,433 administrative investigations for involvement "in acts of violence," which resulted in 158 disciplinary punishments, including the firing of 22 police officers, it said in July. Carabineros said it is considering firing another 21 officers.

#### **Confronting Past Abuses**

Chilean courts continue to try agents of Augusto Pinochet's dictatorship (1973-1990) for human rights abuses. In January 2021, four former military officers and a former police officer were convicted and sentenced to 15 years in prison for two murders and five attempted murders of detainees poisoned in 1981, which the court considered part of a "systematic" policy of repression and crimes against humanity.

#### Migrants and Refugees' Rights

In April 2021, Congress passed a new immigration law that allows authorities to issue deportation orders without hearing migrants or giving them the chance to present evidence. Although the law decriminalizes undocumented entry into the country, it allows for the immediate expulsion of migrants who crossed the border or were trying to cross the border, raising concerns about due process. Some of the law's provisions have already entered into effect, while others require the Ministry of Interior to issue regulations.

From January through April, the government had deported 294 people, most without judicial review, and announced plans to deport a total of 1,500 by year's end.

A series of rulings by Chile's Supreme Court and appeal courts have ordered authorities to stop hundreds of deportations. The rulings have exposed violations of due process in deportations.

Most people deported in 2021, up to October, were Venezuelans. More than 457,000 Venezuelans are estimated to be living in Chile, most with legal status. But migration policies since 2019 have made it increasingly difficult for Venezuelans to obtain visas or asylum. Chile only granted refugee status to 3 Venezuelans, out of 325 applications, in 2020, and to 4 out of 987 in 2021, as of September. The relatively low number of applications appears to be the result of obstacles to apply and border closures.

From January through November 10, 20 migrants had died crossing the high-altitude border from Bolivia to Chile.

In September, Carabineros evicted Venezuelans from a square in the northern city of Iquique, during which there were some acts of violence. The next day, anti-migrant protesters burned personal belongings of Venezuelans living in the streets.

### Women's and Girls' Rights

Chile's 28-year total abortion ban ended in 2017, when the Constitutional Court upheld a law decriminalizing abortion when the life of a pregnant woman is at risk, the fetus is unviable, or a pregnancy results from rape.

However, people seeking safe and legal abortions continue to face multiple barriers. The latest government data available, from 2019, shows that 18 percent of obstetricians in public hospitals refuse to perform abortions when the life of a woman is at risk; 25 percent when the fetus is unviable; and almost 50 percent in cases of rape.

In November 2021, the House of Representatives rejected a bill to decriminalize abortion until the 14<sup>th</sup> week of pregnancy.

According to the coalition of NGOs Mesa de Acción por el Aborto, the public health system restricted access to comprehensive sexual and reproductive health services like pap tests, mammograms, and medical care for sexually transmitted infections for some periods of the pandemic, but resumed providing them at the beginning of 2021.

Thirty-three women and girls were victims of femicide from January through mid-September 2021, the NGO Women's Network Against Violence Against Women reported. Legislation in 2020 expanded the definition of femicide to a killing committed for "gender motives," without requiring a relationship between the perpetrator and the victim, as was previously the case.

#### Indigenous Rights

In May 2021, 1.2 million Indigenous voters selected representatives for 17 seats at the constitutional convention reserved for Indigenous people.

In July, the constitutional convention chose as its president Elisa Loncón of the Mapuche people, the largest Indigenous group in Chile, with more than 1 million members.

Indigenous movements want the new constitution to recognize Indigenous peoples as nations within a plurinational Chile, as well as their rights to land and resources. Long-standing conflict between the government and some Mapuche land-rights activists in the south continues. In October, a former Carabinero colonel was found guilty of killing a 17-year-old Mapuche boy, almost two decades after the death had taken place.

In October, President Sebastián Piñera declared a state of emergency in four southern provinces, citing increasing violence linked to drug trafficking, terrorism, and organized crime. More than 2,000 military personnel were sent to support police activities.

#### Sexual Orientation and Gender Identity

In December 2021, Congress approved a bill, prioritized by President Piñera, which legalizes marriage between same-sex couples and also recognizes rights enjoyed by heterosexual couples, like the right to adopt children.

In August, a law eliminating "homosexual conduct" as grounds for divorce came into effect.

#### Children's Rights

In August 2021, a judge presented before the Senate commission on children's rights complaints of sexual exploitation and human rights violations in a shelter for children separated from their families run by the National Service for Minors (SENAME) in Santiago.

In October, a new National Specialized Protection Service for Children and Adolescents took over SENAME's child protection programs. A pending bill would also create a new agency to handle children in conflict with the law, replacing SENAME. Human rights organizations have raised concerns that, despite institutional changes, substantial reform to improve care for children is lacking.

#### Covid-19

More than 80 percent of Chileans were fully vaccinated against Covid-19 as of November 8, 2021, one of the highest rates in the world.

In March 2020, schools closed to curb the spread of the Covid-19 virus, affecting 3.5 million students. The Ministry of Education provided educational content through an online platform, but acknowledged that only 27 percent of low-in-come students had access to online education. In-person education resumed in July 2021, although, as of October, attendance was not mandatory and remained low.

## **Disability Rights**

Chile's civil code uses derogatory language about people with disabilities and in many cases strips them of their legal capacity, including by providing for full guardianship of them.

The government has not updated data about the number of people with disabilities since 2015.

### Prison Conditions and Pretrial Detention

Overcrowding in some detention centers and prison violence endangered Chile's detainee population of 39,000 as of October 31, 2021. Homicides in prisons increased by 75 percent from 2017 through 2020, the Attorney General's Office said in September 2021.

In May, the government reported that around 1,800 detainees belonging to groups at higher risk from Covid-19 had been granted house arrest based on an April 2020 law.

The number of pretrial detainees has increased by about a third since 2012. As of August, 37 percent of detainees were awaiting trial. Chile's criminal code allows pretrial detention in broad circumstances and does not establish a maximum period for detention.

In December 2020, the Minister of Justice acknowledged that pretrial detention is used excessively. He said that about 40 percent of pretrial detainees are later found innocent or given sentences not compatible with pretrial detention.

#### Freedom of Speech

In November 2020, the Constitutional Court ruled unconstitutional a bill passed by the House of Representatives to criminalize speech of people who "justify," "approve of," or "deny" human rights violations during the dictatorship, finding it violated the freedom to express opinions without prior censorship. The Senate then had to drop the bill.

#### Key International Actors

In April 2021, the UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families expressed concern that Chile had expelled migrants en masse in February, failing to examine each case and making appeals materially impossible.

Chile strongly criticized abuses by the Nicolás Maduro government in Venezuela and, with other members of the Lima Group, a group of Latin American countries calling to restore democracy in Venezuela, refused to recognize the flawed legislative elections of December 2020.

Chile denounced arbitrary detention of presidential candidates, students, and members of civil society organizations in Nicaragua, and called for free and fair elections there.

President Piñera committed, in August, to receiving 10 Afghan women with their families in the context of the crisis affecting their country. The Foreign Ministry told the press it was working to receive up to 300 Afghans.

## Chile

Chile's national police—the Carabineros—used excessive force in responding to massive demonstrations, some of them violent, in 2019. Thousands of people were injured or reported serious abuses in detention, including brutal beatings and sexual abuse. While initial steps have been taken to reform the police, structural changes to prevent police misconduct and strengthen oversight and accountability are still pending.

President Sebastián Piñera's administration established a state of emergency on March 18 to curb the spread of Covid-19, and extended it throughout the year.

On October 25, an overwhelming majority (78 percent) voted to establish a constituent assembly to rewrite the constitution.

Chile faces important human rights challenges related to prison conditions, accountability for past abuses, and protecting the rights of women; indigenous people; lesbian, gay, bisexual, and transgender people; migrants; and refugees.

#### Abuses by Security Forces

Massive, mostly peaceful, protests over public services and economic inequality erupted across Chile in October 2019. Some demonstrators threw rocks and Molotov cocktails at police and burned public and private property. Some people took advantage of the chaos to loot. Police responded using excessive force against demonstrators and bystanders, whether they were engaged in violence or not.

From October 18 to November 20, 2019, almost 11,000 people were injured, including 2,000 officers, and 26 people died. More than 15,000 people were detained, and some suffered ill-treatment. Several people suffered eye injuries, most hit by pellets that police fired from anti-riot shotguns.

Protests started again in Santiago in February, after police killed a 37-year-old in a hit and run after a soccer match. The same month, seven police officers were discharged and five were placed in pretrial detention for beating an 18-year-old protester. In October, the Prosecutor's Office opened a criminal investigation ongoing at time of writing—and detained a police officer accused of causing the fall and injury of a 16-year-old protester from a bridge, as Carabineros were dispersing a demonstration.

In June, Carabineros said they had opened 1,228 administrative investigations into possible abuses against protesters. Of those, 173 resulted in disciplinary action, including the expulsion from the force of 14 officers. In September, the Comptroller's Office pressed charges in an administrative proceeding against seven police generals for not complying with use of force protocols.

The Prosecutor's Office told Human Rights Watch in October that 5,084 people were indicted for crimes related to lootings, arson, public disorder, and institutional violence related to the demonstrations and unrest that started in October 2019. Seventy-five state agents were indicted, mostly police officers. One police officer was convicted.

Chile has taken preliminary steps to reform the police, in response to abuses. A council convened in December 2019, by the Ministry of Interior and a Senate commission issued recommendations in the first months of 2020 to overhaul the institution, including by improving transparency, training, and accountability. At time of writing, a new unit for Carabineros reform under the Ministry of Interior had been tasked with implementing those recommendations.

In addition, there were at least four reform bills pending in Congress to modernize security forces. However, the bills do not go far enough in overhauling the Carabineros disciplinary system to ensure accountability for abuses.

#### **Confronting Past Abuses**

Chilean courts continue to prosecute former police and military officers responsible for human rights abuses during Augusto Pinochet's dictatorship from 1973 to 1990.

Chile maintains a 50-year secrecy order that seals from the public testimony provided by victims before the National Commission on Political Prison and Torture from November 2003 to May 2004. The testimony revealed places of detention and torture methods. Former President Michelle Bachelet's administration (2014-2018) submitted a bill to lift the secrecy order in 2017. At time of writing, the order had been set aside in approximately 15 cases, allowing access to files with testimonies, photographs, and press releases.

On March 6, a Chilean court convicted 31 former agents for their role in the 1974 disappearances of moviemakers Carmen Bueno Cifuentes and Jorge Muller Silva during the security forces' Operación Colombo, in which they forcibly disappeared 119 political prisoners. On September 9, another Chilean judge ordered reparations for a woman arbitrarily arrested and tortured by Carabineros in 1984.

#### Women's and Girls' Rights

Chile's 28-year total abortion ban ended in 2017 when the Constitutional Court upheld a law decriminalizing abortion under three circumstances: when a pregnancy results from rape, the life of a pregnant woman is at risk, or the fetus is unviable. The law, in its current form, allows doctors and private institutions to refuse to provide abortions for reasons of conscientious objection.

Significant barriers to access remain, even for legally permissible abortions. Measures to curb the spread of Covid-19, including a lockdown, have negatively impacted access to comprehensive sexual and reproductive health, including access to abortion, according to local groups.

In 2019, Chile outlawed sexual street harassment, including verbal assaults, groping, stalking, and indecency, which are now punishable by fines or prison time.

Between January and June, calls to the Carabineros' emergency number reporting gender-based violence more than doubled, although formal complaints dropped. Calls reporting rape more than doubled. Calls reporting sexual harassment more than tripled. Rape, sexual abuse, and other sex crimes reported to police rose to 17,950, the highest in a decade.

#### Indigenous Rights

Long-standing confrontations between the government and Mapuche land-rights activists continue. The Mapuche represent 87 percent of the Indigenous population of the country.

In June, Mapuche leader Alejandro Treuquil was shot to death by unidentified assailants. According to his family, the incident is related to threats he received from Carabineros and paramilitary groups.

In August, clashes broke out between Mapuches and anti-indigenous groups. Police in five municipalities intervened to clear local government buildings that Mapuches had occupied in support of a jailed leader's hunger strike.

In September, the Piñera administration created the Wallmapu Committee to discuss territorial, collective, and social development of native communities.

Indigenous communities see the pending revision of the constitution as an opportunity for recognition, including of land claims.

#### Sexual Orientation and Gender Identity

A gender identity law took effect in December 2019. It allows transgender people over 14 years old to change their name and gender in the civil registry without undergoing surgery. Married people, however, must divorce before exercising their right to legal gender recognition.

In January, the Senate voted to consider a 2017 bill to legalize same-sex marriage and allow same-sex couples to adopt children and pursue other reproductive options. In October 2020, a Committee in the Senate approved the majority of the articles in the bill. It remained pending at time of writing.

In June, the Constitutional Court denied a petition filed by a lesbian couple who were married in Spain and have a child to have their marriage recognized in Chile. The court held that that Chilean law, in its denial of marriage rights to same-sex couples, does not discriminate.

#### Refugees and Migrants' Rights

Immigration laws have not been updated since 1975. For several years, an immigration bill has been stalled in the Senate. The bill would establish long waiting periods to obtain social benefits, provide few avenues for challenging deportation orders, and prohibit changing legal status from within Chile. In April, the government announced that the stalled immigration bill was a high priority. At time of writing, it remained pending. The government estimated that 1.5 million foreigners were living in Chile, as of March— more than a third (472,000) of them from Venezuela. Chile publicly welcomed Venezuelans, but rules for obtaining visas include requirements that make it hard for some to obtain legal status.

#### **Children's Rights**

The Piñera administration has taken several steps to overhaul the flawed National Service for Minors (SENAME). However, complaints against SENAME continued. In August, a SENAME residence worker in Valdivia was accused of mistreating children and suspended. In September, a judge in Valparaiso ordered pretrial detention of a man charged with six counts of prostitution, sexual harassment, and assaults against children in SENAME residences. In November, two children were wounded when police fired shots inside a SENAME center in Talcahuano, pushing the head of Carabineros, Mario Rozas, to resign.

At time of writing, two bills were pending in the legislature to strengthen children's rights protections. One seeks to replace SENAME.

In 2019, the statute of limitations on sex crimes against children was removed.

In March, schools closed to curb the spread of Covid-19, affecting the education of 3.5 million students. The Ministry of Education implemented an online platform for students to access educational content. According to the ministry, 89 percent of students in high-income households have access to online education, but only 27 percent in low-income households do. Despite an attempt to reopen classes in the metropolitan region at the beginning of October, some schools did not receive any students, and others no more than 11 pupils.

#### **Disability Rights**

Chile has failed to adopt a comprehensive legislative framework harmonized with international human rights law on disability rights. Its civil code continues to use derogatory language towards people with disabilities and still provides for full guardianship and other forms of stripping of legal capacity from people with disabilities.

#### **Prison Conditions**

Overcrowding and prison violence endanger Chile's detainee population of approximately 40,000 people. A 2019 report by the National Human Rights Institute showed 19 of 40 prisons above capacity in 2016 and 2017.

A bill presented by the government in 2018 to grant house arrest to individuals convicted for any crime, including human rights violations, who have a serious, lifelong, or terminal illness or are over 75 years old, and have served at least half of their sentence, is still pending before the senate.

Chile took steps to reduce prison overcrowding to curb the spread of the coronavirus. In April, Congress approved a bill introduced by the Piñera government allowing, at time of writing, 1,568 of 27,411 convicted prisoners to serve the remainder of their sentences under house arrest. Additionally, 1,778 of 14,546 pretrial detainees were placed under house arrest or other alternatives to detention—the most significant effort to reduce prison overcrowding in Latin America in response to Covid-19.

As of June, at least 493 prisoners and 631 officers had contracted Covid-19, and four people had died.

#### Freedom of Speech

In September, the House of Representatives passed a bill that would criminalize protected speech of people who "justify," "approve" of, or "deny" the human rights violations committed during the country's dictatorship, punishing them with up to three years in prison, if they "disturb the public order" or "illegiti-mately obstruct or limit" others' exercise of their rights. The Senate had yet to approve the bill at time of writing.

#### Key International Actors

In December 2020, Chile's term on the United Nations Human Rights Council expired.

As a member, Chile supported efforts in 2020 to scrutinize human rights violations in Nicaragua, Syria, Myanmar, Belarus, Eritrea, Iran, Burundi, Yemen and the Occupied Palestinian Territories.

In January, the Inter-American Commission on Human Rights (IACHR) visited Chile to observe first-hand the human rights situation following the October 2019 protests, and to assess the causes and consequences of the unrest. Among other reforms, the IACHR recommended that Chile take measures to end excessive use of force and ensure access to justice for people whose rights have been violated.

The IACHR submitted the free-speech case of lawyer and environmental activist Carlos Barona Bray to the Inter-American Court of Human Rights (IACtHR) in September. Barona Bray was found guilty in a criminal defamation lawsuit filed by a public official.

The IACtHR held a public hearing in January on Judge Daniel Urrutia Laubreaux's case. The judge brought his case to the commission in 2005, arguing that the Supreme Court violated his right to freedom of speech when it sanctioned him for criticizing in an academic paper the court's actions during the Chilean military regime.

Chile maintained a strong stance criticizing abuses by the Nicolás Maduro government in Venezuela. It participated in all Lima Group statements and welcomed the report issued in September by the United Nations Fact-Finding Mission on Venezuela.

Chile endorsed the World Health Organization's Solidarity Call to Action for the Covid-19 Technology Access Pool, an initiative to "realize equitable global access to Covid-19 health technologies through pooling of knowledge, intellectual property and data."

## China

The Chinese government's authoritarianism was on full display in 2020 as it grappled with the deadly coronavirus outbreak first reported in Wuhan province. Authorities initially covered up news about the virus, then adopted harsh quarantine measures in Wuhan and other parts of China. The government has rejected international calls for independent, unfettered investigations into Chinese authorities' handling of the outbreak, and surveilled and harassed families of those who died of the virus.

Beijing's repression—insisting on political loyalty to the Chinese Communist Party—deepened across the country. In Hong Kong, following six months of large-scale protests in 2019, the Chinese government imposed a draconian "National Security Law" on June 30—its most aggressive assault on Hong Kong people's freedoms since the transfer of sovereignty in 1997. In Xinjiang, Turkic Muslims continue to be arbitrarily detained on the basis of their identity, while others are subjected to forced labor, mass surveillance, and political indoctrination. In Inner Mongolia, protests broke out in September when education authorities decided to replace Mongolian with Mandarin Chinese in a number of classes in the region's schools.

Chinese authorities' silencing of human rights defenders, journalists, and activists, and restrictions on the internet, also make it difficult to obtain accurate information about Chinese government policies and actions.

Despite these threats some prominent individuals publicly criticized President Xi Jinping. Entrepreneur Ren Zhiqiang wrote an essay calling Xi "a clown who desires power," while former Central Party school teacher Cai Xia called the Chinese Communist Party a "political zombie." Ren received an extraordinarily lengthy prison sentence—18 years—in September; Cai fled into exile.

Governments, civil society groups, and United Nations officials expressed growing concern over the Chinese government's human rights violations in 2020. In April, reports of Africans in China being targeted for Covid-19 testing led to complaints by African governments and civil society. In July, the US government sanctioned top Chinese officials responsible for Xinjiang abuses. In June, an unprecedented group of 50 UN Special Procedure mandate-holders issued a



#### FREEDOM IN THE WORLD 2022

Chile	
-------	--

FREE



Political Rights	38/40
Civil Liberties	<b>56</b> /60

#### LAST YEAR'S SCORE & STATUS

93/100 Free

Global freedom statuses are calculated on a weighted scale. See the methodology.



# Overview

Chile is a stable democracy that has experienced a significant expansion of political rights and civil liberties since the return of civilian rule in 1990. Ongoing concerns include corruption and unrest linked to land disputes with Indigenous Mapuche people.

# Key Developments in 2021

- In December, left-wing legislator Gabriel Boric became the youngest president elected in Chilean history after winning 55.8 percent of the votes in the runoff election. Elections were also held for the Constitutional Convention, the Chamber of Deputies, over half of the Senate, governors, and regional councilors.
- Though progressives won the presidency and dominated the Constitutional Convention and subnational politics, Congress remained fragmented, meaning Boric will govern under a divided government.
- In October, the Pandora Papers investigation revealed that President Sebastián Piñera had allegedly engaged in irregular use of his political office for personal financial gain. Although the Chamber of Deputies approved impeachment charges, the Senate acquitted Piñera.

# **Political Rights**

# **A. Electoral Process**

## **A1** 0-4 pts

Was the current head of government or other chief national authority elected through free and fair elections?

Presidential elections in Chile are free and fair. The president is directly elected to a four-year term, and consecutive terms are not permitted. In December 2021, Chileans elected Gabriel Boric, to the presidency. Boric, a leftist member of Congress, won the second round of the election with 55.8 percent of the vote, becoming the youngest elected president in Chilean history at age 35.

### **A2** 0-4 pts

Were the current national legislative representatives elected through free and fair elections?

**4**/4

The upper house, the Senate, has 50 seats, and the lower house, the Chamber of Deputies, has 155 seats; all members are directly elected. Senators serve eight-year terms, with half up for election every four years, and members of the Chamber of Deputies are elected to four-year terms.

In November 2021, Chileans elected 27 of 50 senators and all 155 members of the Chamber of Deputies. No coalition won a majority of seats, and both chambers remain politically diverse.

### **A3** 0-4 pts

Are the electoral laws and framework fair, and are they implemented impartially by the relevant election management bodies?

**4**/4

Chile's electoral framework is robust and generally well implemented.

In May of 2021, Chileans elected all 155 members of the Constitutional Convention using a gender parity criterion, with 17 seats reserved for Chile's 10 official Indigenous groups. The convention will propose a new constitution in 2022, which must b<sup>1</sup> approved by a referendum. The constitutional reform process was triggered by an October 2020 national plebiscite, organized in response to the large-scale protests of the previous year. The election of the convention was held concurrently with subnational elections, including for governors, who were elected for the first time following a 2018 legal reform.

# B. Political Pluralism and Participation

#### **B1** 0-4 pts

Do the people have the right to organize in different political parties or other competitive political groupings of their choice, and is the system free of undue obstacles to the rise and fall of these competing parties or groupings?

**4**/4

Chile has a multiparty political system in which parties operate freely. The newly elected Congress, which will hold its first session in March 2022, includes representatives from 16 political parties, as well as several independent candidates. Multiple new parties were registered or began organizing in 2020, motivated by interest in participating in the Constitutional Convention elected in May 2021. By the end of 2021, 27 parties were legally constituted.

#### **B2** 0-4 pts

Is there a realistic opportunity for the opposition to increase its support or gain power through elections?

**4**/4

Power alternation between parties occurs regularly, both in Congress and for the presidency.

#### **B3** 0-4 pts

Are the people's political choices free from domination by forces that are	
external to the political sphere, or by political forces that employ	<b>⊷</b> , 4
extrapolitical means?	ТОР

People are generally free to exercise their political choices without undue influence from actors that are not democratically accountable.

Do various segments of the population (including ethnic, racial, religious, gender, LGBT+, and other relevant groups) have full political rights and electoral opportunities?

**3**/4

The Constitutional Convention elected in May 2021 features gender parity among its 155 members, comprised of 78 men and 77 women, and 17 seats were reserved for members of Indigenous communities. Women are represented in government, and the electoral system includes a quota for women in the legislature. However, women report difficulty gaining influence in intraparty debates.

The interests of the Mapuche minority, which represents about 9 percent of the population, are present in political life, with Mapuche activists regularly making their voices heard in street demonstrations. However, this activism has yet to translate into significant legislative power. In 2017, one Mapuche candidate was elected to the Senate, and one to the Chamber of Deputies.

Members of the LGBT+ community are organized in civil society organizations but few are elected to political positions.

# **C. Functioning of Government**

### **C1** 0-4 pts

Do the freely elected head of government and national legislative representatives determine the policies of the government?

**4**/4

While lobbying and interest groups exist and work to shape policy, there is little significant intervention by actors who are not democratically accountable in policymaking processes.

#### **C2** 0-4 pts

Are safeguards against official corruption strong and effective?

Anticorruption laws are generally enforced, though high-level corruption scandals crop up with some regularity. In October 2021, an anticorruption investigation into President Sebastián Piñera was triggered by allegations found in leaked documents known as the Pandora Papers, which sparked an international investigation that exposed offshore financial records of powerful figures across the globe. Information included in the documents led to speculation that Piñera had improperly used his office to benefit from the sale of a mining company; the sale was contingent on the government choosing not to impose environmental restrictions on the mining area. In November, the Chamber of Deputies voted to impeach Piñera; the Senate acquitted him one week later.

### **C3** 0-4 pts

#### Does the government operate with openness and transparency?

**4**/4

The government operates with relative transparency. In 2009 the Transparency and Access to Public Information Law came into force; it increases public access to information and created a Council on Transparency. Agencies have generally been responsive to information requests.

In September 2019 the government replaced the decades-old Copper Law, in what was viewed as a major step toward improving transparency in the wake of a series of corruption scandals involving the armed forces. The previous legislation stipulated that 10 percent of the state-run copper giant Codelco's export sales be channeled to the armed forces without oversight.

# **Civil Liberties**

тор

# D. Freedom of Expression and Belief

**D1** 0-4 pts

**4**/4

Guarantees of free speech are generally respected, though some laws barring defamation of state institutions remain on the books. Media ownership is highly concentrated.

**D2** 0-4 pts

Are individuals free to practice and express their religious faith or nonbelief in public and private?

**4**/4

The constitution provides for religious freedom, and the government generally upholds this right in practice.

## **D3** 0-4 pts

Is there academic freedom, and is the educational system free from extensive political indoctrination?

**4**/4

Generally, academic freedom is unrestricted in Chile. In 2019, protesters occupied, vandalized, and looted some universities, forcing several educational establishments to finish the semester early or move classes online. Some academics were pub' harassed, especially on social media. However, in 2020 academic freedom was restored to its previous level.

### **D4** 0-4 pts

Are individuals free to express their personal views on political or other

Chileans enjoy open and free private discussion.

# E. Associational and Organizational Rights

**E1** 0-4 pts

Is there freedom of assembly?

The right to assemble peacefully has traditionally been widely respected. However, peaceful protest activity that arose in 2019, when people took to the streets to demonstrate against the government and against societal inequality, was severely disrupted by a variety of factors including people who took advantage of the protest movement's cover to engage in looting, arson, and vandalism; and by widespread police violence and a restrictive state of emergency that was imposed in response to the unrest. Though sporadic protests still occur, both civilian violence and police repression have decreased significantly since 2019.

In September 2021, the government lifted a COVID-19-related state of emergency that had been in effect since March of 2020.

Score Change: The score improved from 3 to 4 because past violent crackdowns on protests were not repeated.

#### **E2** 0-4 pts

Is there freedom for nongovernmental organizations, particularly those that are engaged in human rights- and governance-related work?

Nongovernmental organizations (NGOs) form and operate without interference.

TOP

**4**/4

4/4

#### **E3** 0-4 pts

Is there freedom for trade unions and similar professional or labor organizations?

**4**/4

There are strong laws protecting worker and union rights, but some limited antiunion practices by private sector employers continue to be reported.

# F. Rule of Law

**F1** 0-4 pts

Is there an independent judiciary? 4/4	
--	--

The constitution provides for an independent judiciary, and the courts are generally free from political interference.

#### **F2** 0-4 pts

Does due process prevail in civil and criminal matters?	<b>4</b> /4
---	-------------

The right to legal counsel is constitutionally guaranteed and due process generally prevails in civil and criminal matters. However, indigent defendants do not always receive effective legal representation.

In 2021, the Supreme Court and other courts of appeal ordered authorities to stop numerous deportations of Venezuelans on the basis of international law; these rulings exposed significant violations of due process.

Human rights groups and the United Nations have also criticized the government's use of antiterrorism laws, which do not guarantee due process, to prosecute acts of violence by Mapuche activists.

TOP

### **F3** 0-4 pts

Is there protection from the illegitimate use of physical force and freedom from war and insurgencies?

**2**/4

While the government has developed mechanisms to investigate and punish police abuses, excessive force and human rights abuses committed by the *carabineros* (the national police) still occur, and such abuses intensified during the social upheaval that started in 2019. The protest movement was also marked by a general state of unrest in many places, as some took advantage of the uprising to commit acts of arson, looting, and other vandalism. Protests, vandalism, and police use of excessive force occurred sporadically throughout 2021, but did not reach the intensity of the unrest seen in 2019.

The government's National Institute for Human Rights (INDH), Human Rights Watch (HRW), and Amnesty International all accused the carabineros and the military of perpetrating human rights violations during the protests, including excessive use of force against protesters, as well as torture and sexual abuse of people held in detention.

In 2020, the scale of abuses committed by the security forces fell because of the decline in protests amid the COVID-19 pandemic and associated restrictions, but criticism of security force tactics continued, and there is no evidence that practices exposed during the 2019 protests have been addressed.

In October 2021, President Piñera declared a state of emergency in the Araucanía and Biobío regions in response to violent clashes between security forces and Mapuche activists. The state of emergency has been extended several times, and remained in place at the end of 2021.

<b>F4</b> 0-4 pts	ТОР
Do laws, policies, and practices guarantee equal treatment of various segments of the population?	3/4

While Indigenous people still experience societal discrimination and police brutality, their poverty levels have declined somewhat, aided by government scholarships, land transfers, and social spending.

LGBT+ people continue to face societal bias, despite a 2012 antidiscrimination law that covers sexual orientation and gender identity. In November 2018, the president signed a gender-identity law allowing for gender identity to be changed on the civil registry.

In practice, elites benefit from systematic favorable legal treatment, and widespread grievances about social inequality were a major driver of the 2019 protests.

# G. Personal Autonomy and Individual Rights

### **G1** 0-4 pts

Do individuals enjoy freedom of movement, including the ability to change their place of residence, employment, or education?

**4**/4

The constitution protects the freedom of movement, and the government respects this right in practice. Freedom of movement was constrained in 2019 due to the roadblocks, damage to train stations, and vandalism associated with the social unrest that began in October. In 2020, the transit impact of civil unrest ceased, and in 2021 the only constraints on freedom of movement stemmed from governmental measures to control the spread of the coronavirus.

### **G2** 0-4 pts

Are individuals able to exercise the right to own property and establish private businesses without undue interference from state or nonstate actors?

тор **4**/4 Individuals generally have the right to own property and establish and operate private businesses, and do so without interference from the government or other actors. However, Mapuche activists continue to demand greater territorial rights to land, ancestral waters, and natural resources.

### **G3** 0-4 pts

Do individuals enjoy personal social freedoms, including choice of marriage partner and size of family, protection from domestic violence, and control over appearance?

**4**/4

The government generally does not restrict personal social freedoms.

Violence against children and women remains a problem. A law against femicide went into force in 2010. The government reported 44 femicides and 163 attempted femicides in 2021.

In 2017, a law introduced by then president Michelle Bachelet that decriminalized abortion in the events of rape, an inviable fetus, or danger to the life of the woman, took effect.

In December 2021, the Chilean Congress approved same-sex marriage by an overwhelming majority. Previously, a 2015 law recognized civil unions for same-sex and different-sex couples.

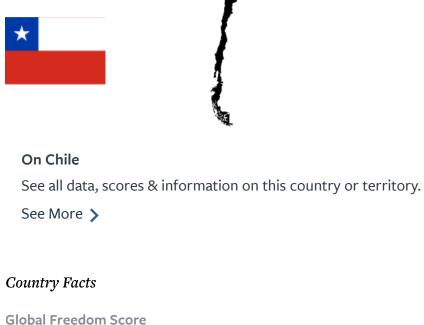
### **G4** 0-4 pts

Do individuals enjoy equality of opportunity and freedom from economic exploitation?

3/4

While compulsory labor is illegal, forced labor, particularly among foreign citize..., continues to occur in the agriculture, mining, and domestic service sectors.

Although there have been improvements in fighting child labor, minors still suffer commercial sexual exploitation and work unprotected in the agricultural sector. Moreover, there is limited public information about forced child labor.



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eport on Trans and Genderliverse Persons and Their momic, Social, Cultural, and Environmental Rights







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### Report on Trans and Gender-Diverse Persons and Their Economic, Social, Cultural, and Environmental Rights

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### **INTRODUCTION AND METHODOLOGY**

- 1. For more than a decade, the Inter-American Commission on Human Rights (hereinafter the "IACHR," the "Inter-American Commission," or the "Commission") has received abundant information on criminalization, violence, prejudice, and discrimination based on sexual orientation, gender identity, gender expression, and sex characteristics in the Americas.<sup>1</sup> The information also reveals the situation of extreme vulnerability that LGBTI persons face<sup>2</sup> throughout the continent, as the violation of their human rights is widespread and present—to a greater or lesser extent—in all Member States of the Organization of American States (hereinafter, the "OAS").
- 2. These practices are based on a perpetrator's desire to "punish" identities, expressions, behaviors, or bodies that differ from traditional gender norms and roles or that run contrary to the man/woman binary system.<sup>3</sup> They include violations of the right to life, including extrajudicial executions committed by State actors or with the acquiescence thereof, as well as murders committed by non-State actors; sexual violence; and acts of discrimination and prejudice that hinder or block the exercise of their rights to identity, to justice, to health and education, among others.
- 3. In this context, it has been repeatedly observed that, within the universe of LGBTI persons, trans and gender-diverse persons<sup>4</sup> are exposed to greater vulnerability and
- IACHR, <u>Violence against LGBTI Persons in the Americas</u>", November 12, 2015. Also see: IACHR, <u>Press Release No. 54/13</u>: "IACHR Condemns Recent Wave of Violence against LGTBI Persons in Haiti," June 30, 2013; IACHR, Press Release <u>60/13</u>: "IACHR expresses concern about violence and discrimination against LGTBI persons, particularly youth, in the Americas," August 15, 2013; IACHR, <u>Press Release 79/13</u>: "IACHR Expresses Concern about Mob Attacks, Police Abuse and other Forms of Violence against LGTBI Persons," October 24, 2013; IACHR, <u>Press Release 92/13</u>: "The IACHR is concerned about violence and discrimination against LGBTI persons in the context of education and family settings." November 22, 2013; IACHR, <u>Press Release 23/14</u>: "IACHR Expresses Concern about Attacks against LGBTI Persons and other Forms of Violence and Restrictions against LGBTI Organizations in the Americas," February 27, 2014; IACHR, <u>Press Release 153/14</u>: "IACHR Expresses Concern over Pervasiveness of Violence against LGBTI Persons and Lack of Data Collection by OAS Member States." December 16, 2014; IACHR, <u>Press Release 49/15</u>: "Discriminated and Made Vulnerable: Young LGBT and Intersex People Need Recognition and Protection of their Rights," May 13, 2015.
- <sup>2</sup> Although in naming its Rapporteurship, the Commission has adopted an acronym that is easily recognizable, it is important to note that the Rapporteurship on the Rights of LGBTI Persons deals with human rights issues related to sexual orientation, gender identity and expression, and sex characteristics. The Commission also recognizes each individual's self identification as the guiding principle. Therefore, it is possible that some individuals who are included in the focus of the Rapporteurship's work are not identified as belonging to the categories implied by the acronym "LGBTI."

<sup>&</sup>lt;sup>3</sup> IACHR, <u>Violence against LGBTI Persons in the Americas</u>", November 12 2015, para. 25.

<sup>&</sup>lt;sup>4</sup> For the purposes of this report, the term "trans and gender-diverse persons" will include a variety of genderdiverse identities that tend to be included under this umbrella term. The IACHR is aware that there are

tend to suffer higher rates of exclusion, stigmatization, and social prejudice.<sup>5</sup> Based on the information gathered by the IACHR, it can be stated that the aggravated situation of social exclusion facing trans and gender-diverse persons is a phenomenon that is structural in nature in the region. It deserves urgent and specialized attention from this Commission and from each of the OAS Member States in their respective jurisdictions.

- 4. The urgency arises mainly from two factors: the first is the alarming data on the lower life expectancy of trans and gender-diverse persons and the extremely high rates of violence and discrimination they face in the region. The second is that the exclusion is often legitimized by State agents and by societies that still maintain and normalize social prejudices against trans and gender-diverse persons, the practical effect of which is that the grave human rights violations to which they are exposed are not given the proper importance and consideration and are therefore not made a public policy priority.
- 5. In this regard, countless barriers prevent trans and gender-diverse persons from being able to fully develop their potential and access basic rights from an early age, barriers arising from the rejection and violence they are met with when they begin to externalize their gender identities. Numerous reports show a high rate of trans and gender-diverse adolescents are driven out of their homes at a young age. Numerous testimonials describe how relatives' first reaction to gender expression during childhood is abuse and harassment, even from the closest members of the nuclear family. This early rejection tends to trigger a spiral toward exclusion that is highly likely to affect performance at school and even whether they remain in the educational system at all.<sup>6</sup>
- 6. At the same time, school tends to be a place where violence manifests as verbal and physical aggression from peers, teachers, and administrators, or as exclusion from groups and social isolation. Numerous studies in many of the region's countries show high absenteeism and dropout rates among trans and gender-diverse adolescents because of harassment at school. This tends to further limit the range of opportunities for personal development, and, consequently, opportunities to secure a livelihood and a fulfilling life. The lack of training and education has a direct impact on opportunities to join the labor market, further intensifying their exclusion.
- 7. As will be shown in this report, this lack of job opportunities is not solely the result of a lack of educational qualifications. Even with sufficient training, prejudice against nonnormative identities will affect whether they are successful in finding a job or at securing a promotion. These same prejudices tend to be held by those with whom they share the space at the workplace, which can weaken workplace cohesiveness and productivity. Additionally, workplace or school attendance and performance can be impacted every time these individuals are the victims of attacks or transphobic harassment in the street that could require medical attention.

numerous forms of gender identity that prefer not to be placed in these categories. For more detail on this, see Chapter 2 of this report.

<sup>&</sup>lt;sup>5</sup> IACHR, <u>Report on Poverty and Human Rights in the Americas</u>, September 7, 2017, para. 187.

<sup>&</sup>lt;sup>6</sup> For more on this, see Chapter 4 of this report on the right to education.

Healthcare is another area where persons with nonnormative identities can encounter resistance and hostility.

- 8. All of this adds up to structural discrimination that can significantly reduce or even destroy any opportunity a trans or gender-diverse person may have of securing a minimum of economic welfare or being able to escape the poverty or extreme poverty they often experience as a result of this systemic exclusion.
- 9. Despite this concerning context, the Commission notes that, in recent years, several States have taken affirmative measures to address this situation and move progressively toward redressing human rights violations against trans and gender-diverse persons. The progress made by States is intimately related to the work of civil society organizations, which work tirelessly and have helped secure progress through legislation and public policy, as well as through the judiciary via strategic litigation. Along these lines, and as described throughout this report, the right to recognition of gender identity is the first step toward effective social inclusion and effective guarantee of the rights of trans and gender-diverse persons.
- 10. The Commission therefore notes that a number of international organizations, United Nations bodies, multilateral development banks, and human rights bodies have increasingly begun analyzing the issue of the exclusion of LGBTI persons from the point of view of economic and human development. In its report on Poverty and Human Rights, the Inter-American Commission uses the concept of "capabilities" to define "the freedom or the means that make it possible to lead a full life on the basis of what every person chooses to be or do."<sup>7</sup> This theoretical framework is of particular interest for analysis of the aforementioned cluster of obstacles and barriers to the personal development of those with nonnormative identities.
- 11. In this regard, each of the dimensions of development examined in this report will be approached from this perspective, with the aim of making a complementary contribution that places special emphasis on the human rights perspective as set forth in the 2030 Agenda. Regarding this, it should be recalled that in 2018, the IACHR joined other international experts to issue a statement aligning the human rights agenda and the sustainable development agenda to *explicitly* include LGBTI persons—and trans persons in particular—as among the beneficiaries of the 2030 Agenda for Sustainable Development (hereinafter, the "2030 Agenda").<sup>8</sup>
- 12. Having documented the extent of the different forms of violence against trans and gender-diverse persons, and having especially taken note of the extremely grave impacts this violence has on their lives, the IACHR views it as necessary to emphasize that the work to prevent, sanction, and eradicate this violence must include serious efforts to provide comprehensive protection<sup>9</sup> and full social inclusion for trans and gender-diverse persons, particularly by guaranteeing their effective enjoyment of economic, social, cultural, and environmental rights. With

<sup>&</sup>lt;sup>7</sup> IACHR, <u>Report on Poverty and Human Rights in the Americas</u>, September 7, 2017, para. 77.

<sup>&</sup>lt;sup>8</sup> IACHR, <u>Press Release</u> 110/18: " Leave no LGBT person behind," May 16, 2018.

<sup>&</sup>lt;sup>9</sup> IACHR, <u>Advances and challenges towards the recognition of the rights of LGBTI Persons in the Americas</u>, December 7, 2018, pg. 21.

this understanding, the IACHR deemed it necessary to move forward with this thematic report on the trans and gender-diverse population in the Americas with the aim of identifying the main obstacles and barriers to their full social inclusion, along with the good practices developed thus far and their outcomes, with a focus on the right to recognition of gender identity and, in particular, on the full enjoyment, exercise, and enforceability of economic, social, cultural, and environmental rights (hereinafter, "ESCER").

- 13. The IACHR underscores that, for methodological purposes, this report's analysis will focus on the rights to education, health, work, and social security, including the status of these rights in the context of the COVID-19 global pandemic. While the IACHR is aware that there are multiple rights—like the rights to housing and food that require specific analysis, and that, under this report's methodology, will not all be addressed specifically. That said, the Commission underscores its understanding that rights cannot be placed in a hierarchy. The Commission also notes that environmental rights will not be addressed in this report, notwithstanding their importance and their impact on the lives of persons. This is due to the lack of advanced research on the issue and its interrelation with the rights of trans or gender-diverse persons as of the drafting of this report. The Commission underscores the close relationship between the environment and the human rights to liberty, equality, and development, as explored with regard to issues of health (physical and mental), education, the economy, and subsistence. It will therefore continue with its work of monitoring the enjoyment of environmental rights by trans and gender-diverse persons, in compliance with its mandate.
- 14. At the same time, this report fits within a context of increasing convergence in the inter-American human rights system on ESCER with respect to the principles of universality, interdependence, and full enforceability.<sup>10</sup> As will be explored in this report, this progress is reflected both in the IACHR's work and in the jurisprudence of the Inter-American Court of Human Rights (hereinafter, the "Inter-American Court"), as well as in the launch of the Working Group of the Protocol of San

<sup>10</sup> See, for example, the rulings of the Inter-American Court: Inter-American Court. Case of Dismissed Employees of Petroperú et al. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2017. Series C No. 344; Case of Poblete Vilches et al. v. Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349; Case of San Miquel Sosa et al. Venezuela. Merits, Reparations, and Costs. Judgment of February 8, 2018. Series C No. 348; Case of Lagos del Campo v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2017. Series C No. 340. Also see the following IACHR reports, among others: IACHR, Report 38/09, Case 12,670, Admissibility and Merits, National Association of Ex-employees of the Peruvian Social Security Institute et al. (Peru), March 27, 2009; Report 100/01, Case 11,381, Milton García Fajardo et al. (Nicaragua), October 11, 2001; IACHR. Report No. 38/09, Case 12,670, Admissibility and Merits, National Association of Ex-employees of the Peruvian Social Security Institute et al. (Peru), March 27, 2009; IACHR Report 22/06, Petition 278-02, Admissibility, Xavier Alejandro León Vega, Ecuador, March 2, 2006; IACHR. Report 55/07, Petition 987-04, Admissibility, Kelyenmagategma Indigenous Community of the Enxet-Lengua People and its members, Paraguay, July 24, 2007; IACHR. Report 17/09, Petition 461-04, Admissibility, Adriana Victoria Plaza Orbe and Daniel Ernesto Plaza Orbe, Ecuador, March 19, 2009; IACHR. Report 140/09, Petition 1470-05, Admissibility, Members of the Union of State Workers of Antioquia (SINTRAOFAN), Colombia, December 30, 2009; IACHR. Report 147/11, Petitions 4418-02 and 980-03, Admissibility, José Antonio Gómez Tello and Iván Víctor Enríquez Feijoo and Sussy Ivette and Wendy Estahel Encalada Cherrez, Ecuador, November 1, 2011.

Salvador<sup>11</sup> (hereinafter the "WGPSS") and its system of indicators.<sup>12</sup> This working group has provided the OAS with new tools to monitor, help, and support States in complying with their international obligations on ESCER,<sup>13</sup> as well as the adoption of the United Nation's 2030 Agenda.<sup>14</sup>

- 15. The inter-American standards on the rights of LGBTI persons are grounded in the principle of equality and nondiscrimination, the foundation of the OAS<sup>15</sup> human rights protection system, which, pursuant to inter-American jurisprudence, has the status of *jus cogens*, as upon it rests the juridical structure of the national and international order, and it permeates all law.<sup>16</sup>
- 16. Along these lines, this report is based on international human rights lawparticularly Inter-American law-and the progressive developments that have taken place, especially in recent decades. As the Commission stated in its 2019 report on the Recognition of the Rights of LGBTI Persons, the principles and obligations governing the rights of LGBTI persons are contained in the international human rights instruments of the Inter-American System (hereinafter the "Inter-American System" or "IAHRS"): principally, the American Declaration of the Rights and Duties of Man (hereinafter the "American Declaration") and the American Convention on Human Rights (hereinafter the "American Convention" or "the Convention"), based on interpretations from the cases system—including Atala Riffo and daughters v. Chile, Flor Freire v. Ecuador, Duque v. Colombia, and Azul Rojas Marín v. Peru—that have strengthened the Inter-American standards on the protection of the rights of individuals who self-identify as LGBTI or who are perceived as such. The Commission will also use the recommendations it has issued on the human rights of LGBTI persons in the framework of the global COVID-19 pandemic.
- 17. An additional development that has had an impact on international law with regard to gender identity and expression is the Yogyakarta Principles,<sup>17</sup> issued in 2007 and

General Assembly of the Organization of American States, "Standards for the Preparation of Periodic Reports Pursuant to the Protocol of San Salvador," AG/RES. 2074 (XXXV-O/05); Working Group to Examine the National Reports Envisioned in the Protocol of San Salvador, "Progress Indicators for Measuring Rights under the Protocol of San Salvador. Second Group of Rights," OEA/Ser.L/XXV.2.1, GT/PSS/doc.9/13.

<sup>&</sup>lt;sup>12</sup> For more information on the Working Group of the Protocol of San Salvador (WGPSS), visit its <u>webpage</u>.

<sup>&</sup>lt;sup>13</sup> For the purposes of the questionnaire, the following are considered economic, social, cultural, and environmental rights: All the rights enshrined in Article 26 of the American Convention on Human Rights; the rights contained in the Additional Protocol to the American Convention on Human Rights (Protocol of San Salvador); and the rights contained in the United Nations' International Covenant on Economic, Social and Cultural Rights.

<sup>&</sup>lt;sup>14</sup> United Nations, General Assembly, <u>Resolution 70/1. Transforming our World: The 2030 Agenda for Sustainable</u> <u>Development</u>, A/RES/70/1, October 21, 2015.

<sup>&</sup>lt;sup>15</sup> IACHR, <u>Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas</u>, December 7, 2018, para. 29.

<sup>&</sup>lt;sup>16</sup> See, *inter alia*, Inter-American Court. Gender identity and equal protection, and nondiscrimination for samesex couples, Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 61.

<sup>&</sup>lt;sup>17</sup> <u>Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender</u> <u>Identity: "The Yogyakarta Principles</u>, March 2007.

updated with the adoption of the Yogyakarta Principles plus 10<sup>18</sup> in 2017 (hereinafter jointly referred to as the "Yogyakarta Principles" or the "Principles"). Although these principles are not a binding international instrument, they interpret State obligations that have been enshrined in binding international treaties based on the principle of nondiscrimination as it applies to sexual orientation, gender identity, gender expression, or sex characteristics.<sup>19</sup>

- 18. Likewise, as indicated previously, the Commission will complement its review of the issues under analysis in this report with the commitments made by States in the framework of the 2030 Agenda for Sustainable Development,<sup>20</sup> especially where it refers to the principle of the protection of human rights enshrined in international law, which has been identified as one of the foundational principles of the entire Agenda and of the 17 Sustainable Development Goals (hereinafter, "SDGs").<sup>21</sup>
- 19. International human rights law and global development actions overlap in numerous places, offering significant opportunities to reverse the social exclusion of vulnerable groups. Effectively, the 2030 Agenda has been designed in such a way as to open a space for both fields to operate in synergy. In this regard, States and civil society have built sustainable development capacity based on the promise to "leave no one behind."<sup>22</sup> These promises can only be fulfilled if all groups of persons—including LGBTI persons, with special emphasis on trans and gender-diverse persons—share equally in the benefits of development.
- 20. With regard to the methodology used to produce this report, the Commission has validated an array of sources that enabled it to collect documentary and testimonial information from OAS member States. The sources were additionally compared and contrasted with each other to include divergent points of view on specific situations—mainly, the information submitted by States, the information submitted by civil society organizations, and the information procured *motu proprio* by the IACHR.
- 21. For the purposes of collecting updated information on the subject of this report, in June 2018, the IACHR circulated a questionnaire in a variety of media and formats.<sup>23</sup> It was submitted officially to each of the representations of the OAS Member States,

<sup>23</sup> IACHR, <u>Consultation questionnaire for the elaboration of a thematic report on trans persons and economic, social, cultural, and environmental rights in the Americas</u>, 2018.

<sup>&</sup>lt;sup>18</sup> <u>Additional Principles and State Obligations on the Application of International Human Rights Law in Relation</u> <u>to Sexual Orientation, Gender Identity, Gender Expression, and Sex Characteristics to Complement the</u> <u>Yogyakarta Principles</u>, November 2017.

<sup>&</sup>lt;sup>19</sup> These principles reflect the scholarship of the most prominent jurists and provide an additional means for interpreting the rules of international law.

<sup>&</sup>lt;sup>20</sup> United Nations, General Assembly, <u>Resolution 70/1. Transforming our World: The 2030 Agenda for Sustainable</u> <u>Development</u>, A/RES/70/1, October 21, 2015.

<sup>&</sup>lt;sup>21</sup> United Nations, General Assembly, <u>Resolution 70/1. Transforming our World: The 2030 Agenda for Sustainable</u> <u>Development</u>, A/RES/70/1, October 21, 2015, paras. 3, 8, 10, 19, 74(e).

<sup>&</sup>lt;sup>22</sup> United Nations, General Assembly, <u>Resolution 70/1. Transforming our World: The 2030 Agenda for Sustainable</u> <u>Development</u>, A/RES/70/1, October 21, 2015, para. 4. In this regard, see: IACHR, <u>Press Release No.</u> 110/18: " Leave no LGBT person behind," May 16, 2018.

as well as disseminated broadly using distribution lists, social media, and the Commission's website to reach civil society organizations, universities, academic groups, and individuals. Respondents to the questionnaire included 11 OAS Member States—Argentina, Bolivia, Brazil, Colombia, Ecuador, Guatemala, Jamaica, Mexico, Panama, Saint Vincent and the Grenadines, and Uruguay—as well as 25 civil society organizations<sup>24</sup> and 7 individuals.<sup>25</sup>

22. The IACHR also made use of the information collected as inputs for producing reports on violence against LGBTI persons in 2015<sup>26</sup> and on the 2018 report "Recognition of the Rights of Lesbian, Gay, Bisexual, Trans and Intersex (LGBTI) Persons in the Americas."<sup>27</sup> Information has also been used that was produced or collected using the Commission's monitoring mechanisms. Also, during the public hearings held since 2005, the Commission has received information on the situation of trans and gender-diverse persons in hearings on the situation of trans persons specifically<sup>28</sup> or on the LGBTI population in general,<sup>29</sup> in addition to the hearings in which the human rights situation of a certain country was discussed<sup>30</sup> and hearings held on broader contexts of human rights violations.<sup>31</sup> Likewise, the IACHR used the information it received during its *in loco* visits and incorporated into the

OTRANS Argentina, 100% Diversidad y Derechos, Grupo de Estudos em Direito Internacional dos Direitos Humanos, Núcleo de Direitos Humanos e Ciadania LGBT, Egale Canada Human Rights Trust, Asociación Organizando Trans Diversidades Chile, Colombia Diversa, Fundación Grupo de Acción y Apoyo a Personas Trans (GAAT), Fundación Pakta, Movement Advancement Project, TransLatin@ Coalition, Comité de la Diversidad Sexual de Honduras, México Igualitario, Centro de Derechos Humanos Fray Matías de Córdova, Fundación Colectivo Hombres Libres de Violencia, Hombres XX, Asociación por las Infancias Transgénero, the School of Law and Criminality of the Universidad Autónoma de Nuevo León, Alternativa Nicaragüense de Diversidad Sexual, Comunidad Homosexual de Nicaragua, Hombres Trans Panamá, Panambi Asociación de Travestis, Transexuales y Transgéneros, Red Lac Trans, Promsex, and Venezuela Diversa

- <sup>25</sup> Leandro Reinaldo da Cunha, Lina Buchely, Natalia Salas, Mónica Espinoza, María de los Ángeles Corte Ríos, Rohan Walters, and José Manuel Simons Domínguez.
- <sup>26</sup> IACHR, <u>Violence against Lesbians, Gays, Bisexuals, Trans and Intersex persons (LGBTI) in the Americas</u>, November 12, 2015, para. 85.
- <sup>27</sup> IACHR, <u>Progress on and Challenges to Recognizing the Rights of LGBTI Persons in the Americas</u>, December 7, 2018.
- As of July 2018, six (6) specific hearings had been held on the human rights of trans persons: IACHR, <u>Public hearing: Human rights situation of the trans population in Argentina</u>, 167th Period of Sessions, March 2, 2018; <u>Public Hearing: Human rights situation of the trans population in Panama</u>, 156th Period of Sessions, October 19, 2015; <u>Public Hearing: Allegations of acts of violence against trans persons in Paraguay and impunity</u>, 154th Period of Sessions, March 17, 2015; <u>Public Hearing: Situation of economic, social, cultural, and economic rights of trans persons in the Americas</u>, 154th Period of Sessions, March 16, 2015; <u>Public Hearing: Discrimination against trans persons in the Americas</u>, 153rd Period of Sessions, October 30, 2014; <u>Public Hearing: Allegations of violence against trans persons in tel Salvador</u>, 149th Period of Sessions, October 29, 2013.
- <sup>29</sup> The full list of hearings on the rights of LGBTI persons, along with the full-length videos of them, can be accessed <u>here</u>.
- <sup>30</sup> Including the following: IACHR, <u>Public hearing: Follow-up on IACHR report on the human rights situation in Jamaica</u>, 153rd Period of Sessions, October 28, 2014; <u>Public Hearing: Follow-up on IACHR report on the human rights situation in Jamaica</u>, 150th Period of Sessions, March 27, 2014.
- <sup>31</sup> Including the following: IACHR, <u>Public Hearing: Religious freedom and the secular State in Latin America</u>, 168th Period of Sessions, May 11, 2018; <u>Public Hearing: Human rights situation of young people in Guyana</u>, 161st Period of Sessions, March 22, 2017; <u>Public Hearing: Human rights, the secular State, and female morbidity and</u> <u>mortality in the Americas</u>, 159th Period of Sessions, December 7, 2016.

corresponding country reports, including visits to Jamaica (2008),<sup>32</sup> Honduras (2009, 2010, 2014, <sup>33</sup> 2018<sup>34</sup>), Colombia (2012),<sup>35</sup> the Dominican Republic (2013),<sup>36</sup> Mexico (2015),<sup>37</sup> Guatemala (2017),<sup>38</sup> and Brazil (2018).<sup>39</sup> It also used the information collected to produce annual reports and the information obtained during working visits of the Office of the Rapporteur on the Rights of LGBTI Persons. The Rapporteurship has worked together with the Office of the Special Rapporteur on Economic, Social, Cultural, and Environmental Rights (REDESCA) in producing this report, which the IACHR deeply appreciates.

- 23. The IACHR also includes in its analysis the statements of a variety of international organizations, working groups, and mechanisms whose mandate is to supervise international treaties. These include reports from the Working Group of the Protocol of San Salvador; the Follow-up Mechanism to the Belém do Pará Convention (hereinafter, "MESECVI" or the "Follow-up Mechanism"); the Office of the High Commissioner for Human Rights; and special treaty and procedures bodies. Additionally, the report takes into account the work of a number of United Nations bodies, especially ones that focus on human rights but also those that deal with sustainable development and international refugee law. The IACHR also appreciates the information contributed by civil society organizations, noting that in drafting this report, it consulted reports from other human rights protection mechanisms and reports prepared for local advocacy. Lastly, the IACHR incorporated additional information that was publicly available in the media from throughout the region.
- 24. The IACHR wishes to thank the Trust for the Americas, Wellspring, ARCUS Foundation and the Government of the Netherlands for their financial support. These important contributions enabled the Commission to strengthen its work of promoting and protecting the rights of trans and gender-diverse persons in the region and were crucial for the preparation and adoption of this report.

<sup>&</sup>lt;sup>32</sup> IACHR, Situation of Human Rights in Jamaica, August 10, 2012.

<sup>&</sup>lt;sup>33</sup> IACHR, <u>Situation of Human Rights in Honduras</u>, December 31, 2015.

<sup>&</sup>lt;sup>34</sup> IACHR, <u>Preliminary observations on the IACHR visit to Honduras</u>, August 3, 2018.

<sup>&</sup>lt;sup>35</sup> IACHR, <u>Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia</u>, December 31, 2013.

<sup>&</sup>lt;sup>36</sup> IACHR, <u>Situation of Human Rights in the Dominican Republic</u>, December 31, 2015.

<sup>&</sup>lt;sup>37</sup> IACHR, <u>Situation of Human Rights in Mexico</u>, December 31, 2015.

IACHR, <u>Situation of Human Rights in Guatemala</u>, December 31, 2017. Also see: IACHR, <u>Human Rights Situation</u> <u>in Guatemala: Diversity, Inequality, and Exclusion</u>, December 31, 2015.

<sup>&</sup>lt;sup>39</sup> IACHR, <u>Press Release 238/2018</u> : "IACHR concludes visit to Brazil", November 12, 2018.

### CHAPTER 1

### HUMAN RIGHTS AND GENDER IDENTITY IN THE AMERICAS

## HUMAN RIGHTS AND GENDER IDENTITY IN THE AMERICAS

25. This chapter's objective is to look at some general aspects of the right to recognition of gender identity, with special attention to how it has been addressed in the Inter-American human rights system. It also reviews some of the terminology needed to understand gender identity, and provides an analysis of the intersectionality between the right to gender identity and groups in historical conditions of vulnerability.

### A. Right to Recognition of Gender Identity

- 26. The IACHR has held that gender identity refers to the internal and individual experience of gender as each person feels it profoundly, which may or may not correspond to the sex assigned at birth, including the personal experience of the body and other expressions of the gender with which the person identifies.<sup>40</sup> This is in line with the Yogyakarta Principles, which define gender identity as "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."<sup>41</sup>
- 27. As a result of the failure to guarantee the right to recognition of gender identity, trans and gender-diverse persons often carry identification documents that do not match their gender identities. As will be explored later on, being prevented from rectifying personal documentation has been identified as one of the greatest obstacles to the effective enjoyment of other human rights, civil and political as well as economic, social, and cultural. There is thus an urgent need for States to adopt measures to guarantee this right pursuant to inter-American and international standards on the subject.

<sup>&</sup>lt;sup>40</sup> IACHR, <u>Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas</u>, December 7, 2018, para. 77.

<sup>&</sup>lt;sup>41</sup> Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, the Yogyakarta Principles, March 2007, footnote 2.

### 1. The Right to Recognition of Gender Identity in the Inter-American System

- 28. In recent years, the Inter-American Commission has made a specific and specialized effort to address the right to recognition of gender identity, along with the violations of the human rights of trans and gender-diverse persons that take place due, among other things, to the failure to guarantee and protect this right. The IACHR observes that for many decades, the subject of gender identity and discrimination against nonnormative gender identities was invisible. In this regard, 2006 saw the first public hearing before the IACHR during which the lack of legal recognition of gender identity was identified as one of the main problems facing trans and gender-diverse persons in the Americas.<sup>42</sup>
- 29. After the OAS General Assembly adopted specific resolutions on violence based on sexual orientation and gender identity,<sup>43</sup> the Commission adopted an action plan as part of its 2011-2015 Strategic Plan to specifically address the rights of LGBTI persons. In 2011, it created the Rights of LGBTI Persons Unit, which, in November 2013, was replaced by the current Rapporteurship on the Rights of LGBTI Persons. It began operating on February 1, 2014.<sup>44</sup>
- 30. Along these lines, in 2012, the IACHR held a hearing specifically on the right of trans persons to gender identity.<sup>45</sup> At that time, civil society organizations expressed to the Commission the importance of enacting gender identity laws throughout the region. In fact, they stated that the lack of such laws constituted an "historic debt" owed to trans persons by Latin America's democracies.<sup>46</sup>
- 31. In its two thematic reports on LGBTI persons published so far, the IACHR has addressed in detail the issues surrounding the right to recognition of gender identity. In its report on violence against LGBTI persons, the IACHR included a section on terminology and reiterated the strong link between lack of recognition of this right and the day-to-day violence suffered by trans and gender-diverse persons in the region.<sup>47</sup> In a report entitled "Progress on and challenges to recognizing the rights of LGBTI persons in the Americas," the IACHR conducted a detailed review of

<sup>&</sup>lt;sup>42</sup> IACHR, Public hearing: Situation of discrimination based on sexual orientation in Peru, 124th Period of Sessions, March 10, 2006 – IACHR archives.

<sup>&</sup>lt;sup>43</sup> OAS, General Assembly, Resolution <u>2435 (XXXVIIIO/08): Human rights, sexual orientation, and gender identity</u>, adopted at the fourth plenary session, held on June 3, 2008, and OAS, General Assembly, <u>Resolution AG/RES</u>. <u>2504 (XXXIX-O/09) Human rights, sexual orientation, and gender identity</u>, adopted at the fourth plenary session, held on June 4, 2009, operative paragraph 1.

<sup>&</sup>lt;sup>44</sup> IACHR, <u>Press Release No. 94/13</u>: "The IACHR creates Rapporteurship to address issues of Sexual Orientation, Gender Identity, Gender Expression, and Body Diversity," November 23, 2013; <u>Press Release</u> 15/14: "IACHR Rapporteurship on the Rights of Lesbian, Gay, Bisexual, Trans and Intersex (LGBTI) persons becomes fully operational and first Rapporteur duly designated," February 19, 2014.

<sup>&</sup>lt;sup>45</sup> IACHR, <u>Public hearing: The right of trans persons to identity</u>, 144th Period of Sessions, March 23, 2012.

<sup>&</sup>lt;sup>46</sup> IACHR, <u>Public hearing: The right of trans persons to identity</u>, 144th Period of Sessions, March 23, 2012, statement by Marcela Romero, the General Secretary of REDLACTRANS.

<sup>&</sup>lt;sup>47</sup> IACHR, <u>Violence against LGBTI Persons in the Americas</u>", para. 28.

the measures adopted and the progress made on the subject by each of the OAS Member States.  $^{\rm 48}$ 

- 32. Regarding its petitions and cases system, in 2016, the IACHR for the first time found that States must guarantee the right of trans persons to change their names and gender identities on identification documents and public records using mechanisms that are simple and clear when it found admissible a petition filed by trans leader Tamara Adrián. It concluded that should the facts be corroborated, the State of Venezuela would be internationally responsible for failing to provide a suitable and effective remedy in the Venezuelan legal system to change an individual's gender identity in documentary records.<sup>49</sup>
- 33. In 2018, to commemorate International Transgender Visibility Day, the IACHR and the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (IE SOGI) urged States to guarantee the full exercise of human rights for trans persons, specifically by adopting—without delay—measures to provide quick, transparent, and accessible recognition of gender identity, guaranteeing the human rights of all trans and gender-diverse persons, and respecting their bodily autonomy.<sup>50</sup>
- 34. For its part, in its Third Hemispheric Report on the Implementation of the Belém do Pará Convention of 2017, MESECVI included a section specifically on laws guaranteeing the recognition of gender identity on the continent.<sup>51</sup> It has also issued a legislative recommendation calling on the States that ratified the Convention to guarantee the right to gender identity.<sup>52</sup>
- 35. Lastly, toward the end of 2017, the Inter-American Court issued Advisory Opinion 24 (hereinafter "AO 24/17") in which it forcefully laid the inter-American legal groundwork for the right to recognition of gender identity in the American Convention and the American Declaration. Effectively, this advisory opinion remains to this day the main instrument used to interpret the basic elements of this fundamental right. The Court emphasized that "gender identity is a constitutive and constituent element of peoples' identities," and therefore, "its recognition by the

- <sup>51</sup> Follow-up Mechanism to the Belém do Pará Convention (MESECVI), <u>Third Hemispheric Report on the</u> <u>Implementation of the Belém do Pará Convention. Prevention of violence against women in the Americas</u> (2017), pgs. 58, 59.
- <sup>52</sup> Follow-up Mechanism to the Belém do Pará Convention (MESECVI), <u>Third Hemispheric Report on the</u> <u>Implementation of the Belém do Pará Convention. Prevention of violence against women in the Americas</u> (2017), pg. 209.

<sup>&</sup>lt;sup>48</sup> IACHR, <u>Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas</u>, December 7, 2018.

<sup>&</sup>lt;sup>49</sup> IACHR Report <u>66/16</u>. Petition 824-12 Admissibility. Tamara Mariana Adrián Hernández. Venezuela. December 6, 2016, para. 26.

<sup>&</sup>lt;sup>50</sup> IACHR, <u>Press Release No.</u> 69/18: "On the occasion of International Transgender Day of Visibility, the IACHR and a UN expert urge States to guarantee the full exercise of the human rights of transgender persons," March 29, 2018.

State is vitally important to ensure the full enjoyment of human rights."<sup>53</sup> The Court's reasoning centers the dignity of the human person and connects it to "the opportunity of all humans for self-determination and to freely choose the options and circumstances that give meaning to their existence, in accordance with their own choices and convictions."<sup>54</sup>

36. Thus, the Court established that, although the right to recognition of gender identity is not explicitly enshrined in the American Convention on Human Rights, it necessarily derives from a harmonious interpretation of Articles 3, 7, 11(2), and 18 of the Convention: that is, the articles that guarantee recognition of juridical personality, the free development of personality, the right to privacy, and the right to a name.<sup>55</sup>

### 2. Legal Standards on Recognition of Gender Identity

37. The following is an overview of inter-American and international standards on the recognition of gender identity that have been progressively developed by the inter-American human rights system.

### a. Correction of Registries

- 38. As a necessary parallel to the right to recognition of gender identity, States are required to regulate and implement procedures that allow for the correction of identification documents to allow changes to the name, photo, and sex or gender to match the self-perceived gender identity.<sup>56</sup>
- 39. The Commission has taken note of the references in the Yogyakarta Principles to the effect that States must ensure that official identity documents only include personal information that is relevant, reasonable and necessary as required by the law for a legitimate purpose. Therefore, they recommend eliminating the registration of a person's sex and gender from identification documents like birth certificates, identification cards, passports, and driver's licenses as part of their juridical personality,<sup>57</sup> preferring removal of the gender marker from identification

<sup>&</sup>lt;sup>53</sup> Inter-American Court. <u>Gender identity and equal protection and nondiscrimination for same-sex couples</u>, Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 98.

<sup>&</sup>lt;sup>54</sup> Inter-American Court. <u>Gender identity and equal protection and nondiscrimination for same-sex couples</u>, Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 88.

<sup>&</sup>lt;sup>55</sup> Inter-American Court. <u>Gender identity and equal protection and nondiscrimination for same-sex couples</u>, Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 115.

<sup>&</sup>lt;sup>56</sup> IACHR, <u>Violence against LGBTI Persons in the Americas</u>, Recommendation 26; Inter-American Court. <u>Gender</u> <u>identity and equal protection and nondiscrimination for same-sex couples</u>, Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 116; General Assembly, <u>Report of the Independent Expert on</u> <u>protection against violence and discrimination based on sexual orientation and gender identity</u>, A/73/152, July 12, 2018, para. 21.

<sup>&</sup>lt;sup>57</sup> IACHR, <u>Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas</u>, December 7, 2018, para. 107(1)

documents.<sup>58</sup> In this regard, the IACHR is in agreement that explicitly including a gender indicator on all documents identifying persons in their social interactions or that are available to the public is not invariably necessary.

### b. Adequate Remedy

- 40. With regard to adequate remedy to guarantee the right to gender identity, the Inter-American Court established that although States can decide which remedy is the most adequate based on their domestic laws, they must guarantee the remedies allow for changing records, including name, sex marker, and photo; they must be confidential, leaving no visible annotations as a consequence of the correction; they must be quick; and they must tend toward being free of charge.<sup>59</sup> It also noted that administrative or notary procedures are the ones that best meet these requirements.<sup>60</sup> In 2018, the IE SOGI indicated likewise, adding that the remedies must "[a]cknowledge and recognize non-binary identities, such as gender identities that are neither 'man' nor 'woman' and offer a multiplicity of gender marker options."<sup>61</sup>
- 41. As examples of the guarantee of this right, in 2015, the Commission praised the States of Mexico and Colombia for adopting decrees allowing the sex on identity documents to be changed through simple administrative procedures<sup>62</sup>. At that time, the IACHR contrasted these measures with the procedures in place previously for correcting sex, which required processing through the courts using extensive and onerous procedures.<sup>63</sup> In 2018, the Commission also welcomed the steps taken toward recognizing gender identity in Uruguay with the enactment of the Comprehensive Trans Persons Act.<sup>64</sup> It has also highlighted the Uruguayan law's important comprehensive human rights protection approach, which, in addition to the recognition of gender identity, complements a 2009 law by requiring collection of information on gender identity in the national census, as well as by providing for

Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression, and Sex Characteristics to Complement the Yogyakarta Principles, November 2017, Principle 31.

<sup>&</sup>lt;sup>59</sup> Inter-American Court. <u>Gender identity and equal protection and nondiscrimination for same-sex couples</u>, Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 160. Likewise, see: Progress on and challenges to recognizing the rights of LGBTI persons in the Americas, OAS/Ser.L/V/II.170 Doc. 184, December 7, 2018, para. 108; IACHR, <u>Press Release</u> 185/17: "On International Transgender Day of Remembrance, the IACHR Urges States to Protect Trans Persons' Full Access to their Economic, Social, and Cultural Rights," November 20, 2017.

<sup>&</sup>lt;sup>60</sup> Inter-American Court. <u>Gender identity and equal protection and nondiscrimination for same-sex couples</u>, Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 160.

<sup>&</sup>lt;sup>61</sup> General Assembly, <u>Report of the Independent Expert on protection against violence and discrimination based</u> <u>on sexual orientation and gender identity</u>, A/73/152, July 12, 2018, para. 81(d)(i).

<sup>&</sup>lt;sup>62</sup> IACHR, <u>Press Release No.</u> 75/15, "IACHR Congratulates Mexico and Colombia for Measures Recognizing Identity of Trans Persons," July 1, 2015.

<sup>&</sup>lt;sup>63</sup> IACHR, <u>Press Release No.</u> 75/15, "IACHR Congratulates Mexico and Colombia for Measures Recognizing Identity of Trans Persons," July 1, 2015.

<sup>&</sup>lt;sup>64</sup> IACHR, <u>Press Release 275/18</u>: "IACHR Welcomes Progress towards the Recognition of Gender Identity in the Region, December 21, 2018.

reparations to victims of State persecution based on gender identity—real or perceived—during the dictatorship. The comprehensive law also guarantees that access to education and culture, work, and health, will be free from discrimination.<sup>65</sup> Additionally, the IACHR has highlighted the gender identity law adopted by the State of Argentina on May 24, 2012 (Law 26,743) that not only guarantees correction of sex in registries and name changes on all documents establishing an individual's identity, but also provides for access to comprehensive healthcare, hormonal treatments, and partial or total surgical procedures without the need for judicial or administrative authorization, with the informed consent of the individual being the only requirement.<sup>66</sup>

42. For its part, with Order 7-2018 of the Supreme Tribunal of Elections, the State of Costa Rica amended the Civil Status Registry Regulations and the New National Identification Card Regulations to provide for a process by which individuals could have their gender identities recognized on their national identification cards through an administrative procedure that follows the guidelines set forth in AO 24/17. The decision also found that the gender indicator on identity documents represented sensitive information, the public display of which could be stigmatizing for those who have changed their names to match their self-perceived identities, and therefore ordered it removed from the identification cards.<sup>67</sup>

### c. Admissible Requirements

43. The Commission has repeatedly reached decisions with regard to pathologizing, offensive, and/or abusive requirements that tend to be applied to people seeking registry changes, urging States to adopt rules that recognize gender identity without them.<sup>68</sup> Among the requirements that are not compatible with the Convention are the following: proof of surgery, hormonal therapy, or any other type of body modification; forced sterilization; the submission of mental health evaluations or physician, psychologist, or psychiatrist certifications; proof of gender dysphoria diagnostic, gender identity disorders, or any other disorder; documentation of attestations as to the veracity of the request; and proof of expectation of stability or

<sup>&</sup>lt;sup>65</sup> IACHR, <u>Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas</u>, December 7, 2018, para. 99.

<sup>&</sup>lt;sup>66</sup> IACHR, <u>Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas</u>, December 7, 2018, para. 100.

<sup>&</sup>lt;sup>67</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the State of Costa Rica, pg. 12.

See, among other examples: Progress on and Challenges to Recognizing the Rights of LGBTI Persons in the Americas, OAS/Ser.L/V/II.170 Doc. 184, December 7, 2018, para. 104; IACHR, <u>Violence against LGBTI Persons</u> in the Americas, Recommendation 26; <u>Press Release 64/16</u>: "Pathologization: Being Lesbian, Gay, Bisexual and/or Trans is Not an Illness," May 12, 2016; <u>Press Release 116/16</u>: "IACHR Welcomes Progress on Human Rights of LGBTI Persons," August 16, 2016; <u>Press Release 40/17</u>: "On Trans Day of Visibility, IACHR Urges States to Ensure Full Inclusion of Trans People and Combat the Factors that Exacerbate Discrimination and Exclusion," March 31, 2017; <u>Press Release 185/17</u>: "On International Transgender Day of Remembrance, the IACHR Urges States to Protect Trans Persons' Full Access to their Economic, Social, and Cultural Rights," November 20, 2017.

of having lived socially with the identity by which the applicant wishes to be recognized (also called a "real-life test").

- 44. With regard to body modifications, the Inter-American Court has found that requiring a person be subjected to an unwanted surgery or sterilization would be tantamount to restricting the full exercise of a number of rights and would entail the forced renunciation of the full and effective enjoyment of the right to humane treatment.<sup>69</sup> Additionally, with regard to the other requirements, the Court found that, while for cisgender persons, the sex assigned at birth corresponds to the gender identities they assume autonomously, trans persons are subjected to numerous requirements to secure recognition of and respect for their gender identities,<sup>70</sup> creating a situation of inequality that is not compatible with the Convention.
- 45. In line with this, given that it is not reasonable to require compliance with requirements that undermine what should be the simply declarative nature of the process, the only admissible substantive requirement for changing registry documents is the free and informed consent of the applicant.<sup>71</sup>

### d. Dignified Treatment in accordance with Self-Perceived Gender Identity

- 46. The Commission wishes to emphasize that the right to recognition of gender identity also entails the right of every individual to be treated in accordance with their self-perceived identities. Practically speaking, this means that an individual's simple declaration of a self-perceived gender gives rise to a duty to treat and refer to that individual based on that identity. It should be emphasized that this duty must be observed fully, without any requirement that the individual rectify their documentation.
- 47. The Commission notes that one of the most common ways of exercising verbal, symbolic, and psychological violence against trans persons is the malicious or deliberate use of pronouns (and, in languages that use grammatical gender, nouns and adjectives) of a gender other than the one a trans person uses to refer to themself (a kind of violence known as misgendering).<sup>72</sup> The aim of this type of violence is to humiliate and insult an individual based on their gender identity or expression. This form of violence has been denounced by numerous civil society organizations as one of the main reasons trans persons face humiliation and mistreatment when seeking health services. Likewise, fear of this violence prevents

<sup>&</sup>lt;sup>69</sup> Inter-American Court. <u>Gender identity and equal protection and nondiscrimination for same-sex couples</u>, Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 146; General Assembly, <u>Report of</u> <u>the Independent Expert on protection against violence and discrimination based on sexual orientation and</u> <u>gender identity</u>, A/73/152, July 12, 2018, para. 81(d)(i).

<sup>&</sup>lt;sup>70</sup> Inter-American Court. <u>Gender identity and equal protection and nondiscrimination for same-sex couples</u>, Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 131.

<sup>&</sup>lt;sup>71</sup> Inter-American Court. <u>Gender identity and equal protection and nondiscrimination for same-sex couples</u>, Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, paras. 127, 133.

<sup>&</sup>lt;sup>72</sup> IACHR, <u>Violence against LGBTI Persons in the Americas</u>", November 12 2015, para. 132

many trans and gender-diverse persons from visiting health centers and hospitals, schools and educational institutions, and socialization spaces, or from placing themselves in any other situation in which they may be exposed to it.

48. In some States that do not yet have a gender identity law (or prior to the enactment of such a law), measures have been taken to prevent or reduce the prevalence of this kind of violence by authorizing the use of a "social name." In general, such provisions give people wishing to be identified by a name other than the one found on their documentation the right to be called and/or registered under that name for certain purposes. The IACHR notes that although these provisions are not sufficient in themselves to comply with inter-American standards on the effective recognition of gender identity, these partial and temporary measures can reduce the possibility of exposing trans and gender-diverse persons to this type of violence until their enjoyment of the right to recognition of gender identity can be fully recognized through an appropriate law.

### e. Recognition of Gender Identity as a Requirement to Enjoy Other Rights

- 49. The right to recognition of gender identity is one of the most important aspects to take into account when analyzing the effective enjoyment of other rights by trans and gender-diverse persons. For the purposes of this analysis, such recognition refers both to legal recognition (especially the opportunity to correct registries) and social recognition (the opportunity to live a life free from violence and the opportunity to fully develop one's personal potential and life plans).
- 50. Legal recognition of gender identity is crucial, as having documentation that does not coincide with one's gender identity is one of the main obstacles to the enjoyment of numerous human rights. This fundamental need of trans and gender-diverse persons has been noted by the IACHR, as well as by the Inter-American Court in Advisory Opinion 24, of 2017.<sup>73</sup>
- 51. Specifically, the Court has held that depriving individuals of gender identity creates differences in treatment and opportunities between cisgender persons and trans persons that are not compatible with the principles of equal protection and nondiscrimination. It is also an obstacle with regard to every individual's right to full recognition of juridical personality.<sup>74</sup> In the universal system, the Committee on

<sup>&</sup>lt;sup>73</sup> Inter-American Court. <u>Gender identity and equal protection and nondiscrimination for same-sex couples</u>, Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 98.

<sup>&</sup>lt;sup>74</sup> Inter-American Court. <u>Gender identity and equal protection and nondiscrimination for same-sex couples</u>, Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 99.

Economic, Social, and Cultural Rights (hereinafter the CESCR),<sup>75</sup> the EI SOGI,<sup>76</sup> and the United Nations High Commissioner of Human Rights have found likewise.<sup>77</sup>

52. The IACHR recognizes that securing legal recognition of gender identity is an essential tool with the potential to noticeably reduce social exclusion and the lack of opportunities. However, legal recognition by itself is not an automatic or comprehensive solution for the marginalization in which the majority of trans and gender-diverse persons are forced to live.<sup>78</sup>

### B. The Right to Gender Expression

- 53. The IACHR has established that gender expression is the external manifestation of an individual's gender.<sup>79</sup> Similarly, the Yogyakarta Principles have defined "gender expression" as "as each person's presentation of the person's gender through physical appearance – including dress, hairstyles, accessories, cosmetics – and mannerisms, speech, behavioral patterns, names and personal references."<sup>80</sup> In 2016, the World Health Organization adopted a very similar definition.<sup>81</sup> The Yogyakarta Principles also clarified that gender expression may or may not conform to a person's gender identity.<sup>82</sup>
- 54. Specifically, just as people have a sexual orientation and a gender identity, they also have a gender expression. This particular form of personal expression tends to be read socially and culturally within a binary, with certain forms of gender expression determined to be "feminine" and other forms of gender expression determined to

<sup>&</sup>lt;sup>75</sup> Committee on Economic, Social, and Cultural Rights, <u>Concluding observations on the fifth periodic report of Costa Rica</u>, E/C.12/CRI/CO/5, October 21, 2016, para. 20.

<sup>&</sup>lt;sup>76</sup> United Nations General Assembly, <u>Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity</u>, A/HRC/38/43, May 11, 2018, para. 43, <u>Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity</u>, A/73/152, July 12, 2018, para. 23.

<sup>&</sup>lt;sup>77</sup> United Nations High Commissioner of Human Rights, <u>Living Free and Equal: What states are doing to tackle violence and discrimination against lesbian, gay, bisexual, transgender, and intersex people</u> (New York and Geneva: OHCHR, 2016), 94.

<sup>&</sup>lt;sup>78</sup> IACHR, <u>Press Release 85/18</u>: "IACHR Welcomes Brazilian Supreme Court Decision to Allow Trans Persons to Change Name through Self-Declaration," April 23, 2018.

<sup>&</sup>lt;sup>79</sup> IACHR, <u>Violence against LGBTI Persons in the Americas</u>", November 12 2015, para. 22.

<sup>&</sup>lt;sup>80</sup> Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression, and Sex Characteristics to Complement the Yogyakarta Principles, November 2017, Preamble.

<sup>&</sup>lt;sup>81</sup> World Health Organization, Gender Equity and Human Rights (GER), <u>FAQ on Health and Sexual Diversity An</u> <u>Introduction to Key Concepts</u>, WHO/FWC/GER/16.2, pg. 1.

<sup>&</sup>lt;sup>82</sup> Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression, and Sex Characteristics to Complement the Yogyakarta Principles, November 2017, Preamble.

be "masculine,"<sup>83</sup> generally mutually exclusive.<sup>84</sup> However, the reality is that the array of possibilities associated with gender expression is much broader and more diverse than expressions that are strictly "masculine" or "feminine."

- 55. The expression of nonnormative sexualities and identities is frequently in itself considered "suspicious," "dangerous for society," or "a threat to the social order and public morals," and tends to be a source of great social anxiety.<sup>85</sup> Thus, femininity from those perceived as men, masculinity from those perceived as women, and gender expression that is ambiguous are ridiculed, rejected, and socially punished.<sup>86</sup> In other words, persons who do not follow socially and culturally established patterns for how a man or woman "should look" or "should behave" suffer discrimination and violence based on their gender expression.<sup>87</sup> These rules tend to be rooted in sexism and linked to the role that is attributed, expected, and required of each gender in the binary.<sup>88</sup>
- 56. The fundamental issue with regard to gender expression as a basis for discrimination is that it is a visible form of personal expression, which, when perceived by other persons—especially in contexts where rejection of and prejudice toward nonnormative expression exists—leads to violent or discriminatory reactions. Effectively, most of the violence and discrimination that takes place against trans and gender-diverse persons tends to occur when the individual's gender identity and expression is perceived by another as contrary to the information found in that person's documentation.<sup>89</sup> This shows how closely intertwined gender identity and gender expression are when analyzing the bases for the discrimination and systematic oppression to which trans persons are subjected. This issue was identified recently by the IACHR in the context of measures to contain the COVID-19 pandemic, motivating a to call on States to adopt awareness-raising policies aimed specifically at security forces and judicial authorities on gender identity and expression to encourage them to take into account that trans and

<sup>&</sup>lt;sup>83</sup> World Health Organization, Gender Equity and Human Rights (GER), <u>FAQ on Health and Sexual Diversity An</u> <u>Introduction to Key Concepts</u>, WHO/FWC/GER/16.2, pg. 1.

<sup>&</sup>lt;sup>84</sup> This logic tends to classify as associated with a certain gender such arbitrary things as ways of speaking, gesturing and walking; posture; the use of cosmetics or accessories; focus on aesthetics and personal care; choosing certain clothing and ways of dressing; tastes, personal aspirations, and participation in certain types of games, activities, hobbies, professions, or sports; the expressiveness of emotions and feelings, especially in public; pitch of voice; bodily forms and physiques; names and nicknames; and even color choice.

<sup>&</sup>lt;sup>85</sup> IACHR, <u>Violence against LGBTI Persons in the Americas</u>", para. 28, citing María Mercedes Gómez, "Chapter 2: Violencia por Prejuicio," in *La Mirada de los Jueces: Sexualidades diversas en la jurisprudencia latinoamericana*. Volume 2. Cristina Motta & Macarena Sáez, eds. (Bogotá: Siglo del Hombre Editores, Red Alas, 2008), 185-186.

<sup>&</sup>lt;sup>86</sup> IACHR, *Violence against LGBTI Persons in the Americas*, November 12, 2015, paras. 25, 310.

<sup>&</sup>lt;sup>87</sup> In anglophone contexts, the term "gender non-conformity" tends to be used to describe an individual's refusal to match their gender expression to socially and culturally defined patterns. See, among other examples: Allegra R. Gordon e Ilan H. Meyer, "Gender Nonconformity as a Target of Prejudice, Discrimination, and Violence Against LGB Individuals" *Journal of LGBT Health Research* 3, No. 3 (2007).

<sup>&</sup>lt;sup>88</sup> General Assembly, <u>Report of the Independent Expert on protection against violence and discrimination based</u> on sexual orientation and gender identity, A/73/152, July 12, 2018, para. 6.

<sup>&</sup>lt;sup>89</sup> Lukas Berredo et al., Submission on language related to gender identity and expression to the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (2017), 2.

gender-diverse persons frequently do not have a personal identification document that properly reflects their identities and/or gender expressions.<sup>90</sup>

#### 1. Gender Expression in the Inter-American Human Rights System

- 57. In the framework of the IACHR's work, an initial precedent on gender expression can be found in a report prepared by the Office of the Special Rapporteur for Freedom of Expression in 2009, which indicates that one of the forms of speech that enjoys special protection "because [it] express[es] an integral element of personal identity and dignity" is speech expressing one's own gender identity.<sup>91</sup>
- 58. As indicated above, the IACHR has found that gender expression refers to the external manifestation of a person's gender<sup>92</sup> and that "the notion of what properly constitutes male or female norms has been a source of human rights abuses against individuals who do not fit or conform to the stereotypical models of masculine or feminine."<sup>93</sup> Also, in its report on violence, the Commission analyzed the information available and issued statements on the laws criminalizing gender expression that were in force at the time, such as in the State of Guyana,<sup>94</sup> as well as vague or open provisions on "morals and good customs" that violate the Convention and impact trans and gender-diverse persons.<sup>95</sup> Regarding this issue, the Commission takes note of the decision by the Caribbean Court of Justice (hereinafter CCJ) in the case of Quincy McEwan, Seon Clarke, Joseph Fraser, Seyon Persaud and the Society Against Sexual Orientation Discrimination (SASOD) v. The Attorney General of Guyana, which found Section 153(1)(xlvii) of the Summary Jurisdiction (Offences) Act, Chapter 8:02, was unconstitutional. The law criminalized the use of clothing socially associated with a different gender (known as cross-dressing).96
- 59. Additionally, the IACHR has explicitly referred to violence and discrimination that is based on the expression of gender diversity. For example, the Commission has welcomed the amendment of Costa Rica's Civil Service Statute, emphasizing that the new regulations establish a duty to respect the right of persons to express themselves in the workplace without fear of being mocked, rejected, bullied, or harassed, for reasons related to, among other things, their gender expression.<sup>97</sup> Additionally, in expressing its concern at the setbacks in federal protections for

<sup>&</sup>lt;sup>90</sup> IACHR, <u>Press Release 81/2020</u>, "The IACHR calls on States to guarantee the rights of LGBTI people in the response to the COVID-19 pandemic", April 20, 2020.

<sup>&</sup>lt;sup>91</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, <u>Inter-American Framework on the Right to</u> <u>Freedom of Expression</u>, December 30, 2009, para. 56.

<sup>&</sup>lt;sup>92</sup> IACHR, <u>Violence against LGBTI Persons in the Americas</u>, November 12 2015, para. 22.

<sup>&</sup>lt;sup>93</sup> IACHR, *Violence against LGBTI Persons in the Americas*, November 12 2015, para. 22.

<sup>&</sup>lt;sup>94</sup> IACHR, <u>Violence against LGBTI Persons in the Americas</u>, November 12 2015, paras. 71, 72, and 85.

<sup>&</sup>lt;sup>95</sup> IACHR, *Violence against LGBTI Persons in the Americas*, November 12 2015, paras. 86 to 95.

<sup>&</sup>lt;sup>96</sup> Regarding the decision of the Caribbean Court of Justice, see <u>CCJ declares Guyana's cross-dressing law</u> <u>unconstitutional</u>, November 12, 2018.

<sup>&</sup>lt;sup>97</sup> IACHR, <u>Press Release 28/17</u>: "<u>IACHR Hails Regional Progress on Human Rights of LGBTI People in the Americas</u>," March 10, 2017.

trans and gender-diverse students in the United States, the IACHR reiterated that the State duty to respect gender identity and expression "encompasses the possibility of giving everyone the opportunity to freely express themselves toward others, consistent with their gender identity and the right to be recognized based on that identity."<sup>98</sup>

60. In 2017, the IACHR specifically addressed the existence of laws or regulations that criminalize gender expression, such as those classifying "dressing in the clothing of the opposite sex" or "imitating the opposite sex" as offenses, stating that these types of provisions impact the right to freedom and security and tend to foster a climate "where hate speech, violence and discrimination are condoned and perpetrated with impunity."<sup>99</sup> It urged States to allow trans and gender-diverse young people to "use their own names and pronouns, and to dress according to their self-defined gender identity and expression," independent of the sex they are assigned at birth.<sup>100</sup> That same year, in expressing concern at the ban on gender education in Paraguay, the IACHR emphasized that children are victims of a variety of forms of violence and bullying in schools—among other places—because of their gender expression.<sup>101</sup>

### 2. Gender Expression as a Prohibited Basis for Discrimination

61. Initial developments in international law with regard to sexual and gender diversity revolved mainly around the concepts of "sexual orientation" and "gender identity."<sup>102</sup> However, as studies on the subject became increasingly precise—essentially through the efforts of international civil society organizations—the

<sup>&</sup>lt;sup>98</sup> IACHR, <u>Press Release 33/17</u>: "IACHR Expresses Concern over Setbacks in Federal Protections for Trans and Gender-Nonconforming Students in the United States," March 15, 2017.

<sup>&</sup>lt;sup>99</sup> IACHR, <u>Press Release 61/17</u>: "Embrace Diversity and Protect Trans and Gender-Diverse Children and Adolescents," May 16, 2017.

<sup>&</sup>lt;sup>100</sup> IACHR, <u>Press Release 61/17</u>: "Embrace Diversity and Protect Trans and Gender-Diverse Children and Adolescents," May 16, 2017.

<sup>&</sup>lt;sup>101</sup> IACHR, <u>Press Release No. 208/17</u>: "IACHR Regrets Ban on Gender Education in Paraguay," December 15, 2017.

<sup>102</sup> The first decisions issued by the former United Nations Commission on Human Rights and the General Assembly on extrajudicial executions that involved sexual diversity only included sexual orientation. See: Commission on Human Rights, Extrajudicial, summary or arbitrary executions, E/CN.4/ RES/2000/31, April 20, 2002; Extrajudicial, summary or arbitrary executions, E/CN.4/RES/2002/36, April 22, 2002; Extrajudicial, summary or arbitrary executions, E/CN.4/RES/2004/37, April 19, 2004; United Nations General Assembly, Resolution 57/214: Extrajudicial, summary or arbitrary executions , A/RES/57/214, February 25, 2003; Resolution 59/197: Extrajudicial, summary or arbitrary executions, A/RES/59/197, March 10, 2005; Resolution 61/173: Extrajudicial, summary or arbitrary executions , A/RES/61/173, March 1, 2007; Resolution 63/182: Extrajudicial, summary or arbitrary executions , A/RES/63/182, March 16, 2009; Resolution 65/208: Extrajudicial, summary or arbitrary executions, A/RES/65/208, March 30, 2011. These resolutions began to include gender identity in 2013. See for example: United Nations, General Assembly, Resolution 67/168. Extrajudicial, summary or arbitrary executions , A/RES/67/168, March 15, 2013; Resolution 69/182: Extrajudicial, summary or arbitrary executions , A/RES/69/182, March 30, 2015. Likewise, the first joint statement of States delivered before the Commission on Human Rights by New Zealand only made mention of "sexual orientation." See: Commission on Human Rights, Joint statement delivered by New Zealand on behalf of a group of 32 States, March 2005. Subsequent statements explicitly included gender identity.

concept of "gender expression" gradually came to be viewed explicitly as a differentiated characteristic.  $^{103}\,$ 

- 62. In the inter-American system, in 2013, for the first time, the OAS General Assembly explicitly and distinctly included "gender expression" in its annual resolutions on diversity.<sup>104</sup> That same year, the States of the OAS adopted the Inter-American Convention against all Forms of Discrimination and Intolerance, the first international treaty to explicitly include "gender expression" as a prohibited basis for discrimination.<sup>105</sup>
- 63. For its part, the Inter-American Court emphasized in its Advisory Opinion 24/17 that gender expression is a category protected under the Convention. This means that no law, decision, or practice can in any way reduce or restrict the rights of a person based on their gender expression.<sup>106</sup> Additionally, the Court specified that banning discrimination based on gender identity applies not only to real or self-perceived identity but also to outwardly-perceived identity, independent of whether this perception corresponds to reality or not. It concluded that "all gender expression is a protected category under Article 1(1) of the American Convention".<sup>107</sup>
- 64. The Commission views it as important to include gender expression as a specific and distinct basis for discrimination in antidiscrimination legal provisions, as doing so gives a law greater technical clarity and specificity and provides more robust protection from discriminatory acts that may be based on such personal characteristics. However, it is important to take into account that a failure to explicitly mention gender expression does not mean, *contrario sensu*, that such protection from this type of discrimination does not exist.
- 65. In this regard, it must be taken into account that gender expression constitutes a form of expression, and as such, it is protected under Article 13 of the American Convention and Article IV of the Declaration, in conjunction with the entire legal framework related to protection of the right to gender identity. Thus, the exercise of this specific form of freedom of expression can never be a valid justification for a

<sup>&</sup>lt;sup>103</sup> Note that issues of sexual diversity were referred to mainly with the term "SOGI" or "sexual orientation and gender identity." Civil society and various international human rights protection organizations have gradually begun using "SOGIE," with the additional "E" standing for expression ("gender identity and/or expression"). More recently, SOGIESC has come into use, to include sex characteristics ("SC"). In some instances, "SOGII" is used ("sexual orientation, gender identity and intersex issues"), although this acronym does not appear to have been broadly adopted. See, among other examples: Dodo Karsay, <u>How far has SOGII advocacy come at the UN and where is it heading?: Assessing sexual orientation, gender identity, and intersex activism and key developments at the UN from 2003 to 2014</u> (2014).

<sup>&</sup>lt;sup>104</sup> With regard to this addition, the States of Jamaica and Saint Vincent and the Grenadines addressed it at the time, saying the term was "not fully defined or accepted internationally," that it was "ambiguous," and that it was not "internationally accepted." See: OAS General Assembly, Resolution <u>2807 (XLIII-O/13)</u>, "Human rights, sexual orientation, and gender identity and expression," June 6, 2013.

<sup>&</sup>lt;sup>105</sup> Inter-American Convention against all Forms of Discrimination and Intolerance (A-69), adopted in Antigua, Guatemala, on June 5, 2013, Article 1.

<sup>&</sup>lt;sup>106</sup> Inter-American Court, AO 24, para. 78.

<sup>&</sup>lt;sup>107</sup> Inter-American Court, AO 24, para. 79.

discriminatory act. On the contrary, it is the Commission's view that the prohibition on discrimination based on gender expression is derived from the protection established for the categories "gender" and "sex," and is ultimately covered, as well, by the open clause prohibiting discrimination—that is, by the phrase "any other social condition."

### C. An Overview of Diverse Gender Identities in the Americas

- 66. On the American continent, the numbers of people who claim for themselves gender identities or expressions that in some way challenge or question the cisnormative gender binary system is very rich, diverse, and varied.<sup>108</sup> In view of the multiple cultural, racial, generational, historical, social, and political factors, it would be impossible to address this vast array of expressions and identities as a homogenous whole that shares the same parameters, definitions, and stances.<sup>109</sup>
- 67. Therefore, it must first be borne in mind that, as a necessary derivation of the right to personal self-determination and the right to privacy, everyone has a human right to claim for themselves the identity that best fits the way in which they conceive of themselves, and any outside attempt to impose external definitions on that identity category is completely prohibited. The definitions that may be offered or used in the abstract with regard to different identity categories are not always and everywhere strictly in line with the way different people at different historical moments and in different cultural contexts claim them for themselves, personally.
- 68. Indeed, the only criteria that can be used as a rule generally applicable to all identities and gender-diverse expressions is that they all in some way question cisnormativity. By claiming identities, by expressing them, or through their bodies, they question the standards that assume everyone must identify throughout their lives with the genders assigned to them at birth, and that this identification will necessarily correspond to the gender expression and roles that "match" the gender assigned.<sup>110</sup>
- 69. The IACHR notes that some trans persons choose to make their gender identities visible through processes that involve some degree of "transition" to acquire—to a greater or lesser extent—the expression and characteristics socially read as the gender with which the person identifies. This process may include body

<sup>&</sup>lt;sup>108</sup> The IACHR has defined the concept of cisnormativity as "the expectation that all people are cissexual [or cisgender], that those assigned male at birth always grow up to be men and those assigned female at birth always grow up to be women." Cisnormative assumptions are so socially and culturally pervasive that they are difficult at first to even recognize and identify. See: IACHR, <u>Violence against Lesbians, Gays, Bisexuals, Trans and Intersex persons (LGBTI) in the Americas</u>, November 12, 2015, para. 32.

<sup>&</sup>lt;sup>109</sup> Likewise, see: General Assembly, <u>Report of the Independent Expert on protection against violence and</u> <u>discrimination based on sexual orientation and gender identity</u>, A/73/152, July 12, 2018, para. 3.

<sup>&</sup>lt;sup>110</sup> IACHR, <u>Violence against LGBTI Persons in the Americas</u>, November 12 2015, para. 32.

modifications and procedures of different intensities, such as hormone treatments, implants, and/or surgeries. The decision to undergo these processes—and how to do so—can vary significantly based on numerous social and personal factors, including age, social and cultural context, access to medical services and information, financial resources, and emotional and social support networks. It must be particularly borne in mind that these processes cannot be reduced simply to aesthetic issues. Rather, they entail the personal realization of one's own identity, of how individuals see themselves, and of how they wish to be seen by others.<sup>111</sup> In other words, these mechanisms enable trans and gender-diverse persons to fully exercise the right to freely develop their personalities in accordance with their own identities and gender expressions.

- 70. The IACHR has also held that gender identity is associated with the internal and individual experience of gender as each person feels it profoundly, which may or may not correspond to the sex assigned at birth, including the personal experience of the body.<sup>112</sup> In this regard, it notes that the choice of whether or not to "transition" is a personal decision of each individual and not to be used as an excuse by States and societies to deny recognition of individuals' gender identities.
- 71. According to the information received by the IACHR, on the American continent, this vast array of diverse gender identities and expressions includes persons who identify as trans, *travesti*, transsexual, or transgender; people of non-binary gender; and people with gender identities that fall within the framework of ancestral cosmovisions. The Commission is aware that this listing does not exhaust all possible forms of identity, and that each of them contain distinct subgroups and categories that vary in accordance with historical, cultural, and social context.

#### 1. Trans, Travesti, Transsexual, and Transgender Identities

72. The IACHR has noted that there is a degree of consensus with regard to the identity categories most commonly claimed by trans and gender-diverse persons in the hemisphere. This section will include an overview of this consensus, along with a preliminary look at the violence and discrimination to which the persons claiming these identities are exposed.

# 73. First, the IACHR has indicated that the term "trans person" is the "the umbrella term often used to describe the different variants of gender identity."<sup>113</sup> According to this

Larissa Pelúcio, "Toda quebrada na plástica": corporalidade e construção de gênero entre travestis paulistas" Campos - Revista de Antropologia 6, No. 1-2 (2005), 97-112; José Miguel Labrín Elgueta, "Metamorfosis trans: Cuerpo e identidad transgénero en trabajadoras sexuales travestis" Revista Nomadías 19 (2015), 165-212.

<sup>&</sup>lt;sup>112</sup> IACHR, <u>Violence against LGBTI Persons in the Americas</u>, November 12, 2015, para. 20.

<sup>&</sup>lt;sup>113</sup> IACHR, <u>Violence against LGBTI Persons in the Americas</u>, November 12, 2015, para. 21. Effectively, the use of the term "trans" as an umbrella term that includes all gender-diverse identities is widespread in the Americas in Spanish- and Portuguese-speaking contexts, and applies to a certain degree in English- and French-speaking contexts as well. For example, see the following documents: [in Spanish] Grupo de Organismos del Estado Nacional para la Protección y Promoción de Derechos de la Población LGBTI (Argentina), <u>Guía de términos y</u> <u>conceptos sobre diversidad sexual desde la perspectiva de derechos</u> (Buenos Aires, 2015), 15; Violeta Alegre

understanding, the common denominator of all trans persons is that their identities and/or gender expression do not coincide with the identities "socially established" for the gender they were assigned at birth. The "T" in the acronym LGBTI is widely understood to stand for "trans" as an umbrella term.<sup>114</sup> This is the logic the Commission used in selecting the name for its LGBTI Rapporteurship<sup>115</sup> and on which its use of the acronym LGBTI in its promotion and monitoring work is based.

- 74. The Commission is aware of the terminology differences that exist in the region and how identity categories can vary depending on the cultural, historical, and political processes of each context and place. In this regard, the IACHR understands that while some terms may be claimed by some groups of persons, those same terms may be viewed differently by others, or may even have been rejected or fallen into disuse on having been found offensive or pathologizing. The IACHR underscores that the personal choice of one category or another cannot have legal effects in terms of enabling or restricting the full enjoyment of the right to gender identity and/or personal autonomy. On the contrary, these decisions form part of the collection of authorities belonging exclusively to the realm of personal self-determination and the private choice of each individual.
- 75. According to the information received by the Commission, trans and gender-diverse persons tend to identify themselves, to a greater or lesser extent, with experiences that tend to be culturally defined as feminine or culturally defined as masculine, although there are also those who do so with more than one gender, with no gender in particular, or fluidly and variably.<sup>116</sup> This demonstrates that, as indicated previously, identity constructs and gender expressions are not determined solely by the two binary possibilities but rather can be placed on a much broader spectrum of possibilities.

et. al, *Guía de acciones para una inclusión sociolaboral de travestis, transexuales y transgéneros (trans):* <u>Recomendaciones basadas en las acciones implementadas en ocho localidades de la Argentina</u> (Buenos Aires: UNDP, 2017); [in Portuguese] UNAIDS, <u>Guia de Terminologia do UNAIDS</u> (2017), 23; Livres e Iguales, <u>Nota</u> <u>Informativa: Pessoas Transgenero</u> (2017); [in English] Ontario Human Rights Commission, <u>Policy on preventing</u> <u>discrimination because of Gender Identity and Gender Expression</u> (2014), 3; Organization for Refuge, Asylum & Migration (ORAM), <u>Sexual Orientation, Gender Identity and Gender Expression: Essential Terminology for</u> <u>the Humanitarian Sector</u> (2016), 22; [in French] Dominique Dubuc, <u>LGBTQI2SNBA+: Les mots de la diversité</u> <u>liée au sexe, au genre et à l'orientation sexuelle</u> (Quebec: FNEEQ, 2017), 11; Chambre de Commerce Gaie du Québec (CCGQ), <u>Lexique LGBT sur la diversité sexuelle et de genre en milieu de travail</u> (2014), 24.

<sup>&</sup>lt;sup>114</sup> However, it should be noted that today, especially in English speaking contexts, the term "transgender" is frequently used as the umbrella term that includes all trans identities, which again demonstrates how much terminology depends on the cultural context in which it is used. Occasionally, an acronym using three "Ts" is used to provide visibility to "*travestis*, transsexuals, and transgender persons," referencing them explicitly, without an umbrella term. To give a few examples, the coalition of sexual and gender diverse city organizations that lobby before the OAS calls itself the "Coalición LGBTTTI de Incidencia en las Américas," and one of the main trans person organizations in Argentina is called the "ATTTA" (Asociación de Travestis, Transexuales y Transgéneros de Argentina), following the same logic.

<sup>&</sup>lt;sup>115</sup> IACHR, <u>Press Release 15/14</u>: "IACHR Rapporteurship on the Rights of Lesbian, Gay, Bisexual, Trans and Intersex (LGBTI) persons becomes fully operational and first Rapporteur duly designated," February 19, 2014.

<sup>&</sup>lt;sup>116</sup> Jaime M. Grant, Lisa A. Mottet, Justin Tanis, et. al, <u>Injustice at Every Turn: A Report of the National Transgender</u> <u>Discrimination Survey</u> (Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011), 25.

#### a. Feminine Trans Identities

- 76. Feminine trans identities include people who, at the time of birth, were assigned a masculine gender, but whose gender identity as socially and culturally constructed, understood, and read, is feminine.<sup>117</sup> This includes those who identify as trans women, transgender women, transsexual women, and travestis, among others. In some contexts, especially English-speaking ones, the acronym "MtF" (male to female) tends to be used to cover all trans women. However, some reject this denomination because it denotes a "pathway or trajectory" that grants unwarranted visibility or relevance to the previous place from which an individual transitioned.<sup>118</sup>
- 77. In its report on violence against LGBTI persons, the IACHR addressed in depth the issues affecting trans women. Their vulnerability is aggravated by intersection with gender. In this regard, the IACHR set forth general guidelines on intersectional discrimination and violence based on gender in conjunction with gender identity and expression, emphasizing that in view of the obligations enshrined in the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (hereinafter "Convention of Belém do Pará"), States have a specific obligation to steadily change social and cultural patterns of conduct to counteract these prejudices, customs, and practices that cause harm to trans women.<sup>119</sup>
- 78. Travestis also fall within the category of feminine trans identities.<sup>120</sup> The IACHR has noted that "[t]here is a wide range of political positions around the use of the term travesti,"<sup>121</sup> as reclamation of this term has been uneven in the region.<sup>122</sup> However,

<sup>&</sup>lt;sup>117</sup> IACHR, *Violence against LGBTI Persons in the Americas*, November 12 2015, para. 21.

See: Rhonda Factor y Esther Rothblum, "<u>Exploring gender identity and community among three groups of transgender individuals in the United States: MTFs, FTMs, and genderqueers</u>", *Health Sociology Review* 17, No. 3 (2008), 252.

<sup>&</sup>lt;sup>119</sup> IACHR, *Violence against LGBTI Persons in the Americas*, November 12 2015, para. 275 to 284.

<sup>&</sup>lt;sup>120</sup> Note that the concept of *travesti*ism as established in Latin America has been characterized as an identity of struggle upon staking out a position outside the binary and because it destabilizes binary categories with its own identity, "neither masculine nor feminine," although the expression of the *travesti* gender tends to be more in line with feminine gender expression. In this regard, Lohana Berkins adds that while *travestis* build their identities *in the feminine*, frequently with cultural values, symbols, and emblems that reproduce femininity or that are associated with hegemonic femininity, they do so in such a way that these rules and attributes are "redefined and destabilized." In this regard, see: Lohana Berkins, "Un itinerario político del travestismo" en Diana Maffia (comp.), *Sexualidades migrantes. Género y transgénero* (Buenos Aires: Feminaria, 2006), 129; Lohana Berkins, "<u>Cómo nos decimos: las travestis en Latinoamérica</u>" *Revista E-Misférica* No. 4.2 (2007); Diana Maffia, "Introducción" en <u>Sexualidades Migrantes: Género y Transgénero</u> (Buenos Aires: Feminaria Editora, 2003), 6.

<sup>&</sup>lt;sup>121</sup> IACHR, *Violence against LGBTI Persons in the Americas*, November 12 2015, footnote 47.

<sup>&</sup>lt;sup>122</sup> In some contexts, the term is used only to refer to a specific form of gender *expression*, restricted to "the use of clothing from the opposite sex," generally for amusement or recreational purposes. In English-speaking contexts, the equivalent term (transvestite) still has a strongly pejorative connotation. It does not tend to have the same identarian meaning, and can even be insulting. See, among other things, examples of glossaries that include different definitions on this: Organization for Refuge, Asylum & Migration (ORAM), <u>Sexual Orientation</u>, <u>Gender Identity and Gender Expression: Essential Terminology for the Humanitarian Sector</u> (2016), 48; Chambre de Commerce Gaie du Québec (CCGQ), <u>Lexique LGBT sur la diversité sexuelle et de genre en milieu de travail</u> (2014), 25; MOVILH, <u>Educando en la Diversidad: Orientación sexual e identidad de género en las</u>

the IACHR highlights that in Latin America, and especially in Argentina, Chile, Uruguay, and Brazil, the term has been given new meaning and reclaimed in terms of identity and politics to mean more than simply the act of occasionally wearing certain clothing. For example, the IACHR has received information indicating that the region's travestis decided to give new meaning to the word travesti and connect it to "the struggle, the resistance, dignity, and happiness,"<sup>123</sup> rejecting the insulting connotation it had been given.

- 79. Part of the trans persons movement also argues for differentiation from other categories, including "transgender."<sup>124</sup> This argument holds that this term refers to experience largely applicable to the global north. Additionally, while many people who identify as travestis do not identify as "trans women," for others, identification with both terms may be simultaneous or shifting.
- 80. As regards the life experiences of trans women, preliminary mention should be made of the cycle of systematic exclusion they face as a result of prejudice against them. The result is that 90% of trans women perform sex work, according to information received by the IACHR.<sup>125</sup> To a lesser degree, they also work in entertainment and performance arts. In this regard, it has been demonstrated that the mass media contribute to the deeply-rooted idea that these marginal identities belong "naturally" to show business, the sex market, street sex work, or even drug trafficking.
- 81. Essentially, social prejudice creates a series of obstacles to trans women's ability to secure education and professional training throughout their lives, and the spiral of exclusion culminates in the apparent "inevitability" of ending up only in certain limited spaces to which they have been reduced. According to some opinions, these "expectations" can even mean that trans women end up shaping their bodies to meet the demands of these spaces.<sup>126</sup>

#### b. Masculine Trans Identities

82. Masculine trans identities encompass those persons who, at the time of birth, were assigned a feminine gender, but whose gender identity as socially and culturally constructed, understood, and read, is masculine. The terms "trans man," "transmasculine," or even "varón trans", in Spanish, are the ones most used by this group of people. It also includes those identifying as transexual men or transgender men. Although it is possible that people with masculine gender identities could identify as travestis, the IACHR has received information indicating that, on the

<u>aulas</u> (Santiago: MOVILH, 2010), 10. Its use in English is discouraged because it is offensive: GLAAD, <u>Media</u> <u>Reference Guide (10<sup>th</sup> Edition)</u> (New York-California: GLAAD, 2016), 11, 16.

Lohana Berkins, "<u>Cómo nos decimos: las travestis en Latinoamérica</u>" Revista E-Misférica No. 4.2 (2007).

<sup>&</sup>lt;sup>124</sup> Diana Maffía, "Los cuerpos como frontera", Revista Pensamiento Penal, 4 de abril de 2013.

<sup>&</sup>lt;sup>125</sup> IACHR, <u>Public hearing: Situation of economic, social, cultural, and economic rights of trans persons in the Americas</u>, 151st Period of Sessions, March 16, 2015.

<sup>&</sup>lt;sup>126</sup> José Miguel Labrín Elgueta, "Metamorfosis trans: Cuerpo e identidad transgénero en trabajadoras sexuales travestis" *Revista Nomadías* 19 (2015), 165-212.

continent, the vast majority of those claiming this identity are persons transitioning to a gender identity that is feminine or tends to the feminine. As with the acronym "MtF" described above, the inverse—"FtM"—tends to be used to describe masculine trans identities, and it has been subjected to the same critiques.

- 83. One of the symbolic effects of the recognition of masculine trans identities is that it breaks cisgender men's monopoly on masculinity. However, different studies have looked at the tensions between masculine trans identities and what could be called "hegemonic masculinity" and the privileges it offers in patriarchal societies.<sup>127</sup> Effectively, the IACHR has observed that trans men do not escape the kinds of discrimination and violence produced by cissexism, which has been defined as the combination of the bias that places the feminine subordinate to the masculine, plus the bias that places trans identities as subordinate to cisgender identities.
- 84. As with feminine trans identities, masculine trans identities encompass a vast diversity of ways of transitioning to one's own masculine identity, from those who say they "have always felt like a man," to those who recognize an identity after passing through identities prior to that of a trans man, often as a lesbian woman with a more masculine gender expression.<sup>128</sup> At the same time, while some testimonials point to the centrality of hormone therapy such as testosterone and its implications and effects on the body,<sup>129</sup> other trans men opt for interpretations and life experiences other than body modification.
- 85. In contrast to what happens with trans women, it is said that the lack of visibility of masculine trans identities appears to protect them from violence based on prejudice against gender-diverse identities and the violence that affects others who challenge gender norms.<sup>130</sup> However, this does not mean they escape experiencing other specific manifestations of cissexism. Specifically, in its report on violence, the IACHR indicated that trans men most often tend to suffer violence that takes place in private spaces outside of which it is frequently not visible.<sup>131</sup> Some studies have found a higher risk of suicide—especially in adolescence—was among the effects of the stigma and discrimination that trans men tend to face,<sup>132</sup> including internalized

Keep in mind that the concept of "hegemonic masculinity" also entails interpretations and implications that impact the life experience of cisgender men, especially when their gender expression tends toward the feminine. However, in this report, the IACHR will focus only on trans persons. Regarding the concept of "hegemonic masculinity," see, in general: Luciano Fabbri, "¿Qué (no) hacer con la masculinidad? reflexiones activistas sobre los límites de los 'colectivos de varones/grupos de hombres.'" V Coloquio de Estudios de Varones y Masculinidades (Santiago de Chile, 2015).

<sup>&</sup>lt;sup>128</sup> Simone Ávila y Miriam Pillar Gross "O 'y' em questao: as transmaculinidades brasileiras" Seminário Internacional Fazendo Gênero 10, Anais Eletrônicos (Florianópolis, 2013), 7.

<sup>&</sup>lt;sup>129</sup> Simone Ávila y Miriam Pillar Gross "<u>O</u> '<u>y</u>' em <u>questao: as transmaculinidades brasileiras</u>" Seminário Internacional Fazendo Gênero 10, Anais Eletrônicos (Florianópolis, 2013), 10.

IACHR, <u>Violence against LGBTI Persons in the Americas</u>, November 12 2015. 104; "An Overview of Violence against LGBTI Persons in the Americas," annex to Press Release 153/14. December 17, 2014, pg. 3.

IACHR, <u>Public hearing: Discrimination based on gender, race, and sexual orientation in the Americas</u>, 133rd Regular Period of Sessions, October 23, 2008; IACHR, 153rd Regular Period of Sessions, October 30, 2014.

ATTTA and Fundación Huésped, Ley de Identidad de Género y Acceso al cuidado de la salud de las personas trans en Argentina, May 2014, pg. 61.

stigma and self-exclusion.<sup>133</sup> It has been found in some cases that their lack of visibility is possibly the reason for which they are less empowered as a group and have fewer opportunities to seek support from peers and/or professionals.<sup>134</sup>

#### c. Non-Binary/Genderqueer Persons<sup>135</sup>

- 86. The Commission has received information on persons who do not identify with the gender assigned to them at birth, but who also do not identify themselves as "trans," nor in any of the identity categories that tend to be included under this umbrella term. Likewise, there are those who identify as "trans"—or in one of the identity categories included under this umbrella term—who specifically identify as outside any category that reflects the man/woman binary.<sup>136</sup>
- 87. This realm of gender identities and expressions includes people who identify as "non-binary" or as "genderqueer," among many other possibilities.<sup>137</sup> There are non-binary individuals who, whatever their physical configuration at birth, identify solely as having a fixed gender that is neither man nor woman. Other non-binary persons do not identify with any particular gender, sometimes referring to themselves as "agender" persons Occasionally, these individuals view themselves as persons without gender, or dissent from the very idea of gender.<sup>138</sup> For their part, gender fluid individuals experience gender fluidly, without a fixed and permanent gender.<sup>139</sup>
- 88. For many of these people, it could be that they never went through a "transition" process but rather assumed a gender identity that challenged conventions or conventional categories.<sup>140</sup> For others, the concept of "transition" may represent the change from living with one of the gender binaries they were assigned at birth to

ATTTA and Fundación Huésped, Ley de Identidad de Género y Acceso al cuidado de la salud de las personas trans en Argentina, May 2014, pg. 61.

ATTTA and Fundación Huésped, Ley de Identidad de Género y Acceso al cuidado de la salud de las personas trans en Argentina, May 2014, pg. 61.

<sup>&</sup>lt;sup>135</sup> The IACHR observes that the fact that this section on nonbinary/genderqueer persons comes under the sections on trans identities does not mean these persons identify as such but is simply a result of how the index is ordered.

<sup>&</sup>lt;sup>136</sup> IACHR, <u>Violence against Lesbians, Gays, Bisexuals, Trans and Intersex persons (LGBTI) in the Americas</u>, November 12, 2015, para. 21.

<sup>&</sup>lt;sup>137</sup> Rhonda Factor and Esther Rothblum, "Exploring gender identity and community among three groups of transgender individuals in the United States: MTSs, FTMs, and genderqueers", *Health Sociology Review* 17, No. 3 (2008), 252.

<sup>&</sup>lt;sup>138</sup> Christina Richards, Walter Pierre Bouman y Meg-John Barker (eds.), <u>Genderqueer and Non-Binary Genders</u> (London: Palgrave, 2017), 5; Simone Ávila and Miriam Pillar Gross; <u>Seminário Internacional Fazendo Gênero</u> 10, Anais Eletrônicos (Florianópolis, 2013), 8.

<sup>&</sup>lt;sup>139</sup> Simone Ávila and Miriam Pillar Gross "<u>O</u> '<u>y</u>' em questao: as transmaculinidades brasileiras</u>" Seminário Internacional Fazendo Gênero 10, Anais Eletrônicos (Florianópolis, 2013), 9.

Jaime M. Grant, Lisa A. Mottet, Justin Tanis, et. al, <u>Injustice at Every Turn: A Report of the National Transgender</u> <u>Discrimination Survey</u> (Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011), 26.

their non-binary identities.<sup>141</sup> This largely depends on the experiences of each person.

- 89. As regards legal recognition of gender identity and amending registries for nonbinary persons, the IACHR notes that the IE SOGI specifically recommended that States "[a]cknowledge and recognize non-binary identities, such as gender identities that are neither 'man' nor 'woman' and offer a multiplicity of gender marker options" in legal processes on recognition of gender identity.<sup>142</sup> Some jurisdictions in the region are just beginning to move toward registry systems that allow people to opt for a third option on their gender marker or even simply eliminate the gender indicator on their official documentation. For example, since 2017, Canada has offered the gender neutral or non-binary indicator ("X") on passports.<sup>143</sup> Also, since 2016, public health credentials in the Canadian province of Ontario do not include information on the person's gender, and since 2017, they have had the option of a sex neutral or non-binary mark ("X") on drivers licenses.<sup>144</sup> Also, in 2018, the public policy on gender identity was amended to allow people born in Ontario to choose a gender neutral or non-binary option ("X") on their birth certificates or even to simply eliminate the gender indicator on the certificates.<sup>145</sup> Additionally, a third option of a gender neutral or non-binary ("X") gender indicator is also available in the province of Alberta.<sup>146</sup> The provinces of Saskatchewan and British Columbia also allow birth certificates to be issued without indicating gender.<sup>147</sup>
- 90. The IACHR deems it important to emphasize that, according to reports, many of these changes were made after consultation processes with civil society organizations and other stakeholders involved in the issue. The Commission therefore notes that, in different contexts, there may be different positions and agreements with regard to the applicability, pertinence, or usefulness of offering a third gender indicator. Consultation processes with civil society organizations and other stakeholders involved in the issue should therefore be conducted.
- 91. Studies find that non-binary and genderqueer persons are often not recognized because of a lack of educational material available to the public. This leads to difficulties in conducting daily activities, including at the workplace and when

<sup>146</sup> Service Alberta, "<u>Amend sex information</u>," visited on July 5, 2018.

Jaime M. Grant, Lisa A. Mottet, Justin Tanis, et. al, <u>Injustice at Every Turn: A Report of the National Transgender</u> <u>Discrimination Survey</u>, (Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011), 26.

<sup>&</sup>lt;sup>142</sup> General Assembly, <u>Report of the Independent Expert on protection against violence and discrimination based</u> on sexual orientation and gender identity, A/73/152, July 12, 2018, para. 81(d)(v).

<sup>&</sup>lt;sup>143</sup> Florence Ashley y Sasha Buchert, "América del Norte" en Zhan Chiam, Sandra Duffy, Matilda González Gil, <u>Informe de Mapeo Legal Trans 2017: Reconocimiento ante la ley</u> (Geneva: ILGA, November 2017), 117.

<sup>&</sup>lt;sup>144</sup> "<u>Press release. Ontario Boosts Gender Inclusivity with Changes to Official Documents</u>," Ontario.ca, June 29, 2016.

<sup>&</sup>lt;sup>145</sup> "Changing your sex designation on your birth registration and birth certificate," Ontario.ca, May 2, 2018.

<sup>&</sup>lt;sup>147</sup> Florence Ashley and Sasha Buchert, "América del Norte" in Zhan Chiam, Sandra Duffy, Matilda González Gil, Informe de Mapeo Legal Trans 2017: Reconocimiento ante la ley (Geneva: ILGA, November 2017), 113.

interacting with public registries.<sup>148</sup> In the United States, those who identify as gender non-binary or genderqueer report higher rates of sexual harassment during their school years and police abuse compared to other persons with diverse identities.<sup>149</sup>

#### 2. Ancestral Identities

- 92. The IACHR has received information on ways of experiencing gender and sexuality that are specific to some indigenous peoples on the continent. In 2013, the Commission held a public hearing on the human rights situation of indigenous lesbian, gay, trans, bisexual, and intersex persons in the Americas.<sup>150</sup> It also received contributions in writing from representatives of some indigenous peoples for drafting its report on violence against LGBTI persons.<sup>151</sup>
- 93. According to the information submitted to the IACHR, the different identities in the framework of ancestral gender diversity do not have exact equivalents in Western concepts.<sup>152</sup> Indigenous cosmovisions or worldviews understand sexuality and gender as connected to and part of Mother Earth, the Pachamama, and the Abya Yala, in coexistence with the different forms of life therein.<sup>153</sup>
- 94. One of these ancestral identities is the *muxhe* in the Zapoteca culture in Oaxaca, in the south of Mexico. The word "*muxhe*" comes from the word "*mujer*," from 16th-century Spanish.<sup>154</sup> It describes a feminine man and is used to describe people who, assigned the masculine gender at birth, grow to take on feminine gender identities.<sup>155</sup> According to the information received by the IACHR, *muxhe* "is identity similar to gay or transgender, but with *sui generis* characteristics,"<sup>156</sup> a "third identity"<sup>157</sup> that breaks with the cisnormative binary gender system. Also, individuals who identify as *muxhe* are integrated into almost all aspects of daily in public life, and one of their important characteristics is being an "integral member

<sup>&</sup>lt;sup>148</sup> Meerkamper, Shawn Thomas. Contesting sex classification: the need for genderqueers as a cognizable class, Dukeminier Awards Journal, Pag. 7

<sup>&</sup>lt;sup>149</sup> Jack Harrison et al., A Gender Not Listed Here: Genderqueers, Gender Rebels and OtherWise in the National Transgender Discrimination Survey, 2 LGBTQ POL'Y J. 13 (2012)., citado por Meerkamper, Shawn.

IACHR, Public hearing: Human rights situation of indigenous lesbian, gay, trans, bisexual, and intersex persons in the Americas, 147th Regular Period of Sessions, March 16, 2013.

<sup>&</sup>lt;sup>151</sup> IACHR, <u>Violence against LGBTI Persons in the Americas</u>, November 12 2015, para. 263 to 267.

<sup>&</sup>lt;sup>152</sup> Fundación Diversencia, <u>Situación de derechos humanos de las personas LGBTI y diversidades ancestrales en el contexto de los Pueblos Indígenas en Abya Yala</u> (2013), para. 12. That the existence of these identities is not registered in Western culture has also been noted by the IE SOGI. See: General Assembly, <u>Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity</u>, A/73/152, July 12, 2018, para. 3.

<sup>&</sup>lt;sup>153</sup> Fundación Diversencia, <u>Situación de derechos humanos de las personas LGBTI y diversidades ancestrales en el contexto de los Pueblos Indígenas en Abya Yala</u> (2013), para. 12.

<sup>&</sup>lt;sup>154</sup> Amaranta Gómez, "<u>Trascendiendo</u>", *Desacatos* No. 15-16 (autumn-winter 2004), 200.

<sup>&</sup>lt;sup>155</sup> Amaranta Gómez, "<u>Trascendiendo</u>", *Desacatos* No. 15-16 (autumn-winter 2004), 200.

<sup>&</sup>lt;sup>156</sup> Amaranta Gómez, "<u>Trascendiendo</u>", *Desacatos* No. 15-16 (autumn-winter 2004), 200.

<sup>&</sup>lt;sup>157</sup> Víctor Hugo Robles, "<u>Un mundo posible (Amaranta Gómez Regalado en Chile</u>]" Vivo Positivo (2008), pg. 37.

of society," with implications for their productive lives and their participation in the commercial, social, and festive life of their community.<sup>158</sup>

- 95. In Panama, the Kuna indigenous people has the *wigunduguid* identity, also called *omeguit* (although the latter term is sometimes used in a pejorative way).<sup>159</sup> According to the Commission's information, under the Kuna cosmology, nature manifests itself in the form of two spirits that reside in bodies and can take three possible forms and emotional processes: *man kuna, woman kuna,* and *omeguid*.<sup>160</sup> In practice, those who self identify as the latter tend to be taught by their mothers "from a very young age to do domestic labor and kept from the work that is socially assigned to heterosexual men."<sup>161</sup> Thus, they take on a feminine sexual and social identity.<sup>162</sup>
- 96. The precolonial indigenous cosmovision of the geographic region occupied today by the United States (including Alaska) and Canada recognized a Two-Sprit man or woman.<sup>163</sup> It included a variety of roles and identities from different indigenous peoples throughout North America, including the *winkte* of the Lakota, the *nádleehi* of the Navajo, and the *badés* of the Sioux, among others.<sup>164</sup> The Commission is aware that these individuals are also subject to discrimination and violence due to the intersectionality between their gender identity and/or expression and their ethnoracial origin. In this regard, the IACHR has taken note of the report *Reclaiming Power and Place,* from Canada, which reveals violations of the human rights of indigenous persons with ancestral gender identities represented by the acronym 2SLGBTQQIA. They experienced persistent and deliberate violations and abuses of their rights, for which reason the report called for social and legal changes to address the issue facing indigenous peoples in that State.<sup>165</sup>
- 97. The IACHR underscores that all gender-diverse identities, including ones not mentioned in this report, are an intrinsic part of every person's right to self-determination in the framework of their ancestral identity.

<sup>&</sup>lt;sup>158</sup> Amaranta Gómez, "<u>Trascendiendo</u>", *Desacatos* No. 15-16 (autumn-winter 2004), 205.

<sup>&</sup>lt;sup>159</sup> In a reappropriation of the insult, Nandín appears in both forms (*omeguit* and *wigunduguid*). See: Fede Abib, "<u>Nandín: la espiritualidad como derecho político</u>," *Facción*, May 17, 2015.

<sup>&</sup>lt;sup>160</sup> Fede Abib, "<u>Nandín: la espiritualidad como derecho político</u>," *Facción*, May 17, 2015.

<sup>&</sup>lt;sup>161</sup> CLAM, "<u>América Latina: Sexualidades y pueblos indígenas</u>", May 13, 2010.

<sup>&</sup>lt;sup>162</sup> CLAM, "<u>América Latina: Sexualidades y pueblos indígenas</u>", May 13, 2010. Also see: Nandín Solís, "<u>Espíritu de dos almas</u>", July 3, 2018; UN-Globe, "<u>Nandín Solís: Making Equality Work</u>", May 16, 2014;

<sup>&</sup>lt;sup>163</sup> Fundación Diversencia, <u>Situación de derechos humanos de las personas LGBTI y diversidades ancestrales en el</u> <u>contexto de los Pueblos Indígenas en Abya Yala</u> (2013), 25.

Ben Vincent and Ana Manzano, "History and Cultural Diversity"in Genderqueer and Non-Binary Genders; Christina Richards, Walter Pierre Bouman, and Meg-John Barker (eds.) (London: Palgrave, 2017), 5.

<sup>&</sup>lt;sup>165</sup> National Enquiry into missing and murdered indigenous women and girls, Reclaiming Power and Place, 2019.

# D. Diverse Identities and Expressions as They Intersect with Other Groups

98. The IACHR has received information on the serious situation of vulnerability to which trans persons are often exposed when they suffer discrimination and violence because of their identities and/or gender expression in conjunction with other factors, such as age, ethnic-racial background, migratory status, and others.

#### 1. Children and Adolescents

- 99. The internal and individual experience of gender and the expression thereof are characteristics of persons that can be present from childhood and/or adolescence. Effectively, a number of retrospective studies and surveys have found based on testimonials from trans and gender-diverse persons that they become aware of their gender identity at a young age.<sup>166</sup>
- 100. The IACHR has urged States to facilitate for trans and gender-diverse children and adolescents the quick, transparent, and accessible recognition of their gender identities without abusive conditions.<sup>167</sup> The IACHR has also emphasized the crucial role that families play in creating a safe and loving environment and has described the main challenges facing trans and gender-diverse children and adolescents, such as legal recognition of their gender identities, harassment at school, mental health, medical care, and impunity for violations of their rights.<sup>168</sup> Specifically, the Commission has called on States to foster welcoming family environments for trans and gender-diverse persons.<sup>169</sup>
- 101. For its part, the Inter-American Court determined in Advisory Opinion 24/17 that all juridical standards on the right to gender identity are fully applicable to children

See, among other examples: Arnold H. Grossman, Anthony R. D'augelli y Nickolas P. Salter, "Male-to-Female Transgender Youth," *Journal of GLBT Family Studies* 2, No. 1 (2006), 71-92; Jody L. Herman et al., Age of Individuals who Identify as Transgender in the United States (Los Angeles: The Williams Institute, 2017).

See: IACHR, <u>Press Release No.</u> 61/17: "Embrace Diversity and Protect Trans and Gender-Diverse Children and Adolescents," May 16, 2017. The press release was also signed by the UN Committee on the Rights of the Child; the UN Committee Against Torture; Mr. Philip Alston, Special Rapporteur on extreme poverty and human rights; Ms. Koumbou Boly Barry, Special Rapporteur on the right to education; Mr. Vitit Muntarbhorn, Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; Mr. Dainius Pūras, Special Rapporteur on the right to health; Ms. Dubravka Šimonović, Special Rapporteur on violence against women, its causes and consequences; the Working Group on the issue of discrimination against women in law and in practice; Mr. Lawrence Murugu Mute, Chairperson of the Committee for the Prevention of Torture in Africa, and Mr. Nils Muižnieks, Commissioner for Human Rights

IACHR, <u>Press Release No.</u> 61/17: "Embrace Diversity and Protect Trans and Gender-Diverse Children and Adolescents," May 16, 2017.

<sup>&</sup>lt;sup>169</sup> IACHR, <u>Press Release No.</u> 61/17: "Embrace Diversity and Protect Trans and Gender-Diverse Children and Adolescents," May 16, 2017.

and adolescents wishing to request recognition of their self-perceived gender identities on documents and registries.<sup>170</sup>

- 102. The Court pointed to Argentina's gender identity law as a good practice on how to legislate recognition of gender identity in cases of minors under the age of 18.<sup>171</sup> Said law only requires the freely-expressed consent of the child or adolescent, the consent of their legal representatives, and legal assistance.<sup>172</sup> The law also establishes a complementary administrative process for changing registries, as well as an expedited and exceptional judicial route to be used only for cases in which, for some reason, it is not possible to obtain the consent of the representatives.<sup>173</sup>
- 103. Parallel to this, in the universal system, the Committee on the Rights of the Child has recognized the discrimination suffered by trans young people and has emphasized "the rights of all adolescents to freedom of expression and respect for their physical and psychological integrity, gender identity and emerging autonomy."<sup>174</sup>
- 104. Regarding the recognition of the gender identity of children and adolescents, the IACHR takes note that processes to change the gender indicator are legally available in Argentina,<sup>175</sup> Chile,<sup>176</sup> Uruguay,<sup>177</sup> and in the Canadian provinces of Alberta,<sup>178</sup> British Columbia,<sup>179</sup> Manitoba,<sup>180</sup> New Brunswick,<sup>181</sup> Nova Scotia,<sup>182</sup> Ontario,<sup>183</sup> Québec,<sup>184</sup> Saskatchewan,<sup>185</sup> Terranova, and Labrador,<sup>186</sup> as well as the territories of Nunavut,<sup>187</sup> the Northwest Territories,<sup>188</sup> and Yukon.<sup>189</sup>

<sup>182</sup> <u>Vital Statistics Act</u>, Chapter 494, Article 25(2).

<sup>184</sup> <u>Civil Code of Quebec</u>, Article 71.1.

<sup>&</sup>lt;sup>170</sup> Inter-American Court. <u>Gender identity and equal protection and nondiscrimination for same-sex couples</u>, Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 154.

<sup>&</sup>lt;sup>171</sup> Inter-American Court. <u>Gender identity and equal protection and nondiscrimination for same-sex couples</u>, Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 156.

<sup>&</sup>lt;sup>172</sup> Law 26,743, Gender Identity Act (Official Bulletin of May 24, 2012), Article 5.

<sup>&</sup>lt;sup>173</sup> Law 26,743, Gender Identity Act (Official Bulletin of May 24, 2012), Article 5.

<sup>&</sup>lt;sup>174</sup> Committee on the Rights of the Child, General Comment No. General Comment No. 20: on the implementation of the rights of the child during adolescence," December 6, 2016, CRC/C/GC/20, para. 34.

<sup>&</sup>lt;sup>175</sup> Law 26,743, Gender Identity Act (Official Bulletin of May 24, 2012), Article 5.

<sup>&</sup>lt;sup>176</sup> IACHR, <u>Press Release 275/2018</u>: "IACHR Welcomes Progress towards the Recognition of Gender Identity in the Region," December 21, 2018.

<sup>&</sup>lt;sup>177</sup> IACHR, <u>Press Release 275/2018</u>: "IACHR Welcomes Progress towards the Recognition of Gender Identity in the Region," December 21, 2018.

<sup>&</sup>lt;sup>178</sup> Service Alberta, "<u>Amend sex information</u>," visited on July 5, 2018.

<sup>&</sup>lt;sup>179</sup> <u>Vital Statistics Act</u> [RSBC 1996], Chapter 479, Article 27(1)(d).

<sup>&</sup>lt;sup>180</sup> <u>Vital Statistics Act</u> [C.C.S.M. c. V60], Article 25(8)(2)(f).

<sup>&</sup>lt;sup>181</sup> <u>Vital Statistics Act</u> (S.N.B. 1979, c. V-3), Article 34.1(1).

<sup>&</sup>lt;sup>183</sup> "Changing your sex designation on your birth registration and birth certificate," Ontario.ca, May 2, 2018.

<sup>&</sup>lt;sup>185</sup> eHealth Saskatchewan, <u>Change Sex Designation</u>, visited on July 5, 2018.

<sup>&</sup>lt;sup>186</sup> <u>Vital Statistics Act</u> (SNL2009) Chapter V-6.01, Article 26.1.

<sup>&</sup>lt;sup>187</sup> Vital Statistics Act [R.S.N.W.T. 1988, c.V-3], Article 11.1(5)(e)

<sup>&</sup>lt;sup>188</sup> <u>Consolidation Of Vital Statistics Act</u> [R.S.N.W.T. 1988, c.V-3], Article 11.1(5)(e)

<sup>&</sup>lt;sup>189</sup> <u>Vital Statistics Act</u> (RSY 2002, c.225), Article 12(1).

105. In contrast, Bolivia<sup>190</sup> and the Federal District of Mexico<sup>191</sup> require an individual to be 18 years old in order to change the gender indicator. In Ecuador, the change is made to the national identification card, which is a document that is only obtained at the age of 18, and therefore the possibility of changing the gender indicator is not available to children and adolescents.<sup>192</sup> Meanwhile, in Brazil, the decision of the Supreme Federal Tribunal did not place any specific age limits on the process for changing the indicator.<sup>193</sup> Lastly, in Colombia, one of the requirements for the procedure is presentation of the national citizen identification card,<sup>194</sup> which is only given to adults when they turn 18.<sup>195</sup> However, in 2017, the Constitutional Tribunal found that changes to the gender indicator must be authorized when it can be proven that "the individual is near the age of majority,"<sup>196</sup> leaving open the possibility that adolescents age 17 or even 16 may be able to change their registry records.

#### 2. Older Persons

- 106. The IACHR has described how older persons can suffer intersectional discrimination regarding their gender identities.<sup>197</sup> An important issue when considering the human rights situations of trans and gender-diverse persons who are also senior citizens is that most of them lived their lives during a time when there was no legal protection from discrimination based on gender identity or expression. On the contrary, many States had laws explicitly criminalizing trans and gender-diverse persons, as well as State public policies that tended to persecute LGBTI persons and to ignore persecution and acts of violence against them.<sup>198</sup>
- 107. As indicated in its report on violence against LGBTI persons, the Commission is aware of the alarming context that in several countries of the region, trans women have an average life expectancy of around 35 years.<sup>199</sup> In line with this, the information collected by the IACHR between 2013 and 2014 found that 80% of the

<sup>&</sup>lt;sup>190</sup> Law No. 807, Law of May 21, 2016, Article 4(1).

<sup>&</sup>lt;sup>191</sup> Civil Code for the federal district of Mexico, (in keeping with amendments of February 5, 2015), Article 135 c(II).

<sup>&</sup>lt;sup>192</sup> Organic Law on the Administration of Identity and Civil Registry Information (Supplementary Official Registry 684, February 4, 2016), Article 76 and 94.

<sup>&</sup>lt;sup>193</sup> Supreme Federal Tribunal (Brazil), <u>RE/670422 - Extraordinary Remedy</u>, August 15, 2018.

<sup>&</sup>lt;sup>194</sup> Decree No. <u>1227/2015</u>, Whereby section is added to Decree 1069 of 2015, the Unified Regulations of the Justice and Law Sector, regarding the procedure for correcting the sex designation in the Civil Registry, Article 2.2.6.12.4.5(2).

<sup>&</sup>lt;sup>195</sup> Zhan Chiam, Sandra Duffy, Matilda González Gil, <u>Informe de Mapeo Legal Trans 2017: Reconocimiento ante la ley</u> (Geneva: ILGA, November 2017), 101.

<sup>&</sup>lt;sup>196</sup> Constitutional Court of Colombia, <u>Judgment T-498/17</u>, August 3, 2017, para. 5.5.

<sup>&</sup>lt;sup>197</sup> IACHR, <u>Press Release 152/17</u>: "IACHR Calls on States to Combat Discrimination against Older Persons," October 4, 2017.

<sup>&</sup>lt;sup>198</sup> Also see: SAGE, It's about time: Aging in a Changing World. Conference Report: Policy Recommendations (2009), 7.

<sup>&</sup>lt;sup>199</sup> IACHR, *Violence against LGBTI Persons in the Americas*, November 12 2015, paras. 275 to 276.

trans persons murdered during a 15 month period were 35 years old or younger.<sup>200</sup> In this regard, it has been noted that the short life expectancy of most trans women explains the absence of generations older than 30, which could directly affect young people lacking guidance from older persons "to help them see beyond the present moment and a perspective beyond individuality."<sup>201</sup>

- 108. Likewise, there is little information collected so far on older trans and genderdiverse persons in the region.<sup>202</sup> In fact, the United Nations Independent Expert on the enjoyment of all human rights by older persons, on finding a lack of data in Costa Rica, recommended that the State conduct a study into the situation of older persons to identify trends and the current challenges they face, including trans persons.<sup>203</sup>
- 109. Early investigative work on the issue has identified specific problems that tend to affect older trans persons, especially those who depend on assistance from care workers who are not aware of or sensitive to gender diversity issues. Experiences have been documented of trans persons living in elder care facilities who have suffered from mistreatment and humiliation and who are afraid to demand respect because they could be expelled from the homes.<sup>204</sup> The difficulty they face earning income often severely limits any opportunity to live without outside support. Additionally, erosion of connections to family that may have been caused by rejection of the person's gender identity can mean that when they age, the individual does not have relatives who could—or who want to—provide care and support.<sup>205</sup>
- 110. The Inter-American Convention on Protecting the Human Rights of Older Persons explicitly prohibits all discrimination based on gender identity.<sup>206</sup> Even so, in contexts in which living conditions allow more trans persons to reach old age, they have been found to be the targets of mistreatment and violence, especially at the hands of care workers and healthcare providers,<sup>207</sup> as detailed throughout this report.

IACHR, Press Release No. 153A/14, <u>An Overview of Violence against LGBTI Persons in the Americas: A Registry</u> <u>Documenting Acts of Violence between January 1, 2013 and March 31, 2014</u>, annex to Press Release 153/14. December 17, 2014.

Lohana Berkins, "<u>Cómo nos decimos: las travestis en Latinoamérica</u>" Revista E-Misférica No. 4.2 (2007).

<sup>&</sup>lt;sup>202</sup> Loree Cook-Daniels And Michael Munson, "<u>Sexual Violence, Elder Abuse, and Sexuality of Transgender Adults, Age 50+: Results of Three Surveys</u>" Journal of GLBT Family Studies, 6 (2010), 142.

<sup>&</sup>lt;sup>203</sup> Human Rights Council, <u>Report of the Independent Expert on the enjoyment of all human rights by older persons</u> on her mission to Costa Rica, A/HRC/33/44/Add.1, para. 76.

<sup>&</sup>lt;sup>204</sup> Damien W. Riggs and Sujay Kentlyn, "Transgender Women, Parenting, and Experiences of Ageing" in *Queering Motherhood: Narrative and Theoretical Perspectives* (Bradford, Canada: Demeter Press, 2014).

<sup>&</sup>lt;sup>205</sup> See, among other examples: Anna Siverskog "'They Just Don't Have a Clue': Transgender Aging and Implications for Social Work" *Journal of Gerontological Social Work* 57, No. 2-4 (2014).

<sup>&</sup>lt;sup>206</sup> <u>Inter-American Convention on Protecting the Human Rights of Older Persons</u>, adopted during the 45th period of sessions of the OAS General Assembly in Washington, DC, United States, on June 15, 2015, Article 5.

<sup>&</sup>lt;sup>207</sup> Erin Fitzgerald, *No Golden Years at the End of the Rainbow: How a Lifetime of Discrimination Compounds Economic and Health Disparities for LGBT Older Adults* (Washington DC: The National Gay and Lesbian Task Force, 2013).

#### 3. Afro-Descendant Persons

- 111. As the Commission expressed in its report on violence against LGBTI persons, afrodescendant persons face acts of violence and discrimination based on their ethnicracial background, gender, sex, sexual orientation, gender identity, skin color, and/or situation of poverty.<sup>208</sup> In fact, in States with high rates of victimization and discrimination against racial minorities, the level of violence to which trans persons are exposed is even greater when they also belong to a racial or ethnic minority group. This leads to more frequent violations of their rights, including of ESCER, as well as greater difficulty asserting such rights before authorities.<sup>209</sup>
- 112. This issue was specifically addressed by the IACHR during public hearings on Colombia<sup>210</sup> and Brazil.<sup>211</sup> Regarding Colombia, the Commission noted the concerning impacts that the armed conflict has had on the lives of LGBTI persons in the Caribbean region, which is largely inhabited by Afro-descendant persons in the lowest socioeconomic segments who, according to the information received, are specifically targeted by armed groups, and particularly by criminal gangs.<sup>212</sup> Regarding the hearing on Brazil, the report presented by one of the requesting organizations showed that trans women of African descent are mocked and humiliated, both because of their gender identities and the color of their skin. They also disproportionally experience violence based on prejudice.<sup>213</sup> Effectively, although trans women only account for 10% of the LGBTI population in Brazil, trans women of African descent account for around 52% of murders of LGBTI persons there.<sup>214</sup>
- 113. The IACHR has received little information on the ethnic-racial composition of the region's trans population. However, with regard to the composition of this population in the United States, a study was conducted by the Williams Institute that found that the adult population identifying as trans is more racially and ethnically

<sup>&</sup>lt;sup>208</sup> IACHR, <u>Violence against Lesbians, Gays, Bisexuals, Trans and Intersex persons (LGBTI) in the Americas</u>, November 12, 2015, para. 358.

See, among other examples: Shanna K. Kattari et al., "Racial and Ethnic Differences in Experiences of Discrimination in Accessing Health Services Among Transgender People in the United States" International Journal of Transgenderism 16, No. 2 (2016), 74; Anneliese A. Singh, "Transgender Youth of Color and Resilience: Negotiating Oppression and Finding Support" Sex Roles 68 (2013) 690; Robert Garofalo et al., "Overlooked, misunderstood, and at-risk: Exploring the lives and HIV risk of ethnic minority male-to-female transgender youth" Journal of Adolescent Health 38, No. 3 (2006) 230–236; National Coalition of Anti-Violence Programs, "Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate Violence in 2013, 2014 Release Edition," 2014.

<sup>210</sup> IACHR, <u>Public hearing: Allegations of violence against LGBTI persons in Colombia's Caribbean region</u>, 153rd Period of Sessions, October 27, 2014.

<sup>&</sup>lt;sup>211</sup> IACHR, <u>Public hearing: Human rights situation of the trans persons of African descent in Brazil</u>, 149th Period of Sessions, October 29, 2013.

<sup>&</sup>lt;sup>212</sup> IACHR, <u>Press Release 131A/2014</u>, Report on the 153rd Period of Sessions of the IACHR, December 29, 2014.

<sup>&</sup>lt;sup>213</sup> Global Rights: Partners for Justice, <u>Report on the Human Rights Situation of Afro-Brazilian Transgender Women</u> (2013), 8.

<sup>&</sup>lt;sup>214</sup> Global Rights: Partners for Justice, <u>Report on the Human Rights Situation of Afro-Brazilian Transgender Women</u> (2013), 9.

diverse than the general population of the United States. It is estimated that nationally, among those identifying as trans, 55% identify as white, 16% identify as African-American or Black, and 21% identify as Latino or Hispanic, with 8% identifying as another race or ethnicity.<sup>215</sup>

# 4. Migrant and Internally Displaced Persons and Asylum Applicants

- 114. On a number of occasions, the IACHR has recognized the heightened vulnerability of trans persons who are immigrants and internally displaced as a result of the intersectional discrimination they face due to their identities and gender expressions, as well as their migratory status.<sup>216</sup>
- 115. The migration process tends to be a context in which a considerable number of human rights violations are committed against trans persons. For them, migration is a significant risk, as the documentation they carry does not reflect their gender identities, even when migrating internally.<sup>217</sup> Under these circumstances, a migrant trans person tends to face multiple instances of institutional violence at the hands of immigration authorities, security forces, border guards, and airport personnel, including arbitrary denial of entry at borders, invasive security examinations and searches, degrading questions, arbitrary delays or detentions, being held in detention centers intended for persons of a gender with which they do not identify, hostile and humiliating treatment, unjustified suspicion, and refusal to accept asylum requests.<sup>218</sup> Private groups also take advantage of the inconsistent documentation or of the greater vulnerability to which trans persons are exposed to exploit them through human trafficking rings.
- 116. Although the risk can be lower, migrating with documentation that reflects one's gender identity but is not consistent with the genitalia socially and culturally assigned to that gender can also entail risk.<sup>219</sup> This can lead to situations in which more modern forms of security technology or other circumstances expose an individual as a trans person. Prejudice and a lack of training of those working as security agents and/or migration officials in these areas can lead to the perceived "inconsistency" being considered an indication of "fraud," therefore leading to

Andrew R. Flores et al., Race and Ethnicity of Adults who Identify as Transgender in the United States (Los Angeles: The Williams Institute, 2016), 2.

<sup>&</sup>lt;sup>216</sup> IACHR, <u>Report on Poverty and Human Rights in the Americas</u>, September 7, 2017, para. 189; <u>Violence against</u> <u>LGBTI Persons in the Americas</u>, November 12 2015, para. 371.

<sup>&</sup>lt;sup>217</sup> United Nations General Assembly, <u>Report of the Independent Expert on protection against violence and</u> <u>discrimination based on sexual orientation and gender identity</u>, A/HRC/38/43, May 11, 2018, para. 43.

See, among other examples: Amnesty International, <u>No Safe Place: Salvadorans, Guatemalans, and Honduran seeking asylum in Mexico based on their sexual orientation and/or gender identity</u> (London: Amnesty International, 2017); Human Rights Watch, <u>Do You See How Much I'm Suffering Here? Abuse against</u> Transgender Women in US Immigration Detention. (2016).

<sup>&</sup>lt;sup>219</sup> Egale Canada, "<u>Policy Paper: "Sex" Inscriptions on the Canadian Passport</u>" (Toronto, 2011), 3.

denial of entry to the country, or even to subjecting the person to stricter and more degrading screenings.<sup>220</sup>

- 117. With regard to internal displacement, it has been documented how trans persons tend to feel the need to migrate from rural areas or small cities to large urban areas to settle in contexts that are less violent and less prejudicial against gender diversity. The anonymity that large cities provides enables them to live lives that are subject to less scrutiny than in places with smaller populations, which tend to be more conservative and openly hostile. Such places also offer more opportunities to socialize with other trans persons and to participate in mutual support activities and even political and social mobilization.<sup>221</sup>
- 118. Lastly, an additional vulnerability is that in many countries where the right to gender identity is guaranteed and processes are provided for changing the gender indicator on personal documentation, they often require nationality or permanent residency. This becomes an obstacle, often insurmountable, that forces many trans persons in situations of human mobility to have to remain in the vulnerable position of carrying documentation that does not match their own gender identities. For example, in the Federal District of Mexico, corrections to the registry can only be requested by persons of Mexican nationality.<sup>222</sup> Colombia requires the applicant submit a copy of the national identification card carried by Colombian citizens,<sup>223</sup> and Bolivia explicitly limits the scope of the gender identity law to Bolivian nationals.<sup>224</sup> Although Argentina provides for the person to obtain permanent residency in the country.<sup>225</sup> Consequently, trans persons who have not secured permanent residency—or are still processing it—are not able to amend the documentation they carry.

### E. Data Collection

119. On several occasions, the IACHR has underscored the crucial importance of adequate State mechanisms for data collection, which are necessary for obtaining statistical information and measurements they can effectively inform the design of

Egale Canada, "Policy Paper: "Sex" Inscriptions on the Canadian Passport" (Toronto, 2011), 4.

Lohana Berkins, "<u>Cómo nos decimos: las travestis en Latinoamérica</u>" Revista E-Misférica No. 4.2 (2007).

 $<sup>\</sup>frac{\text{Civil Code for the federal district of Mexico}}{c(I)}$ . (in keeping with amendments of February 5, 2015), Article 135

<sup>&</sup>lt;sup>223</sup> Decree No. <u>1227/2015</u>, Whereby section is added to Decree 1069 of 2015, the Unified Regulations of the Justice and Law Sector, regarding the procedure for correcting the sex designation in the Civil Registry, Article 2.2.6.12.4.5(2).

Law No. 807, Law of May 21, 2016, Article 4(1).

Decree 1007/2012, Correction of sex registry and change of name(s) and photo (Official Bulletin of July 3, 2012) Article 9(a). Also see: Matilda González Gil, "Argentina: La aplicación de una ley que fue un hito en materia de reconocimiento del género" in Zhan Chiam, Sandra Duffy, Matilda González Gil, <u>Informe de Mapeo Legal Trans</u> 2017: Reconocimiento ante la ley (Geneva: ILGA, November 2017), 96.

public policies on human rights.<sup>226</sup> In its report on violence against LGBTI persons, the IACHR emphasized that this State duty is necessary to uniformly and accurately measure the prevalence, trends, and other aspects of violence in a given State or region.<sup>227</sup> Along the same lines, echoing the importance of producing such information, the Yogyakarta Principles indicate that States are required to compile statistics and research on the extent, causes and effects of violence, discrimination, and other harm, and on the effectiveness of measures to prevent, prosecute and provide reparation for such harm on grounds of sexual orientation, gender identity, gender expression and sex characteristics.<sup>228</sup>

- 120. In this regard, a cause for concern is the lack of public policies on collecting statistical information to effectively inform on the human rights situation of the LGBTI population, specifically of trans persons. Although starting in 2013 and in every subsequent year, the States of the OAS have committed to collecting and compiling information on gender identity,<sup>229</sup> the IACHR has confirmed that few States have effective mechanisms in place for collecting information to assess the living situations of trans and gender non-binary persons in their respective jurisdictions.<sup>230</sup> In its Report on Progress on and Challenges to Recognizing the Rights of LGBTI Persons, the IACHR examined in detail the existing initiatives on the subject.<sup>231</sup>
- 121. For its part, the Working Group of the Protocol of San Salvador (WGPSS) has pointed repeatedly to the need to disaggregate the statistical information produced by States based on gender identity.<sup>232</sup> Regarding this, it should be noted that the "gender

- 228 Additional principles and state obligations on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics, 2017. Principle 30 (Right to State protection).
- 229 OAS, General Assembly, Human rights, sexual orientation, and gender identity and expression, AG/RES. 2807 (XLIII-O/13), adopted at the fourth plenary session, held on June 6, 2013. Likewise, in subsequent years, the General Assembly continued to adopt resolutions with similar content.
- <sup>230</sup> IACHR, <u>Violence against LGBTI Persons in the Americas</u>, November 12 2015, November 12, 2015, paras. 395 to 399; Progress on and challenges to recognizing the rights of LGBTI persons in the Americas, OAS/Ser.L/V/II.170 Doc. 184, December 7, 2018, para. 42; IACHR, <u>Press Release 79/13</u>, "IACHR Expresses Concern about Mob Attacks, Police Abuse and other Forms of Violence against LGTBI Persons," October 24, 2013.
- <sup>231</sup> IACHR, Progress on and Challenges to Recognizing the Rights of LGBTI Persons in the Americas, OEA/Ser.L/V/II.170 Doc. 184, December 7, 2018, paras. 42 to 54.
- <sup>232</sup> Working Group to examine the Periodic Reports provided for the Protocol of San Salvador, Concluding observations and recommendations to the Republic of Peru (2018), pg. 9, 17; Concluding observations and recommendations to the State of Honduras (2017), pg. 7; Concluding observations to the United Mexican

See, among other examples: IACHR <u>Violence against LGBTI Persons in the Americas</u>, November 12 2015, para. 392; Report on the Situation of Afro-Descendant Persons in the Americas, 2011, paras. 14, 22 and 75; IACHR, Report: Access to Justice for Women who are Victims of Sexual Violence: education and health, December 28, 2011, para. 32, Annual Report 2009, Chapter V: Follow-up on Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia, August 7, 2009, para. 216; Report: Situation of the rights of women in Ciudad Juárez, Mexico: the right to be free from violence and discrimination, Chapter IV: Recommendations to improve the application of due diligence to prevent violence against women in Ciudad Juárez and improve their safety, March 7, 2003; Press Release 153A/14, "An Overview of Violence against LGBTI Persons in the Americas: A Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014, annex to Press Release," Annex to Press Release 153/14. December 17, 2014.

<sup>&</sup>lt;sup>227</sup> IACHR, Violence against LGBTI Persons in the Americas, November 12 2015, November 12, 2015, para. 394.

perspective" frequently used to disaggregate data is read solely as the separation between cisgender men and women using a binary logic, which makes invisible and completely hides trans persons. Recently, the WGPSS launched a special guide intended to operationalize the indicators of the Protocol of San Salvador from a crosscutting LGBTI perspective.<sup>233</sup>

- 122. The IACHR was informed of a number of initiatives carried out by States in the region in recent years. Of particular note is the national census of trans persons conducted in Uruguay in 2016.<sup>234</sup> The IACHR particularly welcomes this initiative implemented nationally by the Ministry of Social Development, as it constitutes a good practice worth replicating by other States.<sup>235</sup> Also, two initiatives specifically focused on collecting data regarding the trans-population were implemented in Argentina, although at a smaller scale: a pilot survey was conducted of the trans population in the Municipo of La Matanza in 2012,<sup>236</sup> and a census of the feminine trans-identity population was carried out in the Province of Jujuy.<sup>237</sup> In other States of the region, different surveys have been carried out that, while not focused on trans persons, aimed to assess the living conditions of LGBTI persons in general, including trans-persons within their samples, with varying degrees of disaggregation. These initiatives include surveys carried out by Ecuador,<sup>238</sup> El Salvador,<sup>239</sup> Mexico,<sup>240</sup> and Peru.<sup>241</sup>
- 123. In some countries of the region, initiatives to collect data have been led by civil society.<sup>242</sup> The IACHR welcomes and praises these types of initiatives, especially

- <sup>233</sup> OAS. Working Group of the Protocol of San Salvador. Measuring all Gaps: Guidebook for the Operationalization of the Indicators of the Protocol of San Salvador from a Cross-cutting LGBTI Perspective (2019).
- <sup>234</sup> For more information on how this census was implemented, see: Alejandra lervolino Carrió, <u>Sistematización</u> <u>del proceso del Censo de Personas Trans en Uruguay</u> (Montevideo: MIDES, 2017).
- <sup>235</sup> See the preliminary results of the census at: Ministry of Social Development (Uruguay), <u>Transform 2016:</u> <u>"Revealing realities: Preliminary results of the first census of trans persons</u>" (2016), pg. 8.
- National Institute against Discrimination, Xenophobia, and Racism (Argentina). First Survey of the Trans Population 2012: Travestis, Transsexuals, Transgender persons, and Trans Men. Technical report of the Pilot Program, Municipio of La Matanza, Buenos Aires Province).
- <sup>237</sup> Provincial Office on Statistics and Census (Jujuy Province), *Survey of Feminine Trans Identities* (2018).
- <sup>238</sup> National Institute on Statistics and Census, <u>Case study on living conditions, social inclusion, and fulfillment of human rights for the LGBTI population in Ecuador</u> (2013).
- Office on Sexual Diversity (Secretariat of Social Inclusion) <u>National Survey on LGBTI Realities in El Salvador</u> (2012).
- <sup>240</sup> See: National Human Rights Committee, <u>Survey on discrimination based on sexual orientation and gender</u> <u>identity</u> (ENDOSIG).
- <sup>241</sup> National Institute on Statistics and Information (INEI), *First Virtual Survey for LGBTI Persons* (2018).
- <sup>242</sup> These initiatives include the ones that led to the production of the following reports: Lohana Berkins and Josefina Fernández, La gesta del nombre propio. Informe sobre la situación de la comunidad travesti en Argentina (Buenos Aires: Ediciones Madres de Plaza de Mayo, 2005); Lohana Berkins, Cumbia, Copeteo y Lagrimas: Informe nacional sobre la situación de travestis/transexuales/transgéneros (Buenos Aires: Ediciones Madres de Plaza de Mayo, 2008); La Revolución de las Mariposas: A diez años de la Gesta del Nombre Propio (Buenos Aires: MPD-CABA, 2017).

States (2016), pg. 5, 11; Concluding observations to the Republic of Paraguay (2016), pg. 4, 8; Concluding observations to the Plurinational State of Bolivia (2016), pg. 5, 6; *Concluding observations to the Oriental Republic of Uruguay* (2016), pgs. 7, 17;

because they have been groundbreaking in collecting data, have called attention to the need to collect this important information, and, in many cases, because trans persons themselves have played a leading role in the project. However, the IACHR notes that these valuable activities led by civil society cannot be used by the State as an excuse or reason to postpone or withdraw from its obligation to collect the necessary information itself. Furthermore, the fact that the sole source of information on an extremely vulnerable group like trans persons is often social organizations means that while civil society is organized, the State is also failing to honor its commitments on the subject. In this regard, the IACHR underscores that, according to the recommendations it has made in its various reports,<sup>243</sup> the collection and disaggregation of statistical information is work that must fall to the State, without prejudice to the initiatives that other actors may voluntarily carry out.

124. Lastly, the IACHR underscores the importance that States, in collecting data, include quali-quantitative information on laws and public policies affecting ESCER and access to and enjoyment thereof by LGBTI persons, particularly trans and gender-diverse persons. Finally, the Commission highlights that this information must be grounded in respect for the specific characteristics and sensibilities of these individuals and carried out by staff who are duly trained and sensitized in the diversity of gender identity and gender expression. Such processes must be guided by principles of information confidentiality and security so that no trans or gender-diverse persons are exposed to systematic violations, including by the State's own institutions.

<sup>&</sup>lt;sup>243</sup> IACHR, <u>Violence against LGBTI Persons in the Americas</u>, November 12 2015, General recommendation 1, <u>Advances and challenges towards the recognition of the rights of LGBTI Persons in the Americas</u>, December 7, 2018, para. 267.1.

# CHAPTER 2

# ECONOMIC, SOCIAL, CULTURAL, AND ENVIRONMENTAL RIGHTS IN THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

## ECONOMIC, SOCIAL, CULTURAL, AND ENVIRONMENTAL RIGHTS IN THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

- 125. The protection of gender identity as a protected category under Article 1(1)<sup>244</sup> of the American Convention and the guarantee of related rights requires, in addition to laws, public policies that change the reality of discrimination and violence to which trans and gender-diverse persons are exposed.<sup>245</sup> The Commission recognizes that the comprehensive protection inherent to the effective recognition and application of all the human rights of trans and gender-diverse persons is intrinsically linked to guaranteeing their economic, social, cultural, and environmental rights, as well as their civil and political rights.
- 126. In this regard, the IACHR recalls that the ideal of being a free human being can only be realized if the conditions are established that enable persons—including trans and gender-diverse persons, considering their unique situation of exclusion—to exercise their civil and political rights as well as their economic, social, cultural, and environmental rights in view of their indivisible and interdependent nature.<sup>246</sup> This is particularly important given the direct relationship between the enjoyment of economic, social, cultural, and environmental rights and disproportionate poverty and inequality<sup>247</sup> affecting trans and gender-diverse persons.
- 127. In this regard, from the inter-American instruments on ESCER arise obligations to attend to the basic needs of human development, grounded in the principles of equal protection and nondiscrimination, and respect for and guarantee of these obligations is just as enforceable as for those arising from civil and political rights, including the right to effective judicial protection, both individually and collectively.<sup>248</sup> Thus, the IACHR recalls that ESCER must be guaranteed by all the States of the region, with special emphasis on groups facing greater vulnerability, such as trans and gender-diverse persons.
- 128. In view of the importance of these rights and their direct impact on the scope of other rights, the IACHR has reiterated the importance of taking a specialized

<sup>&</sup>lt;sup>244</sup> Inter-American Court, AO 24, para. 78 and IACHR, Report on progress on and challenges to recognizing the rights of LGBTI persons in the Americas, OAS/Ser.L/V/II.170 Doc. 184, December 7, 2018, para. 32.

<sup>&</sup>lt;sup>245</sup> IACHR, <u>Advances and challenges towards the recognition of the rights of LGBTI Persons in the Americas</u>, December 7, 2018, para. 40.

<sup>&</sup>lt;sup>246</sup> See, for example, IACHR, Third Report on the Human Rights Situation in Paraguay, March 9, 2001, para. 4 and the report on Work, Education and Resources for Women, November 3, 2011. Para. 29

<sup>&</sup>lt;sup>247</sup> IACHR, Access to Justice as a Guarantee of Economic, Social and Cultural Rights. A review of the standards adopted by the Inter-American system of human rights, 2007, para. 48-50.

<sup>&</sup>lt;sup>248</sup> IACHR, Access to Justice as a Guarantee of Economic, Social and Cultural Rights. A review of the standards adopted by the Inter-American system of human rights, 2007, paras. 324-339.

approach to ESCER in the region. Therefore, starting in 2017, the Office of the Special Rapporteur on Economic Social Cultural and Environmental Rights (hereinafter "REDESCA") has been responsible for supporting the IACHR in fulfilling its mandate to promote and protect environmental, social, cultural, and environmental rights in the Americas and the application of the principle that all human rights are indivisible and cannot be ranked one over another.

### A. Regional Instruments and Their Approach to ESCER

- 129. Economic, social, cultural, and environmental rights are set forth in the American Declaration, in Articles XI, XII, XIII, XIV, XV, and XVI; generally in Article 26 of the American Convention on Human Rights; and in greater detail in the Additional Protocol to the American Convention on Human Rights (Protocol of San Salvador).
- 130. Also, the Charter of the Organization of American States (hereinafter, "the Charter" or "Charter of the OAS"), adopted in 1948 and amended in 1967, includes provisions on the comprehensive development and well-being of the inhabitants of the hemisphere as regards the application of mechanisms and principles for the full realization of the aspirations of their life projects. In its Article 45, the OAS charter explicitly mentions rights to work, organize, Social Security, and health, as well as the principles and mechanisms on which States agreed to focus their efforts.<sup>249</sup>
- 131. The Charter provides an institutional framework for addressing these issues comprehensively. Therefore, it first establishes that human beings have a right to achieve material well-being and spiritual development, among other provisions related to the right to work and education. Likewise, through the Protocol of Buenos Aires, the OAS Charter incorporates in its Article 34 the measures to provide basic goals for comprehensive development, including acceptable working conditions for all, expansion of educational opportunities, adequate housing, and others.
- 132. Like the–OAS Charter,<sup>250</sup> the American Declaration does not draw distinctions between the rights set forth in its text. The Declaration includes economic, social, cultural, and environmental rights, as well as civil and political rights, specifying that in the inter-American system, all human rights are interdependent and indivisible.<sup>251</sup> For its part, the Inter-American Democratic Charter (2001) underscores the importance of reaffirming, developing, fine-tuning, and protecting

<sup>&</sup>lt;sup>249</sup> In the pertinent section of the Charter, the text of Article 45 states as follows: "man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace (...)," with subparagraph b) of the article reading as follows: "b) Work is a right and a social duty, it gives dignity to the one who performs it, and it should be performed under conditions, including a system of fair wages, that ensure life, health, and a decent standard of living for the worker and his family, both during his working years and in his old age, or when any circumstance deprives him of the possibility of working; (...)," Organization of American States, Charter of the Organization of American States, signed in Bogotá in 1948 and amended in Buenos Aires in 1967, by the Protocol of Cartagena in 1985, and on other occasions.

<sup>&</sup>lt;sup>250</sup> Inter-American Court, Advisory Opinion OC-10/89, July 14, 1989, para. 44.

<sup>&</sup>lt;sup>251</sup> Id. Pg. 106. Articles IX through XVI of the American Declaration of the Rights and Duties of Man.

ESCER. Along these lines, the Social Charter of the Americas (2012) holds that the "promotion and observance of economic, social, and cultural rights are inherently linked to integral development, equitable economic growth, and to the consolidation of democracy in the states of the Hemisphere."

- 133. At the same time, the American Convention on Human Rights establishes in its preamble the incorporation into the OAS Charter of "broader standards with respect to economic, social, and educational rights" and the "determin[ation of] the structure, competence, and procedure of the organs responsible for these matters."<sup>252</sup> The Convention includes a general commitment to implement and protect ESCER through its Article 26,<sup>253</sup> which is aimed at securing "progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires."<sup>254</sup>
- 134. In view of the importance of ESCER, OAS Member States adopted the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (hereinafter the "Protocol of San Salvador"), which entered into force on November 16, 1999.
- 135. The Protocol reaffirms the integral nature of all human rights,<sup>255</sup> emphasizing that all rights inherent to the human person comprise an indivisible whole that is grounded in recognition of the dignity of the human person."<sup>256</sup> The text enshrines protection for a number of rights, including the right to work, the right to just, equitable and satisfactory conditions of work, trade union rights, the right to social security, the right to health, the right to food, the right to education, and the right to the benefits of culture, among other rights. The Protocol of San Salvador also enshrines the principle of equal protection and nondiscrimination and the obligation to adopt domestic measures to progressively secured the full effectiveness of the rights set forth in the text.<sup>257</sup> Thus, the Protocol of San Salvador describes with more clarity States' obligations with regard to ESCER, recognizing in its text the contentious jurisdiction of the inter-American system to directly supervise Articles 13 (right to education) and 8(1)(a) (trade union rights). Additionally, the obligations established in the Protocol are supervised through the

<sup>&</sup>lt;sup>252</sup> OAS, American Convention on Human Rights, Preamble.

<sup>&</sup>lt;sup>253</sup> Elizabeth Salmón, "Los Derechos económicos, sociales, culturales y ambientales en el Sistema Interamericano: El Artículo 26 de la Convención Americana sobre Derechos Humanos y El camino hacia una lectura social de los Derechos Civiles y Políticos," German Development Corporation (GIZ), 2010, pg. 30.

<sup>&</sup>lt;sup>254</sup> OAS, American Convention on Human Rights, Article 26.

<sup>&</sup>lt;sup>255</sup> Florentín Meléndez, "Los derechos económicos, sociales, culturales y ambientales en el Sistema Interamericano de Protección a los Derechos Humanos", Cuadernos Electrónicos No. 5, human rights and democracy.

Organization of American States, "Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights," San Salvador, November 17, 1988, Preamble.

<sup>&</sup>lt;sup>257</sup> Articles 2 and 3, Protocol of San Salvador.

review of State reports sent to the Working Group of the Protocol of Send Salvador under a monitoring system established in Article 19 of that treaty.

- 136. In this regard, the Working Group of the Protocol of San Salvador supervises progress toward creating and implementing public policies on the existing obligations established in the Protocol. To carry out these evaluations, the Working Group has developed indicators to determine States' level of compliance with their obligations under the Protocol.<sup>258</sup> Civil society and States participate in setting the indicators and establishing their methodologies.<sup>259</sup> The monitoring system combines structural, progress, and outcome indicators using a methodology with a human rights approach.
- 137. Thus far, the Working Group has established two groups of rights set forth in the Protocol. The first<sup>260</sup> includes the rights to health, social security, and education. The second<sup>261</sup> includes the rights to work, to trade union rights, to adequate food, to a healthy environment, and to the benefits of culture.
- 138. The Commission and its REDESCA particularly emphasize the importance of preparing the "Guidebook for the Operationalization of the Indicators of the Protocol of San Salvador from a Cross-cutting LGBTI Perspective" as an extremely valuable tool for formulating public policies to address this population and help it effectively realize its ESCER. The guidebook serves especially as a source of assistance for States as they establish and adjust methodologies for collecting statistical information and data on this population. For civil society, academia, and LGBTI groups in general, it serves as a tool for advocacy and monitoring.<sup>262</sup>
- 139. The Monitoring Mechanism of the Protocol of San Salvador promotes open discussion with different sectors of society within States to establish clear objectives, targets, and priorities to enable transparent supervision of compliance with the obligations established in the protocol.<sup>263</sup>
- 140. The Commission underscores the importance of the work done by the Working Group and its valuable contributions in the form of the comments it submits to States; the creation of indicators; and the collection of data on the ESCER situation

Along with this, the IACHR was asked to propose indicators to measure State progress—or any setbacks. They were included in the system's first indicators document, "Guidelines for Preparation of Progress Indicators in the Area of Economic, Social, Cultural, and Environmental Rights" (CP/doc.4250 corr.1).

<sup>&</sup>lt;sup>259</sup> Working Group to Examine the National Reports Envisioned in the Protocol of San Salvador, "Progress Indicators for Measuring Rights under the Protocol of San Salvador, 2nd ed. 2015. Pg. 2.

<sup>260</sup> OAS, Progress Indicators for Measuring Rights under the Protocol of San Salvador: First Group of Rights, OEA/Ser.L/XXV.2.1, December 16, 2011.

<sup>261</sup> OAS, Progress Indicators for Measuring Rights under the Protocol of San Salvador: Second Group of Rights, OEA/Ser.L/XXV.2.1, November 5, 2013.

<sup>&</sup>lt;sup>262</sup> OAS. Working Group of the Protocol of San Salvador. Measuring all Gaps: Guidebook for the Operationalization of the Indicators of the Protocol of San Salvador from a Cross-cutting LGBTI Perspective (2019).

<sup>&</sup>lt;sup>263</sup> Organization of American States, Working Group to Examine the National Reports Envisioned in the Protocol of San Salvador, "Progress Indicators for Measuring Rights under the Protocol of San Salvador," OEA/Ser.D/XXVI.11 (2015), pg. 18, 20.

in the region.<sup>264</sup>This work complements the IACHR's work, particularly the work of its REDESCA, and the Rapporteur takes part in the Working Group as the representative of the IACHR.

## B. Development of ESCER in the Inter-American Human Rights System

- 141. The standards on economic, social, cultural, environmental rights have been developed over time by the bodies of the inter-American system, demonstrating increasing and positive synergy between the Commission and the Inter-American Court on the protection of these rights. Specifically, the Commission and its REDESCA observe that these rights have historically been integrated within the evaluation, promotion, and protection granted to human rights by the IACHR through its different mechanisms.<sup>265</sup>
- 142. Through its contentious function, the Inter-American Court initially took these rights into account by examining them indirectly, via violations of civil and political rights such as the rights to life, humane treatment, and property,<sup>266</sup> reiterating their enforceability and the applicability of the obligations to respect and guarantee.<sup>267</sup>
- 143. In this regard, although in the case of Suárez Peralta *v*. Ecuador, the Court did not directly apply the provisions of Article 26 to the specific case, in recognized, *inter alia*, that health is a fundamental human right and indispensable for the full exercise of the other human rights.<sup>268</sup> Subsequently, in the case of Gonzales Lluy *v*. Ecuador, the Inter-American Court determined the State had discriminated and prevented the victim from exercising the right to education by failing to guarantee access to the educational system because the individual was living with HIV.<sup>269</sup> In that case, the Inter-American Court applied for the first time the Protocol of San Salvador, which grants authority to monitor compliance with State obligations on this specific right.

Organization of American States, Working Group to Examine the National Reports Envisioned in the Protocol of San Salvador, "Progress Indicators for Measuring Rights under the Protocol of San Salvador," OEA/Ser.D/XXVI.11 (2015). Pg. 32.

See, inter alia, IACHR. Report 100/01. Case 11,381, Milton García Fajardo et al. v. Nicaragua, October 11, 2001, paras. 94-101; IACHR, Merits Report 27/09, Case 12,249, Jorge Odir Miranda Cortez et al. v. El Salvador, March 10, 2009, para. 105; IACHR. Access to Justice as a Guarantee of Economic, Social and Cultural Rights. A review of the standards adopted by the Inter-American system of human rights. September 7, 2007; IACHR. Access to Maternal Health Services from a Human Rights Perspective, June 7, 2010: IACHR. Report on Poverty and Human Rights in the Americas, September 7, 2017.

<sup>&</sup>lt;sup>266</sup> Inter-American Court. Case of Ximenes Lopes. Brazil. Judgment of July 4, 2006. Series C No. 149; Case of Suárez Peralta v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 21, 2013. Series C No. 261; Case of the "Five Pensioners" v. Peru. Merits, Reparations, and Costs. Judgment of February 28, 2003. Series C No. 98.

<sup>&</sup>lt;sup>267</sup> Inter-American Court, Case of Acevedo Buendía *et al. v.* Peru, Judgment of July 1, 2009, para. 100.

<sup>&</sup>lt;sup>268</sup> Inter-American Court. Case of Suárez Peralta v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 21, 2013. Series C No. 261, para. 132.

<sup>&</sup>lt;sup>269</sup> Inter-American Court, Case of Gonzales Lluy *et al. v.* Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 1, 2015. Series C No. 298, paras. 252, 256, 265, 274, and 291.

The Court also found that a law banning the payment of pensions to same-sex couples, thereby preventing them from exercising the right to social security, violated the right to equal protection and nondiscrimination.<sup>270</sup>

- 144. Later, the Court took a step forward in establishing the autonomy of these rights by finding a direct violation of Article 26 of the ACHR in the case of Lagos del Campo *v*. Peru.<sup>271</sup> In that judgment, the Court found that protection of the right to work fell within the framework of the Inter-American system, particularly as regards job stability and the right to not be unjustly removed from a job,<sup>272</sup> establishing direct and autonomous access to international justice for ESCER in the IAHRS.
- 145. The Inter-American Court continued to extend and more clearly develop its interpretation of the application of Article 26 of the ACHR and States' obligations to make ESCER effective by applying the provision in subsequent decisions, in both its contentious and advisory roles, particularly with regard to the rights to health,<sup>273</sup> social security,<sup>274</sup> and a healthy environment.<sup>275</sup> For example, in the case of Poblete Vilches, the Inter-American Court ruled for the first time with regard to the right to health on its own, establishing that this right is protected by Article 26 of the Convention.<sup>276</sup> Along these lines, in its judgment in the case of Cuscul Pivaral *et al.* regarding protection of the right to health for people who live with HIV in Guatemala, the Court found that "a literal, systematic, and teleological interpretation leads to the conclusion that Article 26 of the American Convention protects the rights derived from the economic, social, educational, scientific, and cultural standards set forth in the OAS Charter,"<sup>277</sup> and reiterated its competence to review immediate enforcement obligations as well as progressive obligations regarding ESCER.<sup>278</sup> More recently, the Court ruled the right to health of persons deprived of liberty and the right to social security—specifically, pensions for older adults—were

<sup>&</sup>lt;sup>270</sup> Inter-American Court. Case of Duque v. Colombia. Preliminary Objections, Merits, Reparations, and Costs. Judgment of February 26, 2016. Series C No. 310, para. 125.

<sup>&</sup>lt;sup>271</sup> Inter-American Court. Case of Lagos del Campo v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2017. Series C No. 34.

<sup>&</sup>lt;sup>272</sup> Inter-American Court, Case of Lagos del Campo v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2017. Series C No. 340, para. 143.

<sup>&</sup>lt;sup>273</sup> Inter-American Court. Case of Poblete Vilches *et al. v.* Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349; Inter-American Court. Case of Cuscul Pivaral *et al. v.* Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359

<sup>&</sup>lt;sup>274</sup> Inter-American Court. Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of March 6, 2019. Series C No. 375; Inter-American Court. Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 21, 2019. Series C No. 394.

<sup>&</sup>lt;sup>275</sup> Inter-American Court. The Environment and Human Rights. Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23.

<sup>&</sup>lt;sup>276</sup> Inter-American Court. Case of Poblete Vilches *et al. v.* Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, para. 105.

<sup>277</sup> Inter-American Court. Case of Cuscul Pivaral *et al. v.* Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, párr.97

<sup>&</sup>lt;sup>278</sup> Inter-American Court. Case of Cuscul Pivaral *et al. v.* Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, párr.98

integral parts of ESCER protected directly and autonomously at the Inter-American level.<sup>279</sup>

- 146. For its part, the IACHR has also reaffirmed and exercised its competence to consider potential violations of Article 26 of the American Convention and the ESCER set forth in the American Declaration and the framework of the individual petitions and cases system. It has emphasized the interdependence and indivisibility of economic, social, cultural, and environmental rights and civil and political rights.<sup>280</sup>
- 147. In general terms, the Commission has underscored that Article 26 of the ACHR establishes that States Parties have an obligation to progressively develop the social rights derived from the OAS Charter. Thus, the Commission has indicated that it first needs to be established if the right in question in the case is derived from "the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States," as referred by Article 26. That is, Article 26 of the ACHR is the article that identifies the Charter of the OAS as the direct source of these rights, assigning the provisions in that treaty applicable to these issues the character of human rights. As the objective of the Charter of the OAS was not to identify rights but to establish an international organization, the IACHR has indicated that outside texts must be used to identify the rights derived from the provisions of that instrument. With this established, it must then be determined whether the State in question failed to comply with the obligation to "achiev[e] progressively" the full effectiveness of that right or the general obligations to respect and guarantee it. This second level of analysis must take into consideration the nature and scope of the State's obligations—both immediate and progressive—under Articles 1(1), 2, and 26 of the Convention, as well as the obligations contained in the right in question.<sup>281</sup>
- 148. Based on this, the Commission has indicated that Article 26 of the American Convention imposes a series of obligations on States beyond simply limiting regression—this is part of the obligation of progressiveness, but cannot be understood as the only legally actionable obligation in the inter-American system. Thus, the Commission finds that, taking into account the interpretive framework of Article 29 of the American Convention, Article 26 analyzed in view of Articles 1(1) and 2 of the Convention entails, at a minimum, the following immediate and

<sup>&</sup>lt;sup>279</sup> Inter-American Court. Case of Hernández v. Argentina. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 22, 2019. Series C No. 395; Inter-American Court. Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 21, 2019. Series C No. 394.

<sup>&</sup>lt;sup>280</sup> IACHR. Resolution 12/85, Case 7615 (Yanomami Community), Brazil, March 5, 1985; IACHR. Merits Report 50/16. Undocumented Workers (United States) November 30, 2016; IACHR Merits Report 25/18. Employees of the Fireworks Factory in Santo Antonio de Jesús and their relatives (Brazil), March 2, 2018; IACHR Merits Report 64/18. Opario Lemoth Morris *et al.* (Miskito divers) (Honduras), May 8, 2018; IACHR. Merits Report 110/18. Paola del Rosario Albarracín Guzmán and relatives (Ecuador), October 5, 2018; IACHR. Merits Report 107/18, Martina Rebeca Vera Rojas (Chile), October 5, 2018.

<sup>&</sup>lt;sup>281</sup> IACHR Report No. 25/18, Case 12,428. Admissibility and Merits. Employees of the Fireworks Factory in Santo Antonio de Jesus and their relatives. Brazil. March 2, 2018, paras. 127 and following; and IACHR Report 110/18, Case 12,678, Merits. Paola del Rosario Albarracín Guzmán and relatives. October 5, 2018, paras. 103 and following.

enforceable obligations: (i) general obligations to respect and guarantee, (ii) application of the principle of nondiscrimination to economic, social, cultural, and environmental rights; (iii) obligations to take steps or adopt measures to make it possible to enjoy the rights included in that article; and (iv) obligations to provide suitable and effective remedies for protecting those rights.<sup>282</sup>

- 149. Regarding the immediate and enforceable components of the obligation to take steps or adopt measures, the IACHR recalls that the CESCR has indicated, for example, that the adoption of measures in itself is not limited or conditioned on other considerations; thus while the full realization of the relevant rights may be achieved progressively, steps towards that goal should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations. The State also has basic obligations to meet the minimum standards for these rights. These obligations are not subject to progressive development but rather must be provided immediately.<sup>283</sup>
- 150. The Commission and its REDESCA underscore that the directly enforceable component of the ESCER is a highly relevant step forward toward guaranteeing the integrality and indivisibility of human rights. They also recognize that access to justice to the Inter-American system in this regard is making it possible to consolidate protection of these rights for rights holders more visibly and robustly. At the same time, it is making it possible to address grave situations that impact or threaten the dignity and human rights of more vulnerable persons more assertively, particularly taking into account social inequality, poverty, and the involvement of non-State actors. Without prejudice to this, they also underscore the importance of States effectively applying standards on progressiveness, non-regression, immediate obligations, and recommendations related to such rights, such as the analysis of their juridical content and specific characteristics as identified and developed by the Commission and its REDESCA in the Inter-American context under the mechanisms for human rights promotion and protection.
- 151. It is the Commission's view that inter-American standards on ESCER demonstrate that all human rights must be understood and protected integrally, without unnecessary hierarchies. They should be made enforceable by the authorities with competence to do so. Pursuant to this, for the purposes of this thematic report, a review is needed of the scholarship and case law on ESCER in the region, highlighting the experiences, central challenges, and situation of trans and gender-diverse persons in this regard.

IACHR Report No. 25/18, Case 12,428. Admissibility and Merits. Employees of the Fireworks Factory in Santo Antonio de Jesus and their relatives. Brazil. March 2, 2018, paras. 127 and following; and IACHR Report 110/18, Case 12,678, Merits. Paola del Rosario Albarracín Guzmán and relatives. October 5, 2018, paras. 103 and following.

<sup>&</sup>lt;sup>283</sup> United Nations Committee on Economic, Social, and Cultural Rights, General Comment 3: The nature of States parties' obligations (art. 2, para. 1, of the Covenant), 1990. In this sense, see: IACHR. Report on Poverty and Human Rights in the Americas, OEA/Ser.L/V/II.164 Doc. 147 (September 7, 2017) paras. 236 and 237.

## C. ESCER in the Framework of the Sustainable Development Goals

- 152. In addition to Inter-American standards, in the universal system, in 2015, the United Nations approved the 2030 Agenda, which sets forth the Sustainable Development Goals (SDGs). The SDGs are a call for every State on the planet to adopt sustainable development measures that include economic, social, and environmental aspects. There are 17 SDGs, rooted in the achievements of the Millennium Development Goals, and they have the equality and dignity of persons at their core. The SDGs encourage States to leave no one behind, with a focus on protecting the rights of groups that have historically faced greater vulnerability and discrimination. This is a universal commitment made by both developing and developed countries in the framework of a reinforced global alliance focused on cooperation and prevention.<sup>284</sup>
- 153. The Commission recognizes that the SDGs offer a new development paradigm aimed at eliminating the conditions that produce systemic inequality on the planet. In this regard, several of the ESCER are reflected from a crosscutting perspective, through an understanding of the human rights of development. The Commission particularly notes that the SDGs were adopted by the 193 Member States of the United Nations, including 35 OAS Member States, with the direct involvement of actors from civil society, academia, and the private sector following a negotiation process that was open, democratic, and participatory.
- 154. The SDGs are integrated and indivisible, and therefore, their implementation requires tools that transcend sector-bound and fragmented approaches to analyze the nature of the interactions between the objectives and targets, identify conflicts and synergies, and take into account not only the policies' impacts on the here and now but also their impacts around the world and in the long term. As the IACHR indicated in its report on Poverty and Human Rights, the SDGs recognize the fundamental nature of human dignity as a guiding principle and respect for human rights and the rule of law, justice, equality and non-discrimination; of respect for race, ethnicity and cultural diversity; and of equal opportunity permitting the full realization of human potential and contributing to shared prosperity.<sup>285</sup>
- 155. It is the IACHR's view that the SDG's offer an opportunity to promote positive synergies and move forward with the design and implementation of integrated public policies for the realization of human rights in general that tie together the economic, social, and environmental dimensions of sustainable development and contribute to eradicating gender inequalities, as well as inequality within and among countries.<sup>286</sup>

<sup>&</sup>lt;sup>284</sup> CEPAL, "Agenda 2030 y los Objetivos de Desarrollo Sostenible: Una Oportunidad para América Latina y el Caribe", January (2018), pg. 7.

<sup>&</sup>lt;sup>285</sup> IACHR, <u>*Report on Poverty and Human Rights in the Americas*</u>, September 7, 2017, para. 290.

CEPAL, "La Agenda 2030 y la Agenda Regional de Género", Gender Series No. 143, pg. 7-8.

- 156. As regards development commitments adopted in the framework of the SDGs, the IACHR reiterates<sup>287</sup> that, although they are not legally obligatory, governments are expected to adopt them as official goals and establish national frameworks for attaining their proposed objectives. In this regard, immediate action is needed to address the systematic exclusion of vulnerable groups, like trans persons. The Commission therefore calls on States to take measures to remove systemic barriers that exclude trans persons from the benefits of the development agenda.
- 157. Regarding this, it should be noted that, for example, the Commission has emphasized that poverty rates, lack of housing, and food insecurity are higher among LGBTI persons than in the community in general. This situation is directly related to SDGs 1, 8, 10, and 11, which include guaranteeing "that all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services" and creating "sound policy frameworks at the national, regional and international levels, based on pro-poor and gender-sensitive development strategies."<sup>288</sup>
- 158. In this context, the Commission recalls that trans and gender-diverse persons are subjected to living in conditions of extreme hostility and instability, both in their places of work and in their daily lives, and that it is the State's job to change the situation directly and gradually at several levels. The IACHR has addressed the systemic exclusion of trans persons from good-quality education—the subject of SDG 4—as the result of harassment, violent abuse, and even expulsion of these individuals from schools. Across all regions of the world, harassment based on real or perceived sexual orientation and gender identity is commonplace, leading to school dropout rates that are much higher for LGBTI persons and that worsen exclusion from economic opportunities.<sup>289</sup>
- 159. Regarding these situations, it is the IACHR's view that in order to guarantee the protection of trans persons and their human rights—including the right to development—within the framework of compliance with the SDGs, States must provide optimal conditions, in both their laws and their application of public policy, to ensure development is comprehensive and sustainable, while at the same time centering respect for and protection of human rights.

<sup>&</sup>lt;sup>287</sup> IACHR, <u>*Report on Poverty and Human Rights in the Americas*</u>, September 7, 2017, para. 291.

<sup>&</sup>lt;sup>288</sup> IACHR; <u>Press Release 110/2018</u>, "Leave no LGBT Person Behind", May 17, 2018.

<sup>&</sup>lt;sup>289</sup> IACHR; <u>Press Release 110/2018</u>, "Leave no LGBT Person Behind", May 17, 2018.

# CHAPTER 3

# RIGHT TO EDUCATION AND CULTURE

# **RIGHT TO EDUCATION AND CULTURE**

### A. Human Right to Education

- 160. The human right to education is enshrined in a considerable number of inter-American and international human rights treaties.<sup>290</sup> The right has been called a "key pillar (...) to ensure enjoyment of a decent life"<sup>291</sup> and "indispensable (...) for realizing other human rights."<sup>292</sup> Education is also necessary for full intellectual development and the development of one's own identity, personality, talents, and skills, all of which provides people with valuable tools for developing their full potential, as well as for finding good quality jobs and for escaping poverty or avoiding falling into it.<sup>293</sup>
- 161. States' international obligations regarding the right to education arise from a vast body of international law. At the Inter-American level, important provisions include Article 26 of the American Convention; Articles 34(h), 47, and 49 of the OAS Charter; Article XII of the American Declaration;<sup>294</sup> and the Article 13 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, Cultural, and Environmental Rights.<sup>295</sup>

<sup>292</sup> IACHR, <u>Report on Poverty and Human Rights</u>, September 7, 2017, para. 356; <u>Work, Education and Resources</u> for Women: The path toward equality in the guarantee of economic, social and cultural rights 2011, paras. 18 and 170.

Likewise every person has the right to an education that will prepare him to attain a decent life, to raise his standard of living, and to be a useful member of society.

The right to an education includes the right to equality of opportunity in every case, in accordance with natural talents, merit and the desire to utilize the resources that the state or the community is in a position to provide. Every person has the right to receive, free, at least a primary education.

<sup>&</sup>lt;sup>290</sup> Charter of the Organization of American States, Article 49; American Declaration of the Rights and Duties of Man, Article XII; Universal Declaration of Human Rights, Article 16; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, the "Protocol of San Salvador," Articles 13 and 16; Inter-American Democratic Charter, Preamble and Article 16; Convention on the Elimination of All Forms of Discrimination against Women, Article 10; Convention on the Rights of the Child, Articles 28 and 29; Convention on the Elimination of All Forms of racial discrimination, Articles 5 and 7; Convention against Discrimination in Education, Article 1; International Covenant on Economic, Social and Cultural Rights, Article 13.

<sup>&</sup>lt;sup>291</sup> Inter-American Court. Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/2002 of August 20, 2002. Series A No. 17, para. 86.

<sup>&</sup>lt;sup>293</sup> In general terms, see: IACHR, <u>Report on Poverty and Human Rights</u> September 7, 2017,, para. 356; Inter-American Court. Case of Yean and Bosico Children v. Dominican Republic. Judgment of September 8, 2005. Series C No. 130, para. 185.

Article XII. Every person has the right to an education, which should be based on the principles of liberty, morality and human solidarity.

Every person has the right to receive, hee, at least a primary eur

Article 13(1). Everyone has the right to education.

- 162. While all OAS Member States recognize this human right under the American Declaration, some of them have also ratified the Protocol of San Salvador,<sup>296</sup> which enshrines the right to education separately. On this legal basis, States have explicitly committed themselves to orient education "towards the full development of the human personality and human dignity and should strengthen respect for human rights, ideological pluralism, fundamental freedoms, justice and peace."<sup>297</sup> The Protocol also explicitly references the value of education in promoting democratic participation, pluralism, and coexistence among people with the aim of fostering peace.<sup>298</sup>
- 163. Additionally, the Commission notes that many international instruments place the focus on education for children and adolescents.<sup>299</sup> Although there is no question that this right is vitally important during childhood,<sup>300</sup> it must be emphasized that, pursuant to the terms of Article 13 of the Protocol of San Salvador, all persons, including adults and older adults, enjoy the same right with equal conditions.
- 164. Specifically with regard to the duty to guarantee the right to education, the IACHR notes that in order to secure its effective exercise, States must implement public policies that are backed by adequate and sufficient financial resources, complemented by monitoring measures to evaluate their effectiveness.<sup>301</sup> Also, as for the measures that must be taken to guarantee this right, both the IACHR<sup>302</sup> and the Inter-American Court<sup>303</sup> have followed the standards set forth by the CESCR,

<sup>-2.</sup> The States Parties to this Protocol agree that education should be directed towards the full development of the human personality and human dignity and should strengthen respect for human rights, ideological pluralism, fundamental freedoms, justice and peace. They further agree that education ought to enable everyone to participate effectively in a democratic and pluralistic society and achieve a decent existence and should foster understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups and promote activities for the maintenance of peace.

As of the approval of this report, the following States had ratified the Protocol of San Salvador: Argentina, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, and Uruguay.

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, the "Protocol of San Salvador," Article 13(2).

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, the "Protocol of San Salvador," Article 13(2).

Declaration of the Rights of the Child (1959), Principle 7; Protocol of San Salvador, Article 16; Principle 11 of the International Conference on Population and Development, adopted on September 5-13, 1994, in Cairo, Egypt (1994).

<sup>&</sup>lt;sup>300</sup> Inter-American Court. Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, Reparations, and Costs. Judgment of August 24, 2010. Series C No. 214, para. 258, Case of Yean and Bosico Children v. Dominican Republic. Judgment of September 8, 2005. Series C No. 130, para. 244; Case of the "Juvenile Reeducation Institute" v. Paraguay. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 2, 2004. Series C No. 112, para. 161.

<sup>&</sup>lt;sup>301</sup> IACHR. Work, Education and Resources for Women: The path toward equality in the guarantee of economic, social and cultural rights November 3 2011, para. 184.

<sup>&</sup>lt;sup>302</sup> IACHR. <u>Work, Education and Resources for Women: The path toward equality in the guarantee of economic,</u> <u>social and cultural rights</u> November 3, 2011, paras. 23 and 181.

<sup>&</sup>lt;sup>303</sup> Inter-American Court. Case of Gonzales Lluy *et al. v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 1, 2015. Series C No. 298, para. 235, citing the Committee on Economic, Social

which has established four essential criteria that States must guarantee with regard to the general right to education.

- 165. In that regard, it must first ensure the *availability* of education—that is, the existence of sufficient educational institutions and programs in the State, with the right health and safety conditions to operate, trained teaching staffs with competitive salaries, and adequate and sufficient teaching materials, among other requirements.<sup>304</sup> States also must guarantee the accessibility of education from a *material* point of view (in terms of geographic location and the physical ability of all persons to gain access), as well as from an *economic* point of view (by ensuring that primary school is free of charge and that secondary school is becoming so progressively). They must ensure that there is no discrimination, especially against vulnerable groups.<sup>305</sup> Furthermore, they must guarantee *acceptability*, in terms of both form and merits, including programs of study and pedagogical methods that are pertinent, culturally adequate, and of good quality.<sup>306</sup> Lastly, States have a duty to ensure the *adaptability* of education in order to be able to meet the specific needs of varied cultural and social contexts.<sup>307</sup>
- 166. For the Commission and its REDESCA, the right to education of trans and genderdiverse persons is a key element for breaking cycles of poverty and providing them with skills to offer the conditions of a life with dignity. The IACHR also underscores that the principle of equal protection and nondiscrimination must apply to the education and training of all persons, for which reason States must ensure that neither public nor private educational institutions discriminate or spread hate speech and intolerance against trans persons. The Commission also underscores the importance and urgency of States ensuring that educational systems incorporate gender perspectives, especially spaces for age-appropriate sexual and reproductive health education that is grounded in scientific evidence and human rights standards. In general, the Commission and its REDESCA underscore that it is important that pedagogical methods, educational processes, and curriculum, especially at the primary and secondary levels, do not undermine the enjoyment of human rights by trans persons; on the contrary, they should strengthen these persons' active participation and help empower them and inspire the collective work of other students.
- 167. It is the understanding of the IACHR and its REDESCA that an inclusive educational system not only enables progress toward guaranteeing the human rights of trans persons throughout their lives, but also expands teaching and learning to all who need it and strengthens societal coexistence by promoting diversity, mutual respect,

and Cultural Rights, <u>General Comment 13: The right to education (Article 13 of the Pact)</u>, E/C.12/1999/10, December 8, 1999, para. 6.

<sup>&</sup>lt;sup>304</sup> Committee on Economic, Social and Cultural Rights, <u>General Comment 13: The right to education (Article 13</u> of the Pact), E/C.12/1999/10, December 8, 1999, para. 6(a).

<sup>&</sup>lt;sup>305</sup> Committee on Economic, Social and Cultural Rights, <u>General Comment 13: The right to education (Article 13</u> of the Pact), E/C.12/1999/10, December 8, 1999, para. 6(b).

<sup>&</sup>lt;sup>306</sup> Committee on Economic, Social and Cultural Rights, <u>General Comment 13: The right to education (Article 13</u> of the Pact), E/C.12/1999/10, December 8, 1999, para. 6(c).

<sup>&</sup>lt;sup>307</sup> Committee on Economic, Social and Cultural Rights, <u>General Comment 13: The right to education (Article 13</u> of the Pact), E/C.12/1999/10, December 8, 1999, para. 6(d).

tolerance, and solidarity as principles of democratic societies. In this regard, States must ensure that trans persons are not directly or indirectly marginalized within the educational system. It also must supervise to ensure the education that it provides is good quality; that it includes training and awareness-raising on the issues that affect them; that it respects the development of their personalities and autonomy; and that it includes mechanisms for overcoming and eradicating harassment, stigmatization, violence, and discrimination against trans persons. The State must prioritize access to an inclusive education for trans children and adolescents that protects their best interest. It must emphasize the establishment of mechanisms for training young trans persons and eliminating the obstacles to education faced by older gender-diverse persons.

168. The Inter-American System has developed specific standards on the human right to education, many of which will be used throughout this chapter, particularly as regards their relevance and application to the situation of trans and gender-diverse persons.

## *B.* The Enjoyment to the Right to Education by Trans and Gender-Diverse Persons

- 169. The information the IACHR has received in recent years reflects a concerning reality as regards the barriers faced by trans and gender-diverse persons to exercising their human right to education. Although the IACHR cannot dismiss the possibility of problems surrounding *availability*, strictly speaking, the information received indicates that the restrictions and barriers facing trans and gender-diverse persons are essentially related to *accessibility* without discrimination and the *acceptability* and *adaptability* of the education.
- 170. The Commission notes that the challenges facing the States of the OAS in this area are significant. The IACHR will first look at the extent of the problem by noting some relevant figures and statistics in the region. According to the information submitted by civil society, according to a regional survey, only 25% of trans persons have been able to complete their secondary school studies.<sup>308</sup> Similar figures were found in multiple surveys conducted by civil society in different countries throughout the region. In Argentina, the data collected by civil society show that 73.2% of the trans persons surveyed were not able to complete their secondary school studies,<sup>309</sup> while in El Salvador, the figure stood at 81% of persons surveyed.<sup>310</sup> In Uruguay, preliminary data from the Trans Census revealed that 60% of trans persons had not completed junior high; that 75% had dropped out of school; and that 55% had

<sup>&</sup>lt;sup>308</sup> REDLACTRANS, *Esperando la muerte: Informe Regional 2016-2017* (2017), pg. 41.

<sup>&</sup>lt;sup>309</sup> Lohana Berkins (comp.), <u>Cumbia, Copeteo y Lágrimas: Informe nacional sobre la situación de travestis,</u> <u>transexuales y transgéneros</u> (Buenos Aires: Ediciones Madres de Plaza de Mayo, 2015), pg. 164.

REDLACTRANS, <u>Violaciones a los Derechos Humanos de Mujeres Trans en Costa Rica, El Salvador, Guatemala, Honduras y Panamá</u> (2015), para. 97.

dropped out or been expelled from the system before the age of 18, with the average dropout age being  $14.^{311}$ 

171. According to the information received, the Commission notes that trans and genderdiverse persons are not able to matriculate, remain in, and/or join the educational system, leading in the end to the violation of their right to education as a cumulative result of a series of situations that gravely affect and directly or indirectly impact their opportunity to effectively enjoy this right. These situations include being forced out of their homes, which often leaves them facing poverty, homelessness, or unstable living situations with no family support network; a lack of recognition of their gender identity; having to attend educational establishments governed by cisnormative disciplinary and behavioral rules; and harassment and bullying, at the hands of both peers and teachers and authorities. The following sections, while not exhaustive, examine the challenges in this area.

#### 1. Forced to Leave Home and Situation of Poverty

- 172. In its first report on poverty, the IACHR indicated that the poverty, discrimination, and exclusion affecting LGBTI persons are associated with the barriers they encounter when seeking to access safe and good-quality education.<sup>312</sup> In this regard, one of the main reasons trans and gender-diverse persons are forced to drop out of school, especially during childhood, is they were forced to leave their homes—generally as a result of assuming their gender identities and encountering a hostile family environment—and the extreme vulnerability in which this places children and adolescents.<sup>313</sup>
- 173. The high number of trans persons forced to leave their nuclear families at a young age, regardless of their economic or social background, leads to a high number of trans persons severely impoverished over the course of their lives.<sup>314</sup> Depending on the subsidiary networks of support they may have, being forced to leave home can lead to experiencing homelessness or unstable housing conditions and having to find a way to support themselves from early adolescence. All of this significantly reduces the possibility of staying in school<sup>315</sup> and, as will be examined in the following chapter, frequently means entering the child prostitution circuit. In this regard, some organizations refer to the trans childhoods impacted by these

<sup>&</sup>lt;sup>311</sup> Ministry of Social Development (Uruguay), <u>Transform 2016: "Revealing realities: Preliminary results of the first census of trans persons"</u> (2016), pg. 8.

<sup>&</sup>lt;sup>312</sup> IACHR, <u>Report on Poverty and Human Rights in the Americas</u>, September 7, 2017, para. 457.

<sup>&</sup>lt;sup>313</sup> Mauro Cabral and Johanna Hoffman, <u>"Me preguntaron cómo vivía / sobreviviendo, dije, sobreviviendo...": trans</u> <u>latinoamericanas en situación de pobreza extrema</u> (OutRight Action International, 2009), pg. 7.

<sup>&</sup>lt;sup>314</sup> Mauro Cabral and Johanna Hoffman, <u>"Me preguntaron cómo vivía / sobreviviendo, dije, sobreviviendo...": trans</u> <u>latinoamericanas en situación de pobreza extrema</u> (OutRight Action International, 2009), pg. 6.

<sup>&</sup>lt;sup>315</sup> Martín Jaime, <u>Diversidad sexual, discriminación y pobreza frente al acceso a la salud pública demandas de las comunidades TLGBI en Bolivia, Colombia, Ecuador y Perú</u> (Buenos Aires, CLACSO, 2013), pg. 134; Instituto Runa de Desarrollo y Estudios de Género, <u>Informe de derechos humanos sobe la comunidad trans en la ciudad de Lima</u> (2016), pg. 9.

phenomena as "interrupted childhoods" that cast them into the adult world at a young age and force them to develop tools for survival.  $^{\rm 316}$ 

174. Effectively, having a home and a certain level of family support until they finish secondary school is described in the information received by the IACHR as an important factor toward enabling trans and gender-diverse persons to complete their studies.<sup>317</sup> Along these lines, for example, one study conducted in Argentina looked at the relationship between the education levels of trans women and the age at which they took on their gender identities socially. According to the information obtained, those who took on their gender identities at a young age did not get as far in their studies. Notably, those who did so after the age of 19 were much more likely to finish secondary school.<sup>318</sup> It has therefore been noted that even trans persons who attempt to recommence their studies as adults "often find they are subjected to the relentless logic of poverty and have to 'choose' between going to night school or working during the time they should be studying."<sup>319</sup>

#### 2. Lack of Recognition of Gender Identity

- 175. Another reason trans persons tend to be pushed out of educational systems involves the lack of recognition of their gender identities. The IACHR notes that many OAS States still do not offer mechanisms for changing the gender indicator in keeping with the standards of the Inter-American system, and only a few jurisdictions offer this procedure to children and adolescents.
- 176. Consequently, most trans and gender-diverse children and adolescents must attend school using the name and gender indicator that was assigned to them at birth. Along with this, teachers and authorities frequently refuse to recognize the gender identities of trans and gender-diverse students, continuing to call them by their names found in the registry and treating them in accordance with the gender assigned to them at birth. This can become a permanent source of humiliation and offense to the dignity of any trans person, as well as cause and encourage bullying.<sup>320</sup> This inability to change the gender assigned at birth impacts all areas with a component of separation by gender, including the use of bathrooms or dressing

<sup>&</sup>lt;sup>316</sup> Lohana Berkins (comp.), <u>Cumbia, Copeteo y Lágrimas: Informe nacional sobre la situación de travestis,</u> transexuales y transgéneros (Buenos Aires: Ediciones Madres de Plaza de Mayo, 2015), pg. 75.

<sup>&</sup>lt;sup>317</sup> Cecilia Rocha Carpiuc, "Educación y personas trans en Uruguay: insumos para repensar las políticas públicas," in <u>De silencios y otras violencias. Políticas públicas, regulaciones discriminatorias y diversidad sexual</u>, Diego Sempol (comp.) (Montevideo: MIDES, 2014), 78.

<sup>&</sup>lt;sup>318</sup> Ministry of the Public Defender and Bachillerato Popular Trans 'Mocha Celis,' <u>La Revolución de las Mariposas.</u> <u>A diez años de La Gesta del Nombre Propio</u> (Ministry of the Public Defender, 2017), pg. 85.

<sup>&</sup>lt;sup>319</sup> Mauro Cabral and Johanna Hoffman, <u>"Me prequitaron cómo vivía / sobreviviendo, dije, sobreviviendo...": trans</u> <u>latinoamericanas en situación de pobreza extrema</u> (OutRight Action International, 2009), pg. 8.

REDLACTRANS, <u>Informe sobre el acceso a los derechos económicos, sociales, culturales y ambientales de la población trans en Latinoamérica y el Caribe</u> (2014), pg. 32.

rooms, playing certain sports, the use of uniforms, makeup, the length of hair, and other things.

- 177. A number of civil society organizations have reported to the IACHR on cases of trans girls in the city of Quito, Ecuador, who are prevented from using their names. They are forced to change schools after experiencing constant rejection by teachers.<sup>321</sup> The reports also indicated that the inability to correct their documentation until the age of majority is a complication for fathers and mothers trying to enroll them in a school.<sup>322</sup> Likewise, the Commission received information on a number of cases in which teachers refused to recognize the gender identities of trans students in Costa Rica<sup>323</sup> and El Salvador.<sup>324</sup> The IACHR was also informed that, in Panama, trans boys are not allowed to wear their hair short or use the uniform or bathroom facilities corresponding to their own gender identities.<sup>325</sup> Regarding this latter issue, the IACHR notes that an inability to freely use the bathroom becomes a source of anxiety and makes the school day extremely difficult.<sup>326</sup> It can even lead to health complications.
- 178. The IACHR notes that the United States has also seen serious setbacks on the protection of trans and gender-diverse persons as regards education. In 2017, the IACHR expressed concern at the federal government's decision to remove a significant number of protections for trans students.<sup>327</sup> These protections included equal treatment, the immediate recognition of gender identity regardless of whether identification documents have been corrected; protection from harassment based on identity or gender expression; the use of bathroom facilities and participation in sports, classes, and/or extracurricular activities based on their own gender identities; the confidentiality of personal information; and the option to correct educational records.<sup>328</sup> A U.S. civil society organization submitted a report to the IACHR indicating that, out of the 50 states, only 14 had laws prohibiting school

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by PAKTA (Ecuador), pg. 13. Also see: Wambra, "<u>Niñez trans: entre el ocultamiento</u> y la libertad," February 6, 2018; La Marea, "<u>La mamá de Cattleya</u>," December 17, 2017; El Comercio, "<u>Madre</u> de niña trans pide respeto por mensajes que circulan en las redes," July 17, 2018.

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by PAKTA (Ecuador), pg. 13. Also see: Wambra, "Niñez trans: entre el ocultamiento y la libertad," February 6, 2018; La Marea, "La mamá de Cattleya," December 17, 2017; El Comercio, "Madre de niña trans pide respeto por mensajes que circulan en las redes," July 17, 2018.

REDLACTRANS, <u>Violaciones a los Derechos Humanos de Mujeres Trans en Costa Rica, El Salvador, Guatemala, Honduras y Panamá</u> (2015), paras. 53 and 54.

<sup>324</sup> REDLACTRANS, <u>Violaciones a los Derechos Humanos de Mujeres Trans en Costa Rica, El Salvador, Guatemala, Honduras y Panamá</u> (2015), para. 100.

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Hombres Trans Panamá, pg. 7.

<sup>&</sup>lt;sup>326</sup> Cecilia Rocha Carpiuc, "Educación y personas trans en Uruguay: insumos para repensar las políticas públicas," in <u>De silencios y otras violencias. Políticas públicas, regulaciones discriminatorias y diversidad sexual</u>, Diego Sempol (comp.) (Montevideo: MIDES, 2014), 48.

<sup>&</sup>lt;sup>327</sup> IACHR, <u>Press Release 33/17</u>: "IACHR Expresses Concern over Setbacks in Federal Protections for Trans and Gender-Nonconforming Students in the United States," March 15, 2017.

<sup>&</sup>lt;sup>328</sup> IACHR, <u>Press Release 33/17</u>: "IACHR Expresses Concern over Setbacks in Federal Protections for Trans and Gender-Nonconforming Students in the United States," March 15, 2017.

discrimination based on gender identity; only 20 prohibited school bullying based on gender identity; and 7 had enacted laws prohibiting all mention of issues of sexual and gender diversity in schools.<sup>329</sup>

- 179. An additional difficulty arising from lack of recognition of gender identity in education is the discrepancies that arise between an individual's gender identity and the information on the documentation accrediting the educational level attained. This can lead to more significant difficulties when applying for scholarships, further programs of study, requests for equivalency certifications, or other opportunities where an accredited degree is a requirement, something that can especially be true when applying for jobs.<sup>330</sup>
- 180. The IACHR takes note of a survey conducted in 2013 in Argentina that found that, once it was possible to amend registries under the gender identity law, 1 of every 10 trans women and 3 of every 10 trans men returned to the educational system.<sup>331</sup> Years later, another study confirms the results indicating improvements in access to education.<sup>332</sup> For example, 84.7% of trans men who said they were attending school indicated that treatment by peers and teachers had improved since the enactment of the gender identity law. Also, whereas in 2005, the main reason for not studying was fear of discrimination, in 2016 it was "lack of money and lack of time or scheduling difficulties."<sup>333</sup> The IACHR emphasizes that the collection of data is vitally important for producing concrete evidence on the benefits of laws and public policies impacting groups of persons in situations of extreme vulnerability.
- 181. The IACHR observes that in some jurisdictions without a gender identity law, mechanisms have been implemented to recognize a so-called "social name."<sup>334</sup> Under these provisions, trans persons have the right to use their own names in

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Movement Advancement Project (MAP) and other organizations, pg. 2.

<sup>&</sup>lt;sup>330</sup> See Chapter 5 of this report on the right to work.

AA. VV., <u>Situación de los derechos humanos de las travestis y trans en la Argentina: Evaluación sobre el</u> cumplimiento de la convención para la eliminación de todas las formas de discriminación contra las mujeres (CEDAW) (2016), pg. 16.

<sup>&</sup>lt;sup>332</sup> Ministry of the Public Defender and Bachillerato Popular Trans 'Mocha Celis,' <u>La Revolución de las Mariposas.</u> <u>A diez años de La Gesta del Nombre Propio</u> (Ministry of the Public Defender, 2017), pg. 85.

<sup>&</sup>lt;sup>333</sup> Ministry of the Public Defender and Bachillerato Popular Trans 'Mocha Celis,' <u>La Revolución de las Mariposas.</u> <u>A diez años de La Gesta del Nombre Propio</u> (Ministry of the Public Defender, 2017), pg. 90.

The Commission wishes to underscore several terminology issues with regard to "name." As opposed to what happens with cisgender persons—who usually adopt the name they receive from their parents or legal guardians—transgender persons tend to use names they have selected as part of the right to selfdetermination that belongs to every individual. The name with which they were registered at birth tends to be known as their "registry name" or "birth name." Thus, what the law describes as a trans person's "social name" is nothing more and nothing less than that person's *name*. Therefore, the expressions "real name" or "true name" as referring to a trans person's name on official documents must always be avoided. Additionally, this information and the gender assigned at birth are protected by the right to privacy, and therefore, in the absence of a compelling reason that is duly justified by the competent authority, it cannot be required or requested.

school records, which tends to require teaching staff and school administrators to call these persons by that name, prohibiting use of the name in registry files.

- 182. For example, in Brazil, prior to the decision of the Supreme Federal Tribunal regarding gender identity and/or expression, numerous jurisdictions had moved toward implementing laws and public policies on the use of the "social name."<sup>335</sup> Additionally, in 2015, Resolution 12 of the National Council on the Struggle against Discrimination and the Promotion of The Rights of Lesbians, Gays, Bisexuals, *Travestis*, and Transsexuals established the legal figure of the "social name" for both oral and written use. It also established that uniforms, bathrooms, changing rooms, and other gender segregated spaces could be used in accordance with one's own gender identity. This resolution also applies to the admissions processes of educational institutions and systems, as well as competitive processes and enrollment.<sup>336</sup> Additionally, in 2018, Resolution 1 of the Ministry of Education established that the social names of *travestis* and transsexual persons would be used in school records, for those both under and over the age of 18.<sup>337</sup>
- 183. In Chile, in 2017, Circular 768 of the Superintendency of Education<sup>338</sup> established an obligation to use the social name regardless of whether the registry had been corrected.<sup>339</sup> Likewise, a right was established to use the school uniform and bathroom facilities in accordance with one's own gender identity, and each school is allowed to offer inclusive or alternative bathrooms as agreed-upon with families.<sup>340</sup>
- 184. In Colombia, the Constitutional Court protected the right to recognition of gender identity of a trans man to whom the National Educational Service had denied identification under the masculine gender and refused to provide him with the corresponding uniform.<sup>341</sup> The Court also ordered an educational institution to admit a trans student who had been rejected due to her manner of dress.<sup>342</sup> In a
- <sup>335</sup> In 2008, the State of Pará was the first Brazilian state to implement a public policy to guarantee the use of social name. Currently, the states of Goiás, Mato Grosso, Maranhão, Paraná, Rio Grande del Sur, Santa Catalina, Tocantins, Alagoas, Espíritu Santo, Ceará, Bahía, Mato Grosso del Sur, and the Federal District also have regulations in place on the use of social name in educational institutions. For more information, see: Cláudio Eduardo Resende Alves, Guilherme Freitas Silva and Maria Ignez Costa Moreira, "<u>A política pública do</u> <u>uso do nome social por travestis e transexuais nas escolas municipais de Belo Horizonte: uma pesquisa</u> <u>documental</u>" *Pesquisas e Práticas Psicossociais* 11, No. 2 (2016).
- Secretariat on Human Rights (Brazil): National Council on the Struggle against Discrimination and the Promotion of The Rights of Lesbians, Gays, Bisexuals, *Travestis*, and Transsexuals, <u>Resolution 12/2015</u>, January 16, 2015.
- <sup>337</sup> Ministry of Education (Brazil), <u>Resolution 1</u>, January 19, 2018.
- Superintendency of Education (Chile), <u>Circular 768: "Rights of trans students with regard to education</u>," April 27, 2017.
- <sup>339</sup> Superintendency of Education (Chile), <u>Circular 768: "Rights of trans students with regard to education</u>," April 27, 2017, parts 5 and 6(c).
- <sup>340</sup> Superintendency of Education (Chile), <u>Circular 768: "Rights of trans students with regard to education</u>," April 27, 2017, parts 6(e) and 6(f).
- <sup>341</sup> Constitutional Court (Colombia), <u>Judgment T-363 of 2016</u>, July 11, 2016. Also see: <u>Judgment T-141 of 2015</u>, March 27, 2015.
- <sup>342</sup> Constitutional Court (Colombia), Judgment <u>T-804</u> 2014, November 4, 2014.

similar case, it protected the right of a trans student to attend school with long hair and wearing makeup.  $^{\rm 343}$ 

The Commission notes that implementation of public policies on the use of a "social 185. name" is a measure to encourage trans and gender-diverse persons to remain within the educational system and notably reduces the reasons for which a trans person may suffer school bullying. At the same time, it is a measure that sends a clear message of respect for the gender identity of these persons and their right to personal self-determination. Still, it must be borne in mind that these types of measures must be viewed as medium-term or temporary solutions until each State can have a general law in place on gender identity that is applicable to all situations and that meets Inter-American standards. As regards the setbacks that have been mentioned in this section, the IACHR reiterates that the nature of the obligations derived from Article 26 of the American Convention and from other international instruments means that the full effectiveness of the rights enshrined therein must be achieved progressively, with the corresponding duty to not reverse the progress achieved this way.<sup>344</sup> This is particularly relevant for recognition of gender identity and gender expression in the area of education.

#### 3. Cisnormative School Rules

- 186. The Commission observes that the existence of cisnormative school rules constitutes another of the central reasons trans persons tend to be pushed out of the educational system, closely related to the failure to recognize gender identity and expression.<sup>345</sup> These rules assert cisnormativity in educational establishments, offering legal bases for discrimination based on gender identity or expression. They tend also to apply to teaching and other staff at schools, which can also have a severe impact on trans or gender-diverse teachers. The existence of these rules is an indication that schools are not neutral spaces in terms of sexuality and gender. Rather, the spaces incorporate norms and incentives intended to produce socially expected identities and expressions.<sup>346</sup>
- 187. In its report on violence against LGBTI persons, the Commission took note of the existence of rules in schools that discriminate based on gender identity or expression.<sup>347</sup> Also, it is common for the visibility of nonnormative identities and expressions to be explicitly prohibited under school rules that assume a student

<sup>&</sup>lt;sup>343</sup> Constitutional Court (Colombia), Judgment T-565 of 2013, August 23 2013.

<sup>&</sup>lt;sup>344</sup> IACHR Admissibility and Merits Report 38/09, Case 12,670, "National Association of Ex-employees of the Peruvian Social Security Institute et al. v. Peru," March 27, 2009. Para. 138

<sup>&</sup>lt;sup>345</sup> In this category the IACHR places all laws, decrees, orders, resolutions, regulations, statutes, codes of conduct, internal regulations, or any other rules that governs how a public or private educational institution functions and is organized.

<sup>&</sup>lt;sup>346</sup> Cecilia Rocha Carpiuc, "Educación y personas trans en Uruguay: insumos para repensar las políticas públicas" in <u>De silencios y otras violencias. Políticas públicas, regulaciones discriminatorias y diversidad sexual</u>, Diego Sempol (comp.) (Montevideo: MIDES, 2014), 41.

<sup>&</sup>lt;sup>347</sup> IACHR, *Violence against LGBTI Persons in the Americas*, November 12 2015, para. 323.

body that is binary and essentially divided into "women" and "men."<sup>348</sup> Also, the legitimacy granted to a cisnormative environment gives school teaching and administrative staff a green light to act out their prejudices by discriminating against and pathologizing trans and gender-diverse persons.

188. In fact, the information provided by different organizations shows how in multiple countries of the region, trans persons are frequently admonished, reprimanded, suspended, and even expelled from educational institutions simply because they had begun their transition process.<sup>349</sup> Indeed, school authorities frequently require them to dress, behave, and present themselves in accordance with the expected parameters of the gender assigned them at birth. In a survey in Honduras, at least 15 people reported having been rejected on trying to enroll—or even having been expelled from their own schools—based on their gender identity or expression or sexual orientation.<sup>350</sup> The IACHR has received information on similar cases in El Salvador<sup>351</sup> and Guatemala.<sup>352</sup>

#### 4. School Bullying

- 189. School bullying is a specific type of violence that takes place in educational environments.<sup>353</sup> In its report on violence against LGBTI persons, the IACHR compiled numerous sources from throughout the region showing that school bullying is special cause for concern in the hemisphere,<sup>354</sup> and that it tends to be one reason for the high rates of school abandonment by trans and gender-diverse persons.<sup>355</sup> In the framework of the universal system, the UN secretary-general expressed concern over school bullying based on sexual orientation or gender identity, indicating that this type of violence is a grave human rights violation.<sup>356</sup>
- 190. The United Nations agencies, UNESCO has led the work on school bullying, addressing in depth the specific issue of how this phenomenon affects trans and

<sup>&</sup>lt;sup>348</sup> Cecilia Rocha Carpiuc, "Educación y personas trans en Uruguay: insumos para repensar las políticas públicas" in <u>De silencios y otras violencias. Políticas públicas, regulaciones discriminatorias y diversidad sexual</u>, Diego Sempol (comp.) (Montevideo: MIDES, 2014), 47.

REDLACTRANS, <u>Esperando la muerte: Informe Regional 2016-2017</u> (2017), pg. 40; REDLACTRANS, <u>Informe sobre el acceso a los derechos económicos, sociales, culturales y ambientales de la población trans en Latinoamérica y el Caribe</u> (2014), pg. 33.

<sup>&</sup>lt;sup>350</sup> Comité de la Diversidad de Honduras, Informe sobre la Situación de los Derechos Humanos de las Personas LGTB en Honduras ante la Visita In Loco de la Comisión Interamericana de Derechos Humanos (2014).

REDLACTRANS, <u>Violaciones a los Derechos Humanos de Mujeres Trans en Costa Rica, El Salvador, Guatemala,</u> <u>Honduras y Panamá</u> (2015), para. 98.

REDLACTRANS, <u>Violaciones a los Derechos Humanos de Mujeres Trans en Costa Rica, El Salvador, Guatemala, Honduras y Panamá</u> (2015), para. 148.

<sup>&</sup>lt;sup>353</sup> IACHR, *Violence against LGBTI Persons in the Americas*, November 12 2015, para. 317.

<sup>&</sup>lt;sup>354</sup> IACHR, *Violence against LGBTI Persons in the Americas*, November 12 2015, paras. 318 to 330.

IACHR, Press Release 49/15: "Discriminated and Made Vulnerable: Young LGBT and Intersex People Need Recognition and Protection of their Rights," May 17, 2015.

<sup>&</sup>lt;sup>356</sup> UN News, "<u>Homophobic bullying represents grave violation of human rights – Ban</u>" December 8, 2011.

gender-diverse persons.<sup>357</sup> In fact, in May 2016, in the framework of the International Ministerial Meeting on violence based on sexual orientation and gender identity and expression hosted by UNESCO in Paris, 17 OAS Member States<sup>358</sup> joined States from other regions of the world in committing to implementing comprehensive policies to prevent and address violence in schools, and violence for reasons of gender identity or expression in particular. This is the first international instrument to speak specifically to violence in schools based on gender identity or expression.<sup>359</sup>

- 191. Acts of intimidation or harassment in an educational context send a strong social message to trans and gender-diverse persons that their identities are not accepted. It promotes and legitimizes prejudices throughout the educational community and reinforces stigma and feelings of shame and inferiority in trans persons.<sup>360</sup> Several studies have found that bullying and discrimination based on gender identity and expression lead to absenteeism and dropping out of school;<sup>361</sup> lesser achievement in academics and sports; reduced intent to pursue higher education; higher levels of depression and low self-esteem; and even suicide.<sup>362</sup>
- 192. Studies on school bullying tend to show that trans and gender-diverse persons suffer the highest rates of victimization. A national survey conducted in the United States found that more than 77% of trans persons experienced some type of mistreatment at some time between preschool and the end of secondary school: more than half (54%) were verbally harassed, almost a quarter (24%) were physically attacked, and 13% were sexually assaulted for being trans.<sup>363</sup> Similar findings in Canada indicate that 78% of trans students feel unsafe because of bullying, and their dropout rate is higher than for their classmates.<sup>364</sup> One survey in Argentina found that up to 45% of trans students dropped out of school because of intimidation and
- See, among other examples: UNESCO, <u>Out in the open: Education sector responses to violence based on sexual orientation and gender identity/expresión</u> (2016); <u>La violencia homofóbica y transfóbica en el ámbito escolar: hacia centros educativos inclusivos y seguros en América Latina</u> (2015); <u>El bullying homofóbico y transfóbico en los centros educativos.</u> <u>Taller de sensibilización para su prevención</u> (2015); <u>Respuestas del Sector Educativo hacia el Bullying Homofóbico</u> (2012); <u>Review of Homophobic Bullying in Educational Institutions</u>. Prepared for the International Consultation on Homophobic Bullying in Educational Institutions, Río de Janeiro, Brazil (2012).
- The States that signed on are: Argentina, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Ecuador, El Salvador, United States, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru, and Uruguay.
- <sup>359</sup> UNESCO, <u>Call for Action by Ministers for an inclusive and equitable education for all learners in an environment</u> <u>free from discrimination and violence</u>, October 2016, Article 4(2).
- <sup>360</sup> IACHR, <u>Press Release 92/13</u>: "The IACHR is concerned about violence and discrimination against LGBTI persons in the context of education and family settings." November 22, 2013.
- REDLACTRANS, *Esperando la muerte: Informe Regional 2016-2017* (2017), pg. 41.
- <sup>362</sup> Peter Goldblum, Rylan J. Testa, Samantha Pflum *et al.*, "<u>The Relationship Between Gender-Based Victimization</u> <u>and Suicide Attempts in Transgender People</u>" Professional Psychology: Research and Practice 43, No. 5 (2012); Ann P. Haas, Philip L. Rodgers and Jody L. Herman, <u>Suicide Attempts among Transgender and Gender Non-Conforming Adults</u> (2014).
- <sup>363</sup> Sandy E. James, Jody L. Herman, Susan Rankin et al., <u>The Report of the 2015 U.S. Transgender Survey</u> (Washington, DC: National Center for Transgender Equality, 2016), pg. 131.
- Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Egale (Canada), pg. 4.

abuse.<sup>365</sup> Furthermore, the IACHR was informed of the significant prevalence of negative comments about trans persons in studies conducted in Brazil,<sup>366</sup> Chile,<sup>367</sup> Colombia,<sup>368</sup> Peru,<sup>369</sup> and Uruguay.<sup>370</sup>

#### C. Toward an Inclusive Education

- 193. It is the IACHR's view that the right to education must be specifically guaranteed for trans and gender-diverse persons by ensuring that they are able to access and remain in the educational system on equal footing. They should also be guaranteed dignified and equal treatment by students, parents, staff, and teachers within the educational system, without discrimination based on gender identity or expression.<sup>371</sup> In order to make this a reality, States must work to ensure these individuals have access to educational opportunities and resources.<sup>372</sup> As proposed in the Yogyakarta Principles, education should be directed to the development of each student's personality, talents, and mental and physical abilities to their fullest potential, and respond to the needs of students of all sexual orientations and gender identities.<sup>373</sup>
- 194. Based on this, the Commission and its REDESCA consider that in order to provide a comprehensive solution to this issue, States must approach the right to education with a multimodal strategy with the aim of removing the barriers that trans and gender-diverse persons face today. Likewise, as will be explored later, education provides an opportunity to offer answers to eradicating prejudice and discrimination. Therefore, a serious educational strategy holds potential benefits for the exercise and enjoyment of other human rights.
- 195. It is the IACHR's understanding that, in addition to enacting laws on gender identity, repealing cisnormative regulations, and designing monitoring and reporting mechanisms to address bullying, States must adopt measures to guarantee a gender

<sup>&</sup>lt;sup>365</sup> 100% Diversidad y Derechos, <u>Encuesta de clima escolar en Argentina dirigida a jóvenes LGBT</u> (Buenos Aires, 2017), pg. 17.

Associação Brasileira e Lésbicas, Gays, Bissexuais, Travestis e Transexuais (ABGLT), <u>Pesquisa nacional sobre o</u> <u>ambiente educacional no Brasil 2016</u> (Curitiba: Imprensa da Universidade Federal do Paraná, 2017), pg. 34.

<sup>&</sup>lt;sup>367</sup> Fundación Todo Mejora Chile, <u>Encuesta nacional de clima escolar en Chile 2016</u> (Santiago, 2017), pg. 35.

<sup>&</sup>lt;sup>368</sup> Sentido y Colombia Diversa, <u>Mi voz cuenta: Encuesta de clima escolar LGBT en Colombia 2016</u> (Bogotá, 2016), pg. 28.

<sup>&</sup>lt;sup>369</sup> Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos (PROMSEX), <u>Estudio Nacional sobre</u> <u>Clima Escolar en el Perú 2016</u> (Lima, 2017), pg. 34.

<sup>&</sup>lt;sup>370</sup> Colectivo Ovejas Negras, <u>Encuesta nacional de clima escolar en Uruguay 2016</u> (Montevideo, 2016), pg. 15.

<sup>&</sup>lt;sup>371</sup> Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity: "The Yogyakarta Principles, March 2007, Principle 16(a).

<sup>&</sup>lt;sup>372</sup> Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity: "The Yogyakarta Principles, March 2007, Principle 16(h).

Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity: "The Yogyakarta Principles, March 2007, Principle 16(b).

diversity perspective and all educational processes offered throughout the population, especially human rights education and comprehensive sex education. The objective is to eradicate prejudice against trans and gender-diverse persons and provide them with tools that enable them to exit poverty or avoid falling into it.

#### 1. Measures of Affirmative Action

- 196. In view of the structural exclusion facing trans and gender-diverse persons, simply ensuring there are no formal or legal obstacles is often not enough. Under these circumstances, it will also be necessary to move toward affirmative action measures that specifically address the situation of aggravated vulnerability and aim to reverse it progressively.<sup>374</sup> This means that States, in coordination and consultation with organizations representing trans and gender-diverse persons, must design strategies to address the local reality in which trans persons live and facilitate their access to educational spaces and institutions by offering tutoring or advisory services, reserved spaces or quotas, scholarships, subsidies, or exemptions specifically reserved for trans persons, leveling activities,<sup>375</sup> and other measures.
- 197. Additionally, in order to ensure the success of the measures taken, it will often be necessary to adapt the availability of the educational offerings to the schedules of trans and gender-diverse persons, many of whose daily lives revolve around nighttime hours, including those who do sex work.<sup>376</sup> In this regard, initiatives must be flexible and available enough to be effectively used by individuals whose routines or schedules are a reflection of the extreme vulnerability in which they live.

<sup>&</sup>lt;sup>374</sup> Keep in mind that with regard to specific implementation of public policies on education, it must be emphasized that these legal obligations must be applied in both public educational institutions and private schools. Thus, States maintain the obligation to oversee the provision of public interest services like education even when the services are provided by private entities, specifically through regulation and supervision of the services. This is particularly important when supervising services that involve the protection, supervision, care, and education of children. In this regard, see: IACHR, <u>Violence against LGBTI Persons in the Americas</u> (2015), para. 308; Report on Corporal Punishment and Human Rights of Children and Adolescents (2009), para. 69; Inter-American Court. Case of Ximenes Lopes. Brazil. Judgment of July 4, 2006. Series C No. 149, paras. 94, 96, 99; Inter-American Court. Case of Alban Cornejo *et al.* v. Ecuador. Merits, Reparations, and Costs. Judgment dated November 22, 2007. Series C No. 171, para. 119.

<sup>&</sup>lt;sup>375</sup> Ministry of the Public Defender and Bachillerato Popular Trans 'Mocha Celis,' <u>La Revolución de las Mariposas.</u> <u>A diez años de La Gesta del Nombre Propio</u> (Ministry of the Public Defender, 2017), pg. 171.

<sup>&</sup>lt;sup>376</sup> Diego Sempol, "Jóvenes y trans: posibles líneas de acción para el Plan de Acción de Juventudes 2015-2025" in <u>Plan de Acción de Juventudes 2015 – 2025: Estudios</u> (Montevideo: MIDES, 2014), pg. 46. Regarding sex work, the IACHR will conduct a more extensive analysis in Chapter IV of this report. For now, it underscores that it is aware of the existence of the vigorous debates surrounding the nature of sex work and that sex work, in and of itself, is not a form of exploitation, as long as the necessary guarantees are in place. In this regard, it takes note of the comparative jurisprudence (European Court of Justice: C-340/14 and C-341/14 Trijber and Harmsen [2015] EU:C:2015:641).

- 198. The IACHR has been informed that several of Brazil's public universities have reserved enrollment spots for trans persons.<sup>377</sup> In 2017, the Universidade Federal da Bahia (UFBA) became the first federal university to set aside enrollment spots in master's and doctoral programs for trans persons. In 2018, the Universidade Federal do Cariri in Ceará also issued a resolution reserving enrollment spots for trans persons. For its part, Universidade Federal do Sul da Bahia was the first to establish quotas for trans persons at the graduate level.<sup>378</sup> The Commission also takes note with concern of the decision of the Brazilian government to challenge the legality of these reserved enrollment spots and cancel them.<sup>379</sup> It is the IACHR's view that given their situation of extreme vulnerability, reserving enrollment spots for trans persons is or could be an important State policy toward generating opportunities for trans persons by providing them with ways of securing protection and comprehensive development.
- 199. Other good practices in this regard include the establishment and operation of the Mocha Celis *Travesti*-Trans People's High School, in the Autonomous City of Buenos Aires Argentina,<sup>380</sup>an initiative highlighted by the IE SOGI.<sup>381</sup> It was established as a free educational space aimed specifically at *travestis*, transsexuals, transgender persons, and trans women and men to invite them to recommence their studies and provide them with a new tool offering training, cooperation, and self-confidence in overcoming specific situations, with an official degree to certify it. Additionally, the institution's comprehensive approach to gender diversity allows for raising awareness regarding healthcare, participation, and the full exercise of citizenship among students, as well as the management of micro enterprises and cooperatives that provide a way out of prostitution and the problems related to it.<sup>382</sup>
- 200. Among the measures of affirmative action proposed is the establishment of socioeducational programs to work with the families of trans and gender-diverse persons to end intrafamily discrimination and violence by working in coordination with teams from educational institutions. This is because it has been found that family

<sup>&</sup>lt;sup>377</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Grupo de Estudos em Direito Internacional dos Direitos Humanos (GEDI-DH) and Núcleo de Direitos Humanos e Cidadania LGBT (Nuh/UFMG) (Brazil), pg. 5.

<sup>&</sup>lt;sup>378</sup> Ministério da Educação, Universidade Federal Do Sul Da Bahia, Pró-Reitoria de Gestão Acadêmica, <u>Edital Nº</u> <u>06/2018: Processo seletivo para área básica de ingresso das licenciaturas interdisciplinares da rede Anísio</u> <u>Teixeira de colégios universitários</u> (2018). Also see: G1 (Bahía), <u>Universidade na Bahia é pioneira na criação de</u> <u>cotas para transexuais e travestis na graduação: 'Emblemático'</u>, March 15, 2018.

<sup>&</sup>lt;sup>379</sup> Folha de São Paulo, *Bolsonaro anuncia suspensão de vestibular para trans em universidade federal*, 16 de julio de 2019.

<sup>&</sup>lt;sup>380</sup> Ministry of the Public Defender and Bachillerato Popular Trans 'Mocha Celis,' <u>La Revolución de las Mariposas.</u> <u>A diez años de La Gesta del Nombre Propio</u> (Ministry of the Public Defender, 2017), pg. 21.

<sup>381 &</sup>lt;u>Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity on his mission to Argentina</u>, A/HRC/38/43/Add.1, April 9, 2018, paras. 36-37.

Agustín Fuchs, "El Bachillerato Popular para Jóvenes y Adultxs 'Mocha Celis'. Experiencias en el diseño y planeamiento de un Bachillerato Popular para personas travestis, transexuales y transgéneros" Educación, Sexualidades y Relaciones de Género (Buenos Aires: FFyL-UBA, 2011), pg. 3; AA. VV., <u>Situación de los derechos humanos de las travestis y trans en la Argentina: Evaluación sobre el cumplimiento de la convención para la eliminación de todas las formas de discriminación contra las mujeres (CEDAW) (2016), pg. 16.</u>

support is a differentiating factor that enables individuals to continue with their educations and build future expectations for jobs other than sex work<sup>383</sup>

201. In view of this, it is clear that States still face significant challenges to comprehensively guaranteeing the right to education for trans persons, with one of the main obstacles being the lack of recognition of gender identity, which leads to violence and discrimination in schools, poor performance, and dropping out. It is therefore urgent for States to systematically monitor the prevalence of violence and bullying based on sexual orientation and gender identity and expression in educational institutions. They have an obligation to ensure that both public and private educational institutions provide spaces that offer protection and an opportunity for anonymous reporting, as well as early prevention and detection strategies, intervention protocols, and clear progress indicators that focus on the realization of this right for these individuals.

#### 2. Education as a Tool for Eradicating Prejudice

- 202. One of the main causes of the grave situation of exclusion forced upon trans and gender-diverse persons is the extremely high rates of overall social prejudice with regard to sexual and gender diversity. States must therefore implement strategies to address and eventually eradicate these prejudices at all levels and using a variety of mechanisms. The Commission observes that acceptance of and respect for sexual and gender diversity is an objective that can only be attained by designing and implementing a planning strategy that includes public policies capable of producing short-, medium-, and long-term results.
- 203. Human rights education and education on sexual and reproductive health are both closely related to the right to education, and they mutually complement and strengthen each other. In the area of international human rights, both of them contribute to legitimizing diversity from their respective areas based on the principle of equal protection and non-discrimination. Thus, their implementation has the potential to progressively eradicate deeply rooted prejudices against sexual and gender diversity.<sup>384</sup>
- 204. The Yogyakarta Principles identify the key role played by educational methods and resources in increasing understanding of and respect for diverse gender identities and expressions, including the specific needs of those targeted by such efforts and their family members.<sup>385</sup> For its part, the IACHR has underscored the role of education as a strategic instrument for addressing and eliminating prejudice, stereotypes, and false conceptions of persons with diverse sexual orientations or

<sup>&</sup>lt;sup>383</sup> Diego Sempol, "Jóvenes y trans: posibles líneas de acción para el Plan de Acción de Juventudes 2015-2025" in <u>Plan de Acción de Juventudes 2015 – 2025: Estudios</u> (Montevideo: MIDES, 2014), pg. 55.

Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity: "The Yogyakarta Principles, March 2007, Principle 2(f).

Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity: "The Yogyakarta Principles, March 2007, Principle 16(d).

gender identities.<sup>386</sup> Likewise, the United Nations Office of the High Commissioner for Human Rights has emphasized the role of comprehensive sex education as a tool for combating discrimination against LGBT persons.<sup>387</sup> The UN Special Rapporteur on education has indicated likewise,<sup>388</sup> as has the United Nations International Children's Fund (UNICEF).<sup>389</sup> More specifically, the IE SOGI has invited States to reevaluate their educational curricula and textbooks and produce pedagogical tools and methodologies to promote an open mind and respect for diversity.<sup>390</sup>

- 205. Furthermore, the IACHR and its Office of the Special Rapporteur for Freedom of Expression have indicated that States must implement educational measures to promote broader and deeper discussion as a means of exposing and combating existing negative stereotypes against trans and gender-diverse persons.<sup>391</sup> Pursuant to the Yogyakarta Principles, these initiatives must include facts and information on the historical truths behind the causes, nature, and consequences of discrimination and violence against trans persons in order to comprehensively raise awareness of how trans and gender-diverse persons have been and still are treated.<sup>392</sup>
- 206. Additional to this, the IACHR highlights that teaching staff play a fundamental role in guaranteeing a safe learning environment. They must therefore have the necessary training and preparation to respond to discriminatory language and acts of violence that are based on gender identity and expression. Effectively, according to the information received by the IACHR, those who report more frequent interventions from school staff in response to denigrating comments tend to feel less unsafe and less fear at school.<sup>393</sup> For example, regarding sexual violence and discrimination against girls, women, and adolescents, the IACHR has indicated that certain predominant social and cultural beliefs can prevent the development of educational policies capable of guaranteeing the right to education, as they promote or facilitate forms of socialization that violate human dignity. Therefore, for the

IACHR, Press Release 92/13: "The IACHR is concerned about violence and discrimination against LGBTI persons in the context of education and family settings." November 22, 2013; Press Release 110/18: "Leave no LGBT person behind - Statement by human rights experts on the International Day against Homophobia, Transphobia and Biphobia," May 16, 2018; Violence against LGBTI Persons in the Americas (2015), para. 326; Report on Poverty and Human Rights (2017), para. 457. As a precedent, also see: IACHR. Work, Education and Resources for Women: The path toward equality in the guarantee of economic, social and cultural rights (2011), paras. 86 and 87. Press Release No. 208/17: "IACHR Regrets Ban on Gender Education in Paraguay," December 15, 2017.

<sup>&</sup>lt;sup>387</sup> United Nations High Commissioner of Human Rights, <u>Discrimination and violence against individuals based on</u> <u>their sexual orientation and gender identity</u>, A/HRC/29/23, May 4, 2015, para. 57.

Report of the United Nations Special Rapporteur on the right to education, A/65/162, July 23, 2010, para. 23.

<sup>&</sup>lt;sup>389</sup> UNICEF, <u>Position Paper 9:</u> UNICEF Position Paper: Eliminating Discrimination Against Children and Parents Based on Sexual Orientation and/or Gender Identity, November 2014, pg. 4.

<sup>&</sup>lt;sup>390</sup> United Nations General Assembly, <u>Report of the Independent Expert on protection against violence and</u> <u>discrimination based on sexual orientation and gender identity</u>, A/HRC/35/36, April 19, 2017, para. 61.

<sup>&</sup>lt;sup>391</sup> IACHR, *Violence against LGBTI Persons in the Americas*, November 12 2015, para. 226.

<sup>&</sup>lt;sup>392</sup> Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression, and Sex Characteristics to Complement the Yogyakarta Principles, November 2017, Principle 37(h).

<sup>&</sup>lt;sup>393</sup> See, among other examples: Sentido y Colombia Diversa, <u>Mi voz cuenta: Encuesta de clima escolar LGBT en</u> <u>Colombia 2016</u> (Bogotá, 2016), pg. 54.

IACHR, the right to education cannot be treated as marginal to gender issues. Educational systems are required to eliminate the prejudices, customs, and practices—often violent—that are based on stereotypical roles and that impact trans and gender-diverse persons.<sup>394</sup>

207. Finally, the Commission holds that the obligations arising from the Convention of Belém do Pará benefit all cisgender women as well as the array of feminine trans identities, including their right "to receive an education that rejects behaviors and social and cultural practices that are based on stereotypes and concepts of inferiority and subordination."<sup>395</sup> There is thus a complementary international jurisprudence that clearly and explicitly establishes an obligation to progressively change social and cultural patterns of behavior within educational programs to promote inclusive and egalitarian societies by prejudices and prejudicial and discriminatory customs or practices.<sup>396</sup>

#### 3. Comprehensive Sexuality Education

- 208. Comprehensive sexuality education (hereinafter "CSE") is a technical term describing a specific approach to teaching sexuality through age-appropriate teaching of the cognitive, emotional, social, interactive and physical aspects of human sexuality based on precise scientific data and impartial information. It is aimed at equipping students with the knowledge, skills, and values they need to make informed decisions in order to enjoy their sexuality fully, healthily, and safely.<sup>397</sup>
- 209. Of particular relevance to the region is the Montevideo consensus on population and development, led by CEPAL,<sup>398</sup> which establishes specific compromises on CSE. Specifically, the IACHR highlights priority measures 11, 14, and 40, whereby States committed to guaranteeing the effective implementation of comprehensive sexuality education programs and recognizing the effectiveness from a young age of a participatory, intercultural, gender, and human rights approach aiming to prevent teen pregnancy, eliminate unsafe abortion, and guarantee emergency contraceptive without prescriptions, as well as both male and female condoms.
- 210. The Commission recalls that the invisibility of nonnormative gender identities and expressions is still common in the region, and that the subject of gender diversity is

<sup>&</sup>lt;sup>394</sup> IACHR Report No. 110/18, Case 12,678, Merits. Paola del Rosario Albarracín Guzmán and relatives (Ecuador), October 5, 2018, para. 116.

<sup>&</sup>lt;sup>395</sup> IACHR, *Violence against LGBTI Persons in the Americas*, November 12 2015, para. 282.

<sup>&</sup>lt;sup>396</sup> IACHR, *Violence against LGBTI Persons in the Americas*, November 12 2015, para. 282.

<sup>&</sup>lt;sup>397</sup> UNESCO, *Emerging Evidence, Lessons and Practice In Comprehensive Sexuality Education: A Global Review* 2015 (Paris: UNESCO, 2015), "Annex 2: Definitions of CSE".

<sup>&</sup>lt;sup>398</sup> CEPAL, <u>Montevideo consensus on population and development</u>. First meeting of the Regional Conference on Population and Development in Latin America and the Caribbean: Full integration of the population and its dynamic in equitable sustainable development and a focus on rights: key for Cairo Programme of Action post 2014. Montevideo, August 12-15, 2013.

still considered "inappropriate" for children. The IACHR has already issued pronouncements on the extremely harmful effects of the absence of serious public policies on comprehensive sexuality education, highlighting how this shortcoming strengthens already widespread taboos on sexuality and ensures sexuality continues to be viewed as something negative that is not discussed publicly, even to report abuse.<sup>399</sup>

- 211. The United Nations Special Rapporteur on the Right to Education has indicated that the perpetuation of the patriarchal system depends precisely on the denial of the right of every person to receive an education with a gender and diversity perspective.<sup>400</sup> Specifically in the case of trans and gender-diverse persons, CSE is a vital tool for the process of learning about, understanding, maturing, and transitioning in the ways one identifies and expresses oneself. Effectively, having the information, aptitudes, skills, and values necessary to question, deconstruct, and eradicate stereotypes and prejudices that remain prevalent with regard to gender diversity is vital for the full and healthy development of trans and gender-diverse persons.<sup>401</sup>
- 212. At the same time, access to comprehensive sexuality education with a diversity perspective can, among other things, provide critical thinking tools for forming and expressing one's own opinions on inequality in relations among genders, which is a necessary step for raising awareness regarding diversity. Therefore, the IACHR urges States to implement effective comprehensive sexuality education policies with a diversity perspective.<sup>402</sup>
- 213. In the same regard, effective implementation of comprehensive sexuality education policies is one of the main and most important tools for strengthening the reproductive autonomy of persons.<sup>403</sup> The Commission has indicated that States must "guarantee full access to adequate maternal health services," including CSE programs at all education levels, as well as healthcare centers that work on issues of prevention and comprehensive care.<sup>404</sup> In this regard, the Commission wishes to

<sup>&</sup>lt;sup>399</sup> IACHR, <u>Report on Poverty and Human Rights</u> (2017), para. 331.

<sup>&</sup>lt;sup>400</sup> <u>United Nations Special Rapporteur on the right to education</u>, A/65/162 (2010), para. 23.

<sup>&</sup>lt;sup>401</sup> For detailed analysis on how vital it is for trans and gender-diverse persons to have information free of prejudice in the educational system, see: Cecilia Rocha Carpiuc, "Educación y personas trans en Uruguay: insumos para repensar las políticas públicas" in <u>De silencios y otras violencias. Políticas públicas, regulaciones</u> <u>discriminatorias y diversidad sexual</u>, Diego Sempol (comp.) (Montevideo: MIDES, 2014), pg. 66 to 72.

<sup>&</sup>lt;sup>402</sup> IACHR, <u>Violence against LGBTI Persons in the Americas</u>, November 12 2015, para. 455; <u>Public Hearing:</u> <u>Allegations of discrimination and violence based on sexual orientation and gender identity against children in</u> <u>Guyana</u>, 149th Period of Sessions, October 28, 2013; Public Hearing: <u>Gender politics and sexual diversity in</u> <u>Paraguay</u>, 167th Period of Sessions, February 26, 2018; Annex to Press Release 41/18: IACHR Wraps Up 167th Session in Colombia: Public Hearings, Working Meetings, Promotional Activities and Bilateral Meetings," April 6, 2018.

<sup>&</sup>lt;sup>403</sup> IACHR, <u>Report on Poverty and Human Rights in the Americas</u>, September 7, 2017, para. 331; also see: Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression, and Sex Characteristics to Complement the Yogyakarta Principles, November 2017, Principle 17(o). UNESCO has found likewise. See: UNESCO, <u>Education</u> sector responses to homophobic bullying, 2012, pg. 42.

<sup>&</sup>lt;sup>404</sup> IACHR, <u>Report on Poverty and Human Rights</u> (2017), Recommendation 8(c).

specify that the diversity approach under which all CSE content must be approached, in both formal and informal education, must include masculine trans identities in all content and subject matter regarding reproductive and sexual health in what has been traditionally understood exclusively as "*maternal* health." This includes content on preventing unwanted pregnancies, care during pregnancy, and morbidity and mortality during or after giving birth. This content should not be restricted to cisgender women, and should thus explicitly include masculine trans identities within the range of persons who can become pregnant and carry pregnancies.

- 214. As regards sexually-transmitted infections (hereinafter "STIs"), all CSE programs must include scientific information that is free of prejudices and stereotypes on ways of preventing STI transmission in *all* types of sexual relations. Trans persons have been identified by UNAIDS as a key population for the HIV-AIDS epidemic,<sup>405</sup> for which reason the standards developed by the Commission and the Inter-American Court on the right to education and HIV-AIDS must be followed by States with regard to this population as well.<sup>406</sup> This specifically includes the right to timely information on HIV-AIDS that is free of prejudice; prohibiting restrictions on people who live with HIV from accessing schools; and the right to education that promotes their inclusion and nondiscrimination within society.
- 215. The IACHR is deeply concerned at the information it has been receiving on the fierce resistance in the region to the implementation of CSE policies. In 2017, the Commission expressed its concern over the decision of the Ministry of Education and Science of Paraguay to prohibit the dissemination and use of materials referring to "gender theory and/or gender ideology."<sup>407</sup> At that time, the Commission urged Paraguay to repeal the ban and guarantee that educational material include the gender perspective, in keeping with international standards.<sup>408</sup> The IACHR also received information on the intensification of hostile and discriminatory stances taking the form of movements and marches calling for a ban on the use of such materials, as well as statements by the Ministry of Education and Science who, during a public event, said he was in favor of burning books about "gender ideology."<sup>409</sup>
- 216. Also, in Ecuador, anti-rights groups demonstrated against the regulations of the Elimination of Violence against Women Act, which included a provision-requiring the Ministry of Education to update curriculum content to add a crosscutting gender approach, including new masculine identities, diversity, and the elimination of

<sup>&</sup>lt;sup>405</sup> According to UNAIDS estimates, a trans person is 49 times more likely to contract the HIV virus than a cisgender adult. See: UNAIDS, *The Gap Report: Trangender People* (2014), pg. 3.

<sup>&</sup>lt;sup>406</sup> Inter-American Court. Case of Gonzales Lluy *et al. v. Ecuador.* Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 1, 2015. Series C No. 298, para. 241.

<sup>&</sup>lt;sup>407</sup> IACHR, <u>Press Release 208/17</u>: "IACHR Regrets Ban on Gender Education in Paraguay," December 15, 2017. See: Resolution No. 29,664 of October 5, 2017 of the Ministry of Education and Science.

<sup>&</sup>lt;sup>408</sup> IACHR, <u>Press Release 208/17</u>: "IACHR Regrets Ban on Gender Education in Paraguay," December 15, 2017.

<sup>&</sup>lt;sup>409</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Panambí, Asociación de Travestis, Transexuales y Transgéneros), pg. 20. Also see: ABC Color, "<u>Ministro Riera se ofreció a quemar libros sobre ideología de género</u>", October 6, 2017.

stereotypes. As a result of pressure by these groups, mentions of "new masculinities" and "diverse women" were eliminated from the final text.<sup>410</sup>

- 217. In 2016, the Ministry of Education of Peru presented the National Elementary Education Curriculum,<sup>411</sup> which explicitly includes the gender equality and diversity approach.<sup>412</sup> According to the information received by the IACHR, approval of this document was met with fierce resistance from anti-rights groups, which have launched campaigns in the media and in public spaces that have had a significant impact on the population. One of these organizations filed a lawsuit over a ministerial resolution ordering a new school curriculum, and the First Civil Chamber of the Superior Court of Justice of Lima ruled in its favor.<sup>413</sup> This decision was appealed to the Supreme Court of Peru, which found the lawsuit groundless<sup>414</sup> in April 2019. It is further noted that the Ministry prepared educational support material with content supporting *machista* stereotypes like the objectification of women and stereotyping of sexual and gender diversity. After it was challenged by civil society organizations, the materials were removed from schools where they were already being used.<sup>415</sup>
- 218. Related to this, these groups also mounted fierce resistance to other complementary laws and initiatives aimed at addressing sexual and gender diversity in schools. For example, in Colombia, Law 1620 of 2013 established the National School Coexistence System explicitly to address discrimination based on gender identity or sexual orientation.<sup>416</sup> However, the IACHR was informed that as a result of pressure from anti-rights groups, no specific measures or programs have yet been developed to implement it.<sup>417</sup>

#### 4. Human Rights Education

### 219. Human rights education is one of the fundamental pillars of the global effort to make human rights effective.<sup>418</sup> Providing a human rights education means building a

<sup>415</sup> Ministry of Education (Peru), <u>Press Release</u>, June 27, 2018.

<sup>&</sup>lt;sup>410</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by PAKTA (Ecuador), pg. 15.

<sup>&</sup>lt;sup>411</sup> Ministry of Education. <u>National Elementary Education Curriculum</u> (2016), adopted through Ministerial Resolution 281-2016-MINEDU and amended through <u>Ministerial Resolution 159-2017-MINEDU</u>.

<sup>&</sup>lt;sup>412</sup> Ministry of Education. National Elementary Education Curriculum (2016), pg. 23.

<sup>&</sup>lt;sup>413</sup> Judgment of the Superior Court of Justice of Lima, First Civil Chamber, June 13, 2017 and Judgment of the Supreme Court of Justice of March 6, 2018.

<sup>&</sup>lt;sup>414</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by PROMSEX, pg. 2.

<sup>&</sup>lt;sup>416</sup> Law 1620 of March 15, 2013, Creating the National School Coexistence System and Training for the Exercise of Human Rights, Sexuality Education, and the Prevention and Mitigation of School Violence (Colombia).

<sup>&</sup>lt;sup>417</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Colombia Diversa (Colombia), pgs. 1, 4.

<sup>&</sup>lt;sup>418</sup> United Nations Office of the High Commissioner of Human Rights, <u>Panel discussion on the implementation of the United Nations Declaration on Human Rights Education and Training: good practices and challenges</u>, A/HRC/35/6, March 27, 2017, para. 5.

universal human rights culture by passing on knowledge, teaching techniques, and attitudes to empower students, offering them tools to develop their critical thinking, demand effective enforcement of rights, and be aware of the need in a democratic society to find solutions that are inclusive.<sup>419</sup> Human rights education and training are essential for promoting universal and effective respect for human rights and the fundamental liberties of persons in keeping with the principles of equality, universality, indivisibility, and interdependence.<sup>420</sup>

- 220. Since at least 2005, the Member States of the OAS have supported human rights education through various resolutions of the General Assembly, including the importance of disseminating the content of the inter-American system in the schools of the hemisphere.<sup>421</sup> Additionally, starting in 2007, the General Assembly moved forward in proposing the inclusion of human rights education in formal education, in accordance with the Protocol of San Salvador, urging States to follow the Curricular and Methodological Proposal prepared for this by the Inter-American Institute of Human Rights (hereinafter, "IIDH").<sup>422</sup> Parallel to its periodic reports on the subject, in 2010, the IIDH adopted the Inter-American Covenant on Human Rights Education in formal education in the Americas.<sup>423</sup> In 2011, the United Nations adopted the Declaration on Human Rights Education and Training,<sup>424</sup> which sets forth the consensus on the importance of human rights education as a process that fosters knowledge, skills, and attitudes to promote respectful behaviors.
- 221. The IACHR reiterates that, pursuant to the instruments of the Inter-American system, especially the Protocol of San Salvador, States have an obligation to provide human rights education in both formal and informal educational contexts and to ensure the effective professional training of the teaching staff, particularly on issues related to equal protection and nondiscrimination.<sup>425</sup> This must particularly be borne in mind given that the IIDH has identified specialized training and the training
- <sup>419</sup> See, in general: UNESCO and OHCHR, <u>Plan of Action. Plan of Action. World Programme for Human Rights</u> <u>Education</u> (New York: UNESCO, 2006; Inter-American Institute of Human Rights, <u>Curricular and methodological</u> <u>proposal for incorporating human rights education into formal schooling for children from 10 to 14 years of</u> <u>age</u> (San Jose: IIDH, 2006).

<sup>&</sup>lt;sup>420</sup> United Nations, General Assembly, <u>Resolution 66/137: United Nations Declaration on Human Rights Education</u> and Training, A/RES/66/137, February 16, 2012.

<sup>&</sup>lt;sup>421</sup> OAS General Assembly, AG/RES. 2066 (XXXV-O/05), Dissemination of Information on the Inter-American System for the Promotion and Protection of Human Rights in Educational Institutions in the Countries of the Hemisphere, June 7, 2005.

OAS General Assembly, AG/RES. 2321 (XXXVII-O/07), Proposal to Incorporate Human Rights Education into Formal Education for Schoolchildren Aged 10 to 14, in accordance with the Protocol of San Salvador, June 5, 2007; AG/RES. 2404 (XXXVIII-O/08), Education on human rights in formal education in the Americas, June 3, 2008; AG/RES. 2466 (XXXIX-O/09), Education on human rights in formal education in the Americas, June 4, 2009; AG/RES. 2604 (XL-O/10), Education on human rights in formal education in the Americas, June 8, 2010; AG/RES. 2673 (XLI-O/11), Education on human rights in formal education in the Americas, June 7, 2011; AG/RES. 2732 (XLII-O/12), Education on human rights in formal education in the Americas, June 4, 2012.

<sup>&</sup>lt;sup>423</sup> Inter-American Institute of Human Rights, <u>Inter-American Covenant on Human Rights Education</u> (2010).

<sup>&</sup>lt;sup>424</sup> United Nations, General Assembly, <u>Resolution 66/137: United Nations Declaration on Human Rights Education</u> and Training, A/RES/66/137, February 16, 2012.

<sup>&</sup>lt;sup>425</sup> IACHR. <u>Work, Education and Resources for Women: The path toward equality in the guarantee of economic, social and cultural rights</u> November 11, 2011, para. 182.

of teaching staff and human rights pedagogy as the area in which the region is furthest behind.  $^{\rm 426}$ 

222. Furthermore, the IACHR emphasizes that human rights education plays an important role in addressing and eliminating structural prejudice, historical discrimination, stereotypes, and false ideas regarding persons with diverse gender identities. It is indispensable for full embrace and promotion of diversity and the acceptance of diverse sexual orientations and gender identities toward achieving a cultural change "that fully embraces diversity and the promotion of acceptance of diverse sexual orientations and gender identities." <sup>427</sup>

#### 5. Education as a Tool for Emerging from Poverty

- 223. In its General Comment 13, the Committee on Economic, Social and Cultural Rights underscored that, as an empowerment right, the right to education "is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities."<sup>428</sup>
- 224. Regionally, the Inter-American Democratic Charter included an article specifically highlighting the key relationship between education and alleviating poverty.<sup>429</sup> Likewise, in its earlier judgments on ESCER, the Inter-American Court included the right to education among the obligations that States must fulfill to guarantee the right to a life with dignity, especially as regards persons facing vulnerability.<sup>430</sup> The Court also links the right to education to the opportunity to reverse the situation of vulnerability.<sup>431</sup> It later did so again on the specific legal basis offered by Article 13 of the Protocol of San Salvador.<sup>432</sup> Although the case dealt with a lack of registration

<sup>&</sup>lt;sup>426</sup> Inter-American Institute of Human Rights, <u>Informe Interamericano de la Educación en Derechos Humanos</u> (2013), 13.

<sup>&</sup>lt;sup>427</sup> IACHR, <u>Press Release 208/17</u>: "IACHR Regrets Ban on Gender Education in Paraguay," December 15, 2017; <u>Press Release 92/13</u>: "The IACHR is concerned about violence and discrimination against LGBTI persons in the context of education and family settings." November 22, 2013. Likewise, see: Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression, and Sex Characteristics to Complement That Yogyakarta Principles, November 2017, Principle 30(e).

<sup>&</sup>lt;sup>428</sup> CESCR, <u>General Comment 13: The right to education (Article 13 of the Pact)</u>, E/C.12/1999/10, December 8, 1999, para. 1.

<sup>&</sup>lt;sup>429</sup> General Assembly of the Organization of American States, <u>Inter-American Democratic Charter</u>, 28th Extraordinary Period of Sessions, adopted on September 11, 2001, Article 16.

<sup>&</sup>lt;sup>430</sup> Inter-American Court. Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations, and Costs. Judgment of June 17, 2005. Series C No. 125, paras. 162 and 163; Case of the "Juvenile Reeducation Institute" v. Paraguay. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 2, 2004. Series C No. 112, para. 159.

<sup>&</sup>lt;sup>431</sup> Inter-American Court. Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations, and Costs. Judgment of June 17, 2005. Series C No. 125, para. 169.

<sup>&</sup>lt;sup>432</sup> Inter-American Court. Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, Reparations, and Costs. Judgment of August 24, 2010. Series C No. 214, para. 211.

in the civil registry at the time of birth in the case of the girls named Yean and Bosico, the Court emphasized that the lack of documentation deprived them of their right to education, worsening their situation of vulnerability.<sup>433</sup>

- 225. For its part, the Commission has identified the "instrumental" nature of the right to education as well as its value as a tool for escaping poverty.<sup>434</sup> In its first report on poverty and human rights, the IACHR emphasized that education is necessary for children to be able to fully develop their personalities, talents, and skills, as well as to enhance opportunities to find good-quality jobs and escape poverty.<sup>435</sup>
- 226. In 2017, the IACHR and other international experts outlined the specific connections between the human right to education and SDG 4,<sup>436</sup> which proposes securing inclusive, equitable, and good quality education by 2030, as well as promoting lifelong learning opportunities for young people and adults.<sup>437</sup> The 2030 Agenda also places renewed emphasis on principles of inclusion, equity, and gender equality, especially under its goal 4(5), which focuses on eliminating gender disparities and securing respect for the most vulnerable population groups.<sup>438</sup>
- 227. Specifically, from the point of view of human development, education is where an individual acquires the skills and knowledge necessary to fully develop their human potential. Exclusion from educational opportunities will necessarily have an impact that seriously limits opportunities to obtain work with dignity or even enter the labor market at all. In other words, because educational achievements—especially the completion of secondary or preparatory school—tend to be a significant determining factor of the economic status individuals may achieve over the course of their lives, when trans persons have their right to education restricted or impacted, their future economic outlooks are also impacted, and their social vulnerability increases, among other negative effects that can be extremely difficult to reverse.
- 228. According to information received by the IACHR, the lack of access to education has a direct causal relationship with access to work.<sup>439</sup> A survey conducted in Argentina and published in 2017 found that education level has a noticeable impact on the performance of sex work as a principal source of income. It found that 76% of

<sup>&</sup>lt;sup>433</sup> Inter-American Court. Case of Yean and Bosico Children v. Dominican Republic. Judgment of September 8, 2005. Series C No. 130, paras. 185 and 225. Also see: Mónica Pinto, "<u>La justiciabilidad del derecho a la educación</u>" Revista del Instituto Interamericano de Derechos Humanos (2010), 217.

<sup>&</sup>lt;sup>434</sup> IACHR. <u>Access to Justice for Women who are Victims of Sexual Violence</u>, December 9, 2011, paras. 3 and 13.

<sup>&</sup>lt;sup>435</sup> IACHR, Report on Poverty and Human Rights in the Americas, September 7, 2017, para. 356.

<sup>&</sup>lt;sup>436</sup> Although most of the efforts regarding inclusive education are placed under SDG-4, other SDGs also include targets that are relevant for trans and gender-diverse persons in the area of education, such as education and reproductive and sexual health (SDG-3 and SDG-5) and reducing the proportion of young people outside the educational system (SDG-8).

<sup>&</sup>lt;sup>437</sup> United Nations, General Assembly, <u>Resolution 70/1: Transforming our World: The 2030 Agenda for Sustainable</u> <u>Development</u>, A/RES/70/1, October 21, 2015, para. 19.

<sup>&</sup>lt;sup>438</sup> UNESCO, <u>Unpacking Sustainable Development Goal 4: Education 2030</u> (2016), pg. 11.

<sup>&</sup>lt;sup>439</sup> Mauro Cabral and Johanna Hoffman, <u>"Me preguntaron cómo vivía / sobreviviendo, dije, sobreviviendo...": trans</u> <u>latinoamericanas en situación de pobreza extrema</u> (OutRight Action International, 2009), pg. 8.

individuals who had not finished secondary school supported themselves with sex work, a figure that was lower for those who had a secondary school education or higher.<sup>440</sup> The situation of exclusion from education and job opportunities produced by discrimination based on gender identity and expression is chronic in nature and "not only reproduces poverty but incessantly produces more poverty, and therefore more poor trans persons."<sup>441</sup>

229. Lastly, it should be highlighted that, in view of the labor vulnerability that tends to characterize trans and gender-diverse persons, professional education or skills training (also called "job-specific training") can play a key role in offering dignified, safe, and profitable opportunities for escaping economic and social marginalization.<sup>442</sup> Establishing public policies to offer job opportunities that provide trans persons with a way out in the short-term can have a substantial impact on realization of their human rights, improving their employability, and guaranteeing the conditions for the enjoyment of a life with dignity.

#### D. The Human Right to Culture

230. The right to participate in cultural life has been enshrined in the Universal Declaration of Human Rights,<sup>443</sup> in the International Covenant on Economic, Social and Cultural Rights,<sup>444</sup> and in other treaties and instruments in the framework of the universal system of human rights.<sup>445</sup> At the inter-American level, Article 13 of the American Declaration establishes that every person has the right "to take part in the cultural life of the community, to enjoy the arts, and to participate in the benefits that result from intellectual progress, especially scientific discoveries." This right is recognized by Article 14 of the Protocol of San Salvador, and the IACHR observes that it can also be protected under Article 26 of the ACHR via the OAS Charter. Indeed, Article 47 of the Charter indicates that States must give primary importance to stimulating culture for the comprehensive betterment of human individuals as a basis for social justice and democracy, followed by recognizing the individual and joint commitment to preserving the cultural heritage of the American peoples

<sup>&</sup>lt;sup>440</sup> Ministry of the Public Defender and Bachillerato Popular Trans 'Mocha Celis,' <u>La Revolución de las Mariposas.</u> <u>A diez años de La Gesta del Nombre Propio</u> (Ministry of the Public Defender, 2017), pg. 21.

<sup>&</sup>lt;sup>441</sup> Mauro Cabral and Johanna Hoffman, <u>"Me preguntaron cómo vivía / sobreviviendo, dije, sobreviviendo...": trans</u> <u>latinoamericanas en situación de pobreza extrema</u> (OutRight Action International, 2009), pg. 8.

<sup>&</sup>lt;sup>442</sup> See: Ministry of Labor, Employment, and Social Security – Violeta Alegre, <u>Guía de acciones para una inclusión sociolaboral de travestis, transexuales y transgéneros: Recomendaciones basadas en las acciones implementadas en ocho localidades de la Argentina</u> (Buenos Aires: UNDP, 2017), pg. 20.

<sup>&</sup>lt;sup>443</sup> Universal Declaration of Human Rights, Article 27.

<sup>&</sup>lt;sup>444</sup> International Covenant on Economic, Social and Cultural Rights, Article 15.

<sup>&</sup>lt;sup>445</sup> Convention on the Rights of the Child, Article 31(2); Convention on the Rights of Persons with Disabilities, Article 30(1); International Convention on the Elimination of All Forms of Racial Discrimination, Article 5(e); Convention on the Elimination of All Forms of Discrimination against Women, Article 13(c); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 43(1)(g); Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Article 2; United Nations Declaration on the Rights of Indigenous Peoples, Articles 5, 8, and 10 through 13.

(Article 48); and Article 45(f) recognizes the right to participation of sectors that have been excluded and discriminated against in a country's cultural life.

- For the purposes of this report, the Commission will take into account the standards 231. set forth by the Committee on Economic, Social and Cultural Rights (CESCR) and its General Comment 21 on the right of everyone to take part in cultural life.<sup>446</sup> In it, the Committee adopted a dynamic, broad, and inclusive definition of the concept of "culture" that includes "all manifestations of human existence" and is "a living process, historical, dynamic and evolving, with a past, a present and a future."<sup>447</sup> It is also worth noting that the Committee identified at least three main components of the exercise of this right, those being each individual's right to *participation in*, access to, and contribution to cultural life.448 Specifically, the Commission underscores that "[t]he protection of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, and requires the full implementation of cultural rights, including the right to take part in cultural life." 449 This means that the State must redouble its efforts to protect trans and gender-diverse persons as a group that faces particular vulnerability and historic discrimination in view of the delicate relationship between and obstacles involved in access to participation in cultural life and the social and legal limitations that are set based on binary criteria in a majoritarian society.
- For the IACHR and its REDESCA, the right of trans persons to participate in cultural 232. life means they have the right to freely express their identities in all areas of cultural life, contribute to its development, and enjoy the benefits thereof. Thus, programs and policies aimed at promoting culture must constructively integrate this population and ensure its full participation and that it is not discriminated against, so as to preserve its distinctive forms of expression and promote societal tolerance and respect. Considering that cultural activities, goods, and services are a means of transmitting values, identities, reflections, forms of existence, worldviews, and ways of living together, the Commission and its REDESCA recognize that they are more than just a form of expression: indeed, they comprise the elements that structure and impact economic, social, and political relations. In this regard, States have an obligation to promote a cultural environment that is respectful of gender diversity. as well as to adopt legislative, administrative, and judicial measures aimed at guaranteeing trans persons their right to culture and eradicating negative prejudices and stereotypes against such persons in this area.

<sup>&</sup>lt;sup>446</sup> Committee on Economic, Social and Cultural Rights, <u>General Comment 21: Right of everyone to take part in</u> <u>cultural life (Article 15, paragraph 1(a))</u>, E/C.12/GC/21, December 21, 2009.

<sup>&</sup>lt;sup>447</sup> Committee on Economic, Social and Cultural Rights, <u>General Comment 21: Right of everyone to take part in</u> <u>cultural life (Article 15, paragraph 1(a))</u>, E/C.12/GC/21, December 21, 2009, para. 11.

<sup>&</sup>lt;sup>448</sup> Committee on Economic, Social and Cultural Rights, <u>General Comment 21: Right of everyone to take part in</u> <u>cultural life (Article 15, paragraph 1(a))</u>, E/C.12/GC/21, December 21, 2009, para. 15.

<sup>&</sup>lt;sup>449</sup> Committee on Economic, Social and Cultural Rights, <u>General Comment 21: Right of everyone to take part in</u> <u>cultural life (Article 15, paragraph 1(a))</u>, E/C.12/GC/21, December 21, 2009, para. 40.

#### 1. The Right of Trans and Gender-Diverse Persons to Culture

- 233. The IACHR has received limited information on the specific challenges facing trans and gender-diverse persons with regard to their effective enjoyment of their right to participate in cultural life. Extreme vulnerability tends generally to severely restrict any person's opportunity to access or participate in cultural activities, and especially to contribute to producing cultural or scientific expression. Additionally, the historical prevalence of stigma and discrimination has helped completely exclude trans and gender-diverse persons from areas of culture, or ensure they are included in a way that is denigrating or mocking, where they play roles representing the "undesirable," "perverse," or "criminal."
- 234. The Commission has not received substantial information on public policies to encourage the participation of trans or gender-diverse persons in cultural promotion or production activities. In this regard, it is the IACHR's view that the diversity of voices to which space must be given in the media and when planning cultural policies must offer trans and gender-diverse persons specific opportunities to make their own local and regional contributions to culture. Also, civil society organizations play a fundamental role, as many of them carry out activities for the trans population while promoting their participation and involvement in cultural life in general.<sup>450</sup> Additionally, this State duty to guarantee the diversity of voices is closely related to its duty to promote the dismantling of harmful prejudices and stereotypes. This relationship was underscored by the CESCR, which noted that the right to education "is fed by and closely linked to the promotion of culture and development of science."<sup>451</sup>
- 235. As regards contribution to cultural life, the Commission emphasizes that trans and gender-diverse persons must be able to exercise the opportunity to be involved in creating the spiritual, material, intellectual and emotional expressions of the community, as well as participate in the definition, elaboration and implementation of policies and decisions that have an impact on the exercise of a person's cultural rights.<sup>452</sup> The IACHR notes with satisfaction that, in some countries of the region, certain cultural expressions led or managed by trans or gender-diverse persons have been identified, including poetry, music, recitals, and literature.<sup>453</sup> In this regard, the IACHR urges the replication of these initiatives in the region, with the objective of increasing the visibility of culturally diverse expression, as well as producing alternative discourses and models in which the trans population can see itself reflected and included. Lastly, with regard to the production of knowledge,

REDLACTRANS, <u>Informe sobre el acceso a los derechos económicos, sociales, culturales y ambientales de la población trans en Latinoamérica y el Caribe</u> (2014), pg. 34.

<sup>&</sup>lt;sup>451</sup> Committee on Economic, Social and Cultural Rights, <u>General Comment 21: Right of everyone to take part in</u> <u>cultural life (Article 15, paragraph 1(a))</u>, E/C.12/GC/21, December 21, 2009, para. 2.

<sup>&</sup>lt;sup>452</sup> Committee on Economic, Social and Cultural Rights, <u>General Comment 21: Right of everyone to take part in</u> <u>cultural life (Article 15, paragraph 1(a))</u>, E/C.12/GC/21, December 21, 2009, para. 15.

Juan Tauil, "Testiga: Crónicas, entrevistas y otras rarezas" (La Plata: EDULP, 2015), 19; Marina Rosenzvaig, "iQue otros sean lo normal! Performatividad y representaciones discursivas transgénero en la obra de lx artista argentinx Susy Shock" XII Congreso Internacional Locas. Escritoras y personajes femeninos cuestionando las normas (Universidad de Sevilla, 2015).

trans and gender-diverse persons must be able to progressively occupy positions in which they can participate actively in knowledge production, research, and cultural and scientific documentation, especially as regards the realities of their own lives. However, in order for this objective to be met, at least in the short or medium term, States will need to pursue affirmative-action measures as described previously.

#### E. Toward more Inclusive Education and a Culture that Respects Gender Identity and Expression

- 236. States face significant challenges to comprehensively guaranteeing the right to education for trans persons, with one of the main obstacles being the lack of recognition of gender identity, which leads to violence and discrimination in schools, poor performance, and dropping out. Because of the interdependence of human rights, restrictions on the right to education—whether *de jure* or *de facto* mean limitations on other rights. For example, the lack of a higher education means trans persons risk losing the opportunity to access better jobs, meaning less economic empowerment and significant limitations on their personal autonomy.
- 237. Additionally, the IACHR has found that States have not only a duty to protect trans persons' from violence or direct discrimination in their right to education but also an obligation to identify and eradicate practices or legal provisions that indirectly present obstacles to the comprehensive inclusion of these individuals in the education system. As addressed earlier, this means revising cisnormative regulations, but it also means revising existing measures and mechanisms of protection that do not explicitly include or provide for trans persons and their particular needs. The IACHR reiterates that enacting laws on violence or discrimination, even laws specifically targeting schools, is only effective when they have been designed to prevent and root out anti-trans prejudices. Such measures must include adequate mechanisms for investigating violence and discrimination that take into account the age of the perpetrator, the person's hierarchical relationship with the victim and the educational level at which the violence takes place, as well as set up procedures for compensating and providing comprehensive care to the victims of the violence.
- 238. Third, the Commission analyzed education's power as a tool of transformation. In certain cases, education can provide a way out of a situation of vulnerability through personal empowerment. Collectively, education provides a pathway for transmitting messages that eradicate prejudices and disinformation on trans identities, as well as a way of building more inclusive and tolerant societies.
- 239. Lastly, the Commission has underscored the importance of collecting data in other areas. It now calls for the collection of data and statistics in the area of education. The information collected by some States on the impact of gender identity laws or certain regulations, such as on the use of a "social name," for example, contribute to the regional understanding of the benefits of such measures. Likewise, the collection of this data enables better follow-up, monitoring, and evaluation by State institutions and by civil society watchdogs. Additionally, figures on violence and

discrimination can give shape to the actions, plans, public policies, and legislation intended to combat trans phobia in the educational sector.

Regarding this, it is clear that States must move forward in addressing 240. circumstances that place effective limits on the real opportunities that trans and gender-diverse persons have to participate in, access, and contribute to cultural life in their societies. The IACHR recalls that States have an obligation to produce a comprehensive policy on promoting, accessing, and enjoying cultural, sporting, artistic, community, and academic spaces that actively includes trans and genderdiverse persons Participation is one of the main guiding principles in designing public policies with a human rights approach,<sup>454</sup> and it is therefore crucial that these policies take into account the opinions and experiences of trans persons. However, in this context, it is also necessary to listen to the voices of artists, cultural promoters, and the defenders of these rights in order to strategically eradicate the barriers that make it difficult for trans persons to exercise their cultural rights. As the Inter-American Court has found, the duty to prevent human rights abuses includes a duty to adopt all legal, policy, administrative, and cultural measures to promote the protection of human rights. In that framework, the State also has an obligation to adopt measures to ensure that non-State actors like companies, media outlets, and cultural groups and associations do not interfere with or negatively impact the right of trans and gender-diverse persons to participate in cultural life.

### CHAPTER 4

## RIGHT TO WORK AND ITS JUST, EQUITABLE, AND SATISFACTORY CONDITIONS

# **RIGHT TO WORK AND ITS JUST, EQUITABLE, AND SATISFACTORY CONDITIONS**

#### A. The Human Right to Work and Its Just, Equitable, and Satisfactory Conditions

- 241. The human right to work and its just, equitable, and satisfactory conditions are broadly recognized within the Inter-American system. The Inter-American Court and the Commission have found that this right is protected by Article 26 of the American Convention, deriving from it the economic, social, educational, scientific, and cultural standards contained in the OAS Charter.<sup>455</sup> They have specifically indicated that Article 45(b) of the Charter establishes that "[w]ork is a right and a social duty," with Article 34(g) of the Charter including among its goals for achieving comprehensive development "[f]air wages, employment opportunities, and acceptable working conditions for all." Likewise, Article XIV of the American Declaration establishes that "[e]very person has the right to work, under proper conditions, and to follow his vocation freely [...]."
- 242. The Protocol of San Salvador also enshrines the right to work under just and equitable conditions in its Articles 6 and 7. Article 6 requires States adopt measures that will make the right to work fully effective, especially with regard to the achievement of full employment, vocational guidance, and the development of technical and vocational training projects. Article 7 addresses working conditions, including compensation, stability, time off, etc. Also, in Article 8, the Protocol establishes a right to organize and join unions and a right to strike.
- 243. Meanwhile, according to the CESCR, the right "is an important component of other labour rights enshrined in the Covenant and the corollary of the right to work as freely chosen and accepted. Similarly, trade union rights, freedom of association and the right to strike are crucial means of introducing, maintaining and defending just and favourable conditions of work," mentioning as well that social security systems serve to compensate for a lack of income from work. Regarding working conditions the Committee has indicated that "The enjoyment of the right to just and favorable conditions of work is a prerequisite for, and result of, the enjoyment of other Covenant rights, for example, the right to the highest attainable standard of physical

<sup>455 &</sup>lt;u>Case of Lagos del Campo v. Peru.</u> Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2017. Series C No. 340, para. 143; IACHR Report 25/18, Case 12,428. Admissibility and Merits. Employees of the Fireworks Factory in Santo Antonio de Jesus and their relatives. Brazil. March 2, 2018, paras. 127 and following.

and mental health, by avoiding occupational accidents and disease, and an adequate standard of living through decent remuneration."<sup>456</sup>

- 244. For its part, the Inter-American Democratic Charter indicates that the promotion and strengthening of democracy requires the full and effective exercise of workers' rights and the application of core labor standards, such as those contained in the Declaration and conventions of the International Labour Organization.<sup>457</sup>
- 245. Is also important to highlight that Article 6 of the American Convention bans slavery, involuntary servitude, and forced labor. In this regard, the Inter-American Court has indicated that this prohibition is an absolute provision of international law, as it has acquired the status of *jus cogens*. That is, it is *erga omnes* applicable and all States are required to comply with it.<sup>458</sup>
- 246. The IACHR has underscored that one of the substantive elements of the right to work is that jobs can be freely chosen or accepted, which means each person can pursue their vocation and dedicate themselves to the activities reasonably in accordance with their expectations or life plans, either by creating opportunities or by taking measures that do not obstruct them.<sup>459</sup> It has also indicated that in order for States to comply with the minimum content of this right, an essential elements is that they must regulate and carry out actions intended to ensure effective compliance, specifically by overseeing public and private employers and punishing violations. This becomes even more important should there be unequal and abusive labor practices deriving from unstable labor relations.<sup>460</sup> It has likewise underscored that States have an obligation to fight workplace discrimination against the LGBTI population:<sup>461</sup> That is, not only must they refrain from such practices but they must establish a comprehensive system for actively combating discrimination based on gender identity or expression in the workplace.
- 247. Lastly, the IACHR and its REDESCA highlight that although the right to work and the right to do so under just and equitable conditions are autonomous and independent rights, their contents are essential for the realization of other human rights and constitute an indivisible and inherent part of human dignity. The right to work means the survival of both the individual and their family.<sup>462</sup>

<sup>&</sup>lt;sup>456</sup> CESCR, General Comment General comment No. 23 (2016) on the right to just and favourable conditions of work, para. 1.

<sup>&</sup>lt;sup>457</sup> IACHR. Work, Education and Resources for Women: The path toward equality in the guarantee of economic, social and cultural rights (2011), para. 88.

<sup>&</sup>lt;sup>458</sup> Inter-American Court. Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary Objections, Merits, Reparations, and Costs. Judgment of October 20, 2016. Series C No. 318, paras. 249, 412, and 413.

<sup>&</sup>lt;sup>459</sup> IACHR. Report 148/18. Case 12,997. Merits. Sandra Cecilia Pavez Pavez. Chile. December 7, 2018, para. 65

<sup>&</sup>lt;sup>460</sup> IACHR. Report 64/18. Case 12,738. Merits. Opario Lemoth Morris *et al.* (Miskito divers). Honduras. May 8, 2018, para. 261.

<sup>&</sup>lt;sup>461</sup> IACHR. Report 148/18. Case 12,997. Merits. Sandra Cecilia Pavez Pavez. Chile. December 7, 2018, para. 63

<sup>&</sup>lt;sup>462</sup> Cf. UN. Committee on Economic, Social and Cultural Rights. General Comment 18: The right to work. E/C.12/GC/18, February 6, 2006, approved on November 24, 2005, para. 1.

#### B. Exclusion of Trans and Gender-Diverse Persons from Work

- 248. The information received by the Commission indicates that the exclusion from work as experienced by trans and gender-diverse persons is a regionwide phenomenon. In the report "Business and Human Rights: Inter-American Standards," the Commission and its REDESCA observed that trans persons are the ones who tend to face the most severe forms of labor discrimination.<sup>463</sup> The Commission reiterates that in Latin America, structural discrimination and exclusion in the labor market for reasons of gender identity and expression is one of the factors that sets in motion "an endless cycle of poverty."<sup>464</sup> Previously, in its report on violence against LGBTI persons, the IACHR made reference to numerous studies and reports from international bodies, civil society organizations, State authorities, activists, and academics documenting and explaining that generalized violence, prejudice, and discrimination obstruct trans persons' opportunities to access the formal labor market.<sup>465</sup>
- 249. As has been mentioned, few statistics have been systematically collected in the countries of the region on trans or gender-diverse persons, or the information has not been disaggregated based on gender identity. Even so, the quantitative information that the IACHR was able to obtain is very concerning. For example, the data from the Uruguay Census indicated that only 23% of trans and gender-diverse persons have formal employment.<sup>466</sup> The IACHR was informed by the Human Right Secretariat of Argentina that it estimates that only 10% of the trans population has gained entry to the job market.<sup>467</sup> In El Salvador, the UNDP has found that only 5% of trans persons have formal employment in a business.<sup>468</sup> In Ontario, Canada, 37% of trans persons have been able to obtain full-time jobs.<sup>469</sup> The data collected in the United States by civil society in 2015 show that the unemployment rate among trans persons was three times higher than the unemployment rate for the population as a whole, with Black and Latino participants and participants of Arab and indigenous origins suffering the highest rates of unemployment.<sup>470</sup>

<sup>&</sup>lt;sup>463</sup> IACHR. Business and Human Rights: Inter-American Standards, report of the Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights (REDESCA) November 1, 2019. para. 382

<sup>&</sup>lt;sup>464</sup> IACHR, <u>*Report on Poverty and Human Rights in the Americas*</u>, September 7, 2017, para. 187.

<sup>&</sup>lt;sup>465</sup> IACHR, <u>Violence against Lesbians, Gays, Bisexuals, Trans and Intersex persons (LGBTI) in the Americas</u>, November 12, 2015, paras. 275.

<sup>&</sup>lt;sup>466</sup> Ministry of Social Development (Uruguay), *Transform 2017; Comprehensive Trans Persons Act: Toward new horizons* (2017), 4.

<sup>&</sup>lt;sup>467</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Secretariat for Human Rights and Cultural Pluralism, the Ministry of Justice and Human Rights (Argentina), pg. 27.

<sup>&</sup>lt;sup>468</sup> UNDP, <u>Informe sobre la situación de los derechos humanos de las mujeres trans en El Salvador</u> (2015), 28.

<sup>&</sup>lt;sup>469</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Egale (Canada), pg. 6.

 <sup>&</sup>lt;sup>470</sup> National Center for Transgender Equality, *Report on the US Transgender Survey: Executive Summary* (2016), 10.

- 250. The lack of access to jobs, the inability to obtain identification reflecting their gender and name, and the disrespect for the names they have taken on and their gender expressions in the workplace, as well as the harassment and bullying from employers and colleagues are problems that the IACHR and its REDESCA have identified as obstacles to the realization of trans persons' right to work. As indicated throughout this report, the lack of access to formal employment tends to expose trans persons to dangerous working conditions, often forcing them to turn to sex work as a survival strategy.<sup>471</sup>
- 251. Additionally, and in view of States' obligations in this area, the Commission and its REDESCA consider it important for States to include trans persons in their national employment plans and policies as a group facing particular vulnerability. It should also include specific evaluation indicators for these individuals in the public policies that address the different aspects of this right, including reduction of the unemployment rate, salary levels, workplace health and safety, time off or paid vacation, etc.
- 252. In the following sections, the Commission will delve into the reasons behind the alarming rates of labor market exclusion facing trans and gender-diverse persons in the region, with a special emphasis on the barriers to their entry into the labor market, the discrimination and harassment they often suffer in the workplace, and the survival strategies they use in this context of exclusion to support themselves economically.

#### 1. Barriers to Entering the Labor Market

253. The IACHR observes that several of the main barriers to entering the labor market specific to trans and gender-diverse persons have to do with the lack of educational opportunities mentioned in the previous chapter; the lack of recognition of their gender identities; high rates of prejudice and discrimination; criminal records; and other barriers, such as migratory status, age, or living with HIV.

#### a. Failure to Recognize Gender Identity

254. The inability to secure official documentation that identifies them with the names and gender indicators that match their gender identities is one of the main obstacles facing trans persons throughout the region.<sup>472</sup> This issue has been addressed by the

<sup>&</sup>lt;sup>471</sup> IACHR. Business and Human Rights: Inter-American Standards, report of the Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights (REDESCA) November 1, 2019, para. 382.

<sup>&</sup>lt;sup>472</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Transwave Jamaica, pg. 2.

United Nations CESCR, which indicated that the lack of legal recognition of gender identity is a barrier to accessing work.<sup>473</sup>

255. The IACHR has received information indicating that trans and gender-diverse persons are rejected upon being interviewed,<sup>474</sup> and many have found themselves in a situation of having moved far along in the selection process, even to the point that employers have demonstrated interest in hiring them, but a radical change in attitude takes place when they submit documentation showing their names according to the registry and the sex assigned at birth—or when they are finally seen as trans persons.<sup>475</sup> Even in States where the change is possible, many times there are bureaucratic hurdles, or problems that arise from a failure to amend other documentation, as described in information received by the IACHR regarding Ecuador.<sup>476</sup> For example, almost half of the trans persons living in Ontario, Canada, said they had not been able to provide job references or degrees with their names or registered sexes corrected when seeking employment.<sup>477</sup>

#### b. Prejudice and Discrimination

- 256. In addition to being the main cause of violence, discrimination, and a lack of educational opportunities, social discrimination and stigma on gender diversity is one of the main reasons why trans and gender-diverse persons are not hired by employers, even when they hold the qualifications necessary and are eligible, or when they have been able to rectify their documentation.<sup>478</sup>
- 257. The same prejudices that pathologize and stigmatize trans and gender-diverse persons mean that in the context of a hiring process, they are not considered a good fit or capable of contributing to the development of a company or enterprise. For

<sup>&</sup>lt;sup>473</sup> Committee on Economic, Social, Cultural, and Environmental Rights, Concluding observations on the fifth periodic report of Costa Rica, E/C.12/CRI/CO/5, October 21, 2016, para. 20.

<sup>&</sup>lt;sup>474</sup> IACHR, <u>Public hearing: Human rights situation of trans persons in Chile</u>, 162nd Period of Sessions, May 24, 2017; International Labour Organization (ILO), <u>ORGULLO (PRIDE) en el trabajo Un estudio sobre la discriminación en el trabajo por motivos de orientación sexual e identidad de género en Costa Rica</u> (2016), pg. 26.

<sup>&</sup>lt;sup>475</sup> Defensoria Pública do Estado de Goiás, Defensoria Pública do Estado de Pernambuco, Forum de Transexuais de Goiás, Associação de Homens Trans & Transmasculinidades, Articulação e Movimento para Travestis e Transexuais de Pernambuco, Coletivo Lutas e Cores, *Relatório sobre o reconhecimento e garantia efetiva dos direitos econômicos, sociais e culturais das pessoas trans no Brasil* (2018), 16; UNDP, <u>Informe sobre la situación</u> <u>de los derechos humanos de las mujeres trans en El Salvador</u> (2015), 29.

<sup>&</sup>lt;sup>476</sup> According to the response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas submitted by Pakta (Ecuador), trans persons can request a change to their sex indicator to that of their gender on their identity document (national identification card) after the age of 18. They can do so one time, in the presence of two witnesses who can attest that they have been trans for at least two years.

<sup>&</sup>lt;sup>477</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Egale (Canada), pg. 6.

<sup>&</sup>lt;sup>478</sup> UNDP, <u>Informe sobre la situación de los derechos humanos de las mujeres trans en El Salvador</u> (2015), 28; Ignacio Gabriel Ulises Borgogno, <u>La transfobia en América Latina y el Caribe un estudio en el marco de</u> <u>REDLACTRANS</u> (2015), 44; Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Venezuela Diversa (Venezuela), pg. 8.

example, in Surinam, civil society has reported that trans women are not accepted in teaching positions.<sup>479</sup> Likewise, and confirming these prejudices, according to information received by the IACHR, the positions that tend to be offered to trans and gender-diverse persons are the ones where it is assumed that they will not be in visual contact with the public or with customers.<sup>480</sup>

- 258. According to information sent by civil society in Barbados, the level of scrutiny to which trans and gender-diverse persons are often subjected during hiring processes is higher than for other candidates.<sup>481</sup> They indicate that although they often receive expressions of interest following a written application, this is not the case for inperson interviews. They even note that some employers have cut off interviews upon detecting visual or verbal cues of a nontraditional gender expression, fiercely monitoring the femininity and masculinity of those who participate in interviews.<sup>482</sup>
- 259. In a survey conducted in Venezuela by civil society, 84% of the trans and genderdiverse persons surveyed stated that they had been denied jobs at least once because of their gender identities. In Colombia, that figure stood at 87%.<sup>483</sup> In Guatemala, while 23% of the trans women surveyed said they had been subjected to stigma and discrimination when attempting to find work, 21% said they were certain they had been turned down for a job simply because of their gender identities.<sup>484</sup> Additionally, in the process of securing formal employment, the legal burden of having to subject oneself to a medical examination can expose an individual to the company or the individual doing the hiring as trans. When this forced exposure takes place in oppressive contexts, it can pose a grave risk to the individual and expose them to abuse and humiliation. Therefore, the medical examination requirement can strongly discourage searching for jobs in the formal sector.
- 260. Another equally discriminatory and violent practice that may be encountered during hiring processes involves requiring the individual deny or renounce their

<sup>&</sup>lt;sup>479</sup> LGBT Platform Suriname, <u>Human Rights Situation for LGBTI Persons and Sexual Rights in the Republic of</u> <u>Suriname: List of Issues submitted to the Working Group on the Suriname report</u> (2014), para. 12.

<sup>&</sup>lt;sup>480</sup> Defensoria Pública do Estado de Goiás, Defensoria Pública do Estado de Pernambuco, Forum de Transexuais de Goiás, Associação de Homens Trans & Transmasculinidades, Articulação e Movimento para Travestis e Transexuais de Pernambuco, Coletivo Lutas e Cores, *Relatório sobre o reconhecimento e garantia efetiva dos direitos econômicos, sociais e culturais das pessoas trans no Brasil* (2018), 16; Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by "Hombres XX" (Mexico), pg. 11.

<sup>&</sup>lt;sup>481</sup> EQUALS, Eastern Caribbean Alliance for Diversity and Equality (ECADE) and ARC International, *Report on Barbados: 29th Session of the Universal Periodic Review* (2018), 6.

<sup>&</sup>lt;sup>482</sup> EQUALS, Eastern Caribbean Alliance for Diversity and Equality (ECADE) and ARC International, *Report on Barbados: 29th Session of the Universal Periodic Review* (2018), 6.

<sup>483</sup> Carsten Balzer, Carla LaGata y Jan Simon Hutta, <u>The social experiences of trans and gender-diverse people in</u> <u>Colombia, India, the Philippines, Serbia, Thailand, Tonga, Turkey and Venezuela</u>, (TGEU, 2015), pg. 16.

<sup>&</sup>lt;sup>484</sup> OTRANS Organización Trans Reinas de la Noche, <u>Situación de los Derechos Humanos de las Personas Travestis</u>, <u>Transgénero y Transexuales en Guatemala: Lista de temas sugeridos presentada al Grupo de Trabajo Sobre el</u> <u>Informe de Guatemala. Comité de Derechos Humanos</u> (2015), para. 30.

gender identity in order to be hired or to remain in a position.<sup>485</sup> In a study conducted by the International Labour Organization (ILO) in Costa Rica, the trans individuals interviewed who were working in stable positions said they had undergone their transition processes after being hired—that is, they did not go through the hiring process with their trans identities explicit.<sup>486</sup> The same study found that for trans men, the situation was more difficult, as there was a significant lack of awareness surrounding their identities.<sup>487</sup> In this context, the Commission and its REDESCA have indicated that companies play an important role in changing stereotypical conceptions of LGBTI persons, and through inclusion, they can foster the principles of acceptance and nondiscrimination and help change harmful social perceptions regarding sexual diversity and gender identity.<sup>488</sup>

#### c. Criminal Records

- 261. The Commission has received information indicating that as a result of the application of legal provisions not compatible with the Convention—or the arbitrary application of legal provisions that are used to persecute trans persons—a large number of trans and gender-diverse persons throughout the region have criminal records. Such legal provisions can include laws that explicitly criminalize gender expression; the criminalization of sex work, the arbitrary application of laws on "morality" or "decency", and the use of other various laws to persecute and criminalize trans and gender-diverse persons.
- 262. This is particularly serious because not only does it affect the rights directly harmed by the acts of persecution, but it produces a record of conduct or criminal record that can present an insurmountable obstacle to obtaining employment, therefore preventing individuals from exercising their right to work.
- 263. Additionally, the United Nations' Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity has described how laws criminalizing sex work tend to be used to persecute trans persons.<sup>489</sup> Effectively, trans and gender-diverse persons who do sex work in jurisdictions where it is criminalized are exposed to extortion, violence, and persecution at the hands of security agents.<sup>490</sup> Additionally, when detentions are officially recorded

<sup>&</sup>lt;sup>485</sup> UNDP, <u>Informe sobre la situación de los derechos humanos de las mujeres trans en El Salvador</u> (2015), 28; International Labour Organization (ILO), <u>ORGULLO (PRIDE) en el trabajo Un estudio sobre la discriminación en</u> <u>el trabajo por motivos de orientación sexual e identidad de género en Argentina</u> (2016), pg. 32.

<sup>&</sup>lt;sup>486</sup> International Labour Organization (ILO), <u>ORGULLO (PRIDE) en el trabajo Un estudio sobre la discriminación en el trabajo por motivos de orientación sexual e identidad de género en Costa Rica</u> (2016), pg. 42.

<sup>&</sup>lt;sup>487</sup> International Labour Organization (ILO), <u>ORGULLO (PRIDE) en el trabajo Un estudio sobre la discriminación en el trabajo por motivos de orientación sexual e identidad de género en Argentina</u> (2016), pg. 28.

<sup>&</sup>lt;sup>488</sup> IACHR. Business and Human Rights: Inter-American Standards, report of the Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights (REDESCA) November 1, 2019. 385.

Human Rights Council, Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity on his mission to Argentina, A/HRC/38/43/Add.1, April 9, 2018, para. 49.

<sup>&</sup>lt;sup>490</sup> IACHR, <u>Violence against Lesbians, Gays, Bisexuals, Trans and Intersex persons (LGBTI) in the Americas</u>, November 12, 2015, para. 131.

and judicial processes are brought against them based on these laws, not only are they denied their only means of subsistence, but the resulting criminal record can make it even more difficult to hold any other type of job. These types of laws tend to be applied arbitrarily, even against trans and gender-diverse persons who are not necessarily performing sex work. Civil society has documented how the police in New York detain trans Latina women on suspicion of performing sex work while they are walking through their own neighborhoods. As stated in the testimony of one of the trans women interviewed, "for the police, all trans women are prostitutes."<sup>491</sup>

- 264. The Commission is likewise aware that many other States have legal provisions in place that, although they do not directly criminalize trans and gender-diverse persons, are used in practice to persecute and criminalize them. This especially includes provisions with vague or imprecise terminology like references to "scandal," to "public morals," or to "indecency."<sup>492</sup> Such provisions tend to give security forces broad powers and discretion to let loose their prejudices and discriminate against trans and gender-diverse persons by arbitrarily regulating the use of public space and judging people based on their physical appearances.<sup>493</sup> In the United Nations framework, such provisions have been called into question by the Human Rights Committee<sup>494</sup> and the Committee against Torture.<sup>495</sup>
- 265. Within this margin of arbitrariness, many trans persons, especially trans women, have been subjected to institutional violence, arbitrary detentions, and baseless charges. For example, the IACHR has received information indicating that following the *coup d'état* in 2009 in Honduras, the Policing and Social Coexistence Act of 2002 was frequently used to arbitrarily arrested many trans and gender-diverse persons, especially sex workers, based on highly subjective interpretations of concepts like

<sup>&</sup>lt;sup>491</sup> Human Rights Watch, Sex Workers at Risk, Condoms as Evidence of Prostitution in Four US Cities (2012), pg. 20.

<sup>&</sup>lt;sup>492</sup> IACHR, <u>Violence against Lesbians, Gays, Bisexuals, Trans and Intersex persons (LGBTI) in the Americas</u>, November 12, 2015, paras. 86 and 87. The IACHR report cited the following examples: [Argentina] Law 219-1951, Province of Jujuy, "against morals and good customs;" and the Province of Salta, Law 7135, Article 114, "prostitution;" [Chile] Criminal Code, Article 373, "good customs," "scandal;" [El Salvador] Ordinance on Citizen Coexistence of the Municipality of San Salvador, Article 32, "morals and good customs;" [Ecuador] Guayaquil, Ordinance Regulating the Urban Renewal Zone, Article 4(4), "public order" and "good customs;" [Guatemala] Criminal Code, Article 489, "good customs;" [Honduras] Policing and Social Coexistence Act, Article 100, "suspicious conduct;" [Mexico] Criminal Code of the State of Jalisco, Article 135, "acts against public morals," "obscene displays;" and others.

<sup>&</sup>lt;sup>493</sup> IACHR, <u>Violence against Lesbians, Gays, Bisexuals, Trans and Intersex persons (LGBTI) in the Americas</u>, November 12, 2015, paras. 86.

<sup>&</sup>lt;sup>494</sup> Human Rights Committee, Concluding observations on the third, fourth and fifth periodic reports of El Salvador, CCPR/CO/78/SLV, August 22, 2003, para. 16.

<sup>&</sup>lt;sup>495</sup> Committee against Torture, Concluding observations: Costa Rica, CAT/C/CRI/CO/2, July 7, 2008, para. 11.

"social coexistence" and "morality."<sup>496</sup> In other States, drug laws or laws against "resisting authority" are used similarly.<sup>497</sup>

#### 2. Workplace Discrimination and Harassment

- 266. Trans and gender-diverse persons who are able to join the labor market face high rates of discrimination and workplace harassment.<sup>498</sup> The ILO has recognized that trans persons are the ones facing the most severe forms of discrimination at work.<sup>499</sup>
- 267. Such aggression can include anything from pejorative comments to serious workplace harassment and firing for being trans or gender-diverse. In many contexts, it is common to allow pejorative comments that humiliate people based on their gender-diverse identities. Such comments are often described as tongue-incheek, jokes, or part of "having some fun" and are dismissed or normalized by superiors, colleagues, and even by those targeted by them.<sup>500</sup> This harassment is often seen as "low intensity" or an "innocent joke," with no bad intentions.<sup>501</sup> Legitimizing and normalizing these types of comments perpetuates an environment of hostility toward trans and gender-diverse persons, impacting their emotional health and leading to permanent anxiety and discomfort. Trans persons often must struggle with themselves over whether to keep the job or demand respect for their identities or gender expressions. Additionally, when the harassment does not stop, victims are absent more often from work, and they may eventually end up leaving the job.<sup>502</sup> Other examples of mistreatment frequently described by trans or genderdiverse persons include being forced to hide or deny their gender identities; <sup>503</sup> using

<sup>&</sup>lt;sup>496</sup> Carsten Balzer and Jan Simon Hutta, <u>Transrespect Versus Transphobia Worldwide: a comparative review of the human-rights situation of Gender-variant/Trans people</u> (Berlin: TGEU, 2012), pg. 52.

<sup>&</sup>lt;sup>497</sup> Human Rights Council, Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity on his mission to Argentina, A/HRC/38/43/Add.1, April 9, 2018, para. 58; United Nations, Report of the Special Rapporteur on violence against women, its causes and consequences, on her mission to Argentina, A/HRC/35/30/Add.3, April 12, 2017, para. 37; Akahatá (*et al.*), <u>Situación de los derechos humanos de las personas travestis y trans en la Argentina</u> (2016), 5; REDTRASEX, <u>Trabajo sexual institucional y violencia (2016)</u>, 4.

<sup>&</sup>lt;sup>498</sup> Commission on Human Rights of the Federal District *et al.*, <u>Derechos laborales de las personas LGBTI</u> (2017), 8; IACHR, Public Hearing: <u>Human rights situation of young people in Guyana</u>, 161st Period of Sessions, March 22, 2017.

<sup>&</sup>lt;sup>499</sup> ILO, Discrimination at work on the basis of sexual orientation and gender identity: Results of the ILO's PRIDE Project (2016), 2.

REDLACTRANS, <u>Informe sobre el acceso a los derechos económicos, sociales, culturales y ambientales de la población trans en Latinoamérica y el Caribe</u> (2014), pg. 40. See examples in: ILO, UNAIDS, and UNDP, <u>Promoção dos Direitos Humanos de pessoas LGBT no Mundo do Trabalho: Construindo a iqualdade de oportunidades no mundo do trabalho: combatendo a homo-lesbo-transfobia</u> (Brasilia: OIT/UNAIDS/PNUD, 2015), 25.

<sup>&</sup>lt;sup>501</sup> International Labour Organization (ILO), <u>ORGULLO (PRIDE) en el trabajo Un estudio sobre la discriminación en</u> <u>el trabajo por motivos de orientación sexual e identidad de género en Costa Rica</u> (2016), pg. 72.

<sup>&</sup>lt;sup>502</sup> International Labour Organization (ILO), <u>ORGULLO (PRIDE) en el trabajo Un estudio sobre la discriminación en</u> <u>el trabajo por motivos de orientación sexual e identidad de género en Argentina</u> (2016), pg. 30.

<sup>&</sup>lt;sup>503</sup> UNDP, Informe sobre la situación de los derechos humanos de las mujeres trans en El Salvador (2015), 29.

a bathroom that does not correspond with their gender identity;<sup>504</sup> being forced to wear uniform corresponding to a gender with which they do not identify;<sup>505</sup>or superiors or colleagues sharing information on their gender identities without permission.<sup>506</sup>

- 268. According to data collected in the United States by civil society in 2015, 80% of trans and gender-diverse persons with jobs stated they had experienced some type of discrimination in the workplace or had had to take some action to prevent these discriminatory actions.<sup>507</sup> A study carried out by the ILO in Costa Rica found that 100% of the trans persons surveyed said they had suffered from some type of workplace discrimination.<sup>508</sup> In Ecuador, a study found that 67.4% of trans persons with jobs had experienced discrimination, exclusion, or violence in the workplace.<sup>509</sup>
- 269. The IACHR has received information on cases in which trans women have been dismissed for "being a bad look" or have been explicitly asked to "not move forward" with their transition processes.<sup>510</sup> In general, the moment of the transition is identified as the point after which the harassment and abuse can increase considerably. In fact, for many trans persons, having the opportunity to pursue formal employment depends largely on when they transition.<sup>511</sup> Discrimination can occasionally be so strong that some people opt to postpone their transition in order to keep their jobs.<sup>512</sup> Additionally, the fact of having been able to obtain a job in such a difficult context means that individuals are willing to tolerate a significant amount of hostility or onerous conditions in order to keep the job and earn an income.
- 270. The Commission also learned of cases of trans persons who suffered harassment as public employees, responsibility for which can be directly attributed to the State.<sup>513</sup> For example, in Costa Rica, a trans woman working for the Ministry of Public Works
- <sup>504</sup> REDLACTRANS, <u>Esperando la muerte: Informe Regional 2016-2017</u> (2017), pg. 41. National Center for Transgender Equality, <u>The Report of the 2015 U.S. Transgender Survey</u> (Washington, DC: National Center for Transgender Equality, 2016), 155.
- <sup>505</sup> IACHR, <u>Public hearing: Human rights situation of trans persons in Chile</u>, 162nd Period of Sessions, May 24, 2017.
- <sup>506</sup> National Center for Transgender Equality, <u>The Report of the 2015 U.S. Transgender Survey</u> (Washington, DC: National Center for Transgender Equality, 2016), 155.
- <sup>507</sup> National Center for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey* (Washington, DC: National Center for Transgender Equality, 2016), 155.
- <sup>508</sup> International Labour Organization (ILO), <u>ORGULLO (PRIDE) en el trabajo Un estudio sobre la discriminación en</u> <u>el trabajo por motivos de orientación sexual e identidad de género en Costa Rica</u> (2016), pg. 26.

- <sup>510</sup> REDLACTRANS, Violaciones a los Derechos Humanos de Mujeres Trans en Costa Rica, El Salvador, Guatemala, Honduras y Panamá (2016), 30.
- <sup>511</sup> International Labour Organization (ILO), <u>ORGULLO (PRIDE) en el trabajo Un estudio sobre la discriminación en</u> <u>el trabajo por motivos de orientación sexual e identidad de género en Costa Rica</u> (2016), pg. 54.
- <sup>512</sup> International Labour Organization (ILO), <u>ORGULLO (PRIDE) en el trabajo Un estudio sobre la discriminación en</u> <u>el trabajo por motivos de orientación sexual e identidad de género en Costa Rica</u> (2016), pg. 42.
- <sup>513</sup> Inter-American Court. Juridical Condition and Rights of Undocumented Migrants. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 139.

<sup>&</sup>lt;sup>509</sup> National Council on Gender Equality (Ecuador), Una aproximación a la situación de los derechos humanos de las personas trans en Ecuador (2017), pg. 85.

and Transportation was subjected to violence and verbal and physical harassment at the hands of her colleagues after having begun to transition. When the institution failed to react, the attacks increased, allowing the general harassment to proliferate, eventually leading her to leave her job.<sup>514</sup>

# 3. Options for Survival

271. Faced with the difficulty of securing a job, trans and gender-diverse persons have developed a variety of survival strategies to sustain themselves. The following sections look at the main activities trans and gender-diverse persons pursue to earn income in the contexts of exclusion in which they must operate.

# a. Self-employment and Trades

272. Self-employment tends to be one of the alternatives that trans and gender-diverse persons with some knowledge or skills in a trade find. Even so, it is often difficult to fight stereotypes and the sexist division of labor, which tends to narrow the possibilities—especially for trans women—to certain work that society has historically distributed based on gender.<sup>515</sup> Thus, activities related to sewing, beauty work, makeup, or hairdressing, are areas where trans women have tended to meet with some level of acceptance. Although these types of occupations can provide support and the means to meet needs, they frequently end up being normalized as trades that are "inherent" to trans women, and therefore, the only ones available to them.<sup>516</sup>

## b. Trans Labor Networks and Cooperatives

273. The IACHR has received information on several initiatives carried out by organizations of trans persons that, in response to the lack of job opportunities, organized labor or cooperative networks.<sup>517</sup> These collectives tend to arise from contexts in which groups of trans persons have been able to establish a strong degree of cohesion and organization. The basic aim of these types of projects tends to be to provide an alternative to sex work as the sole form of support. The initiatives

<sup>&</sup>lt;sup>514</sup> REDLACTRANS, Violaciones a los Derechos Humanos de Mujeres Trans en Costa Rica, El Salvador, Guatemala, Honduras y Panamá (2016), 17.

<sup>&</sup>lt;sup>515</sup> National Council on Gender Equality (Ecuador), Una aproximación a la situación de los derechos humanos de las personas trans en Ecuador (2017), pg. 82.

<sup>&</sup>lt;sup>516</sup> National Council on Gender Equality (Ecuador), Una aproximación a la situación de los derechos humanos de las personas trans en Ecuador (2017), pg. 85.

<sup>&</sup>lt;sup>517</sup> Mauro Cabral and Johanna Hoffman, <u>"Me prequitaron cómo vivía / sobreviviendo, dije, sobreviviendo...": trans</u> <u>latinoamericanas en situación de pobreza extrema</u> (OutRight Action International, 2009), pg. 8.

include community radio stations,<sup>518</sup> textile cooperatives,<sup>519</sup> theater companies,<sup>520</sup> and hairdressers.<sup>521</sup>

#### c. Sex Work

- 274. The Commission has received a large amount of information on the few job opportunities available to trans women, often forcing them to do sex work to support themselves.<sup>522</sup> Likewise, the stigma and prejudices faced by trans and gender-diverse persons has normalized sex work as inevitable and "as an inherent characteristic of trans women and not a result of historic marginalization and stigma."<sup>523</sup> It is the Commission's understanding that the discrimination faced by trans women creates a cycle of poverty and exclusion that makes them vulnerable, thus compelling them to turn to sex work as a source of income.
- 275. The figures collected in surveys conducted mostly by civil society organizations are particularly concerning.<sup>524</sup> For example, the IACHR has been informed that, on average in the region, 90% of trans women perform sex work.<sup>525</sup> In Chile, 95% of the trans women surveyed perform sex work.<sup>526</sup> The figure was the same in Colombia.<sup>527</sup> In Paraguay, the survey found that 86% of trans women support themselves using sex work,<sup>528</sup> and in El Salvador, the UNDP found the rate approach 85%.<sup>529</sup> In Argentina, a recent survey revealed that sex work is still the main source

<sup>&</sup>lt;sup>518</sup> National Council on Gender Equality (Ecuador), Una aproximación a la situación de los derechos humanos de las personas trans en Ecuador (2017), pg. 92.

El Teje, "<u>La cooperativa Nadia Echazú: Corte y Confección de una Cooperativa</u>", December 2008; International Labour Organization (ILO), <u>ORGULLO (PRIDE) en el trabajo Un estudio sobre la discriminación en el trabajo por</u> <u>motivos de orientación sexual e identidad de género en Argentina</u> (2016), pg. 40.

<sup>&</sup>lt;sup>520</sup> Telam, "<u>Una cooperativa trans apuesta al teatro como salida laboral y como canal de identidad</u>," September 3, 2013.

<sup>&</sup>lt;sup>521</sup> Human Rights Council, Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity on his mission to Argentina, A/HRC/38/43/Add.1, April 9, 2018, para. 39.

<sup>&</sup>lt;sup>522</sup> IACHR, <u>Violence against Lesbians, Gays, Bisexuals, Trans and Intersex persons (LGBTI) in the Americas</u>, November 12, 2015, paras. 280, 372, and 373; <u>Report on Poverty and Human Rights in the Americas</u>, September 7, 2017, para. 158.

<sup>&</sup>lt;sup>523</sup> REDLACTRANS, *Esperando la muerte: Informe Regional 2016-2017* (2017), pg. 41.

<sup>&</sup>lt;sup>524</sup> The IACHR is aware that the surveys and studies conducted by the different organizations and States did not systematically collect data in a way that is comparable and may have had different methodologies, geographic scopes, and sizes. Therefore, the results presented in this chapter are meant to be illustrative and not intended to provide a statistical measurement for comparing States.

REDLACTRANS, <u>Informe sobre el acceso a los derechos económicos, sociales, culturales y ambientales de la población trans en Latinoamérica y el Caribe</u> (2014), pg. 20.

<sup>&</sup>lt;sup>526</sup> Ignacio Gabriel Ulises Borgogno, <u>La transfobia en américa latina y el caribe un estudio en el marco de</u> <u>REDLACTRANS</u> (2015), 44.

<sup>527</sup> Carsten Balzer, Carla LaGata, and Jan Simon Hutta, <u>The social experiences of trans and gender-diverse people</u> <u>in Colombia, India, the Philippines, Serbia, Thailand, Tonga, Turkey and Venezuela</u> (TGEU, 2015), pg. 16.

<sup>&</sup>lt;sup>528</sup> Panambí Asociación de Travestis, Transexuales y Transgéneros, Informe 2017: Situación de violencia hacia el colectivo trans (Asunción: Panambí, 2018), 31.

<sup>&</sup>lt;sup>529</sup> UNDP, Informe sobre la situación de los derechos humanos de las mujeres trans en El Salvador (2015), 28.

of income for more than 70% of trans women.<sup>530</sup> The only exception to these figures received by the IACHR is the information sent by the State of Ecuador from its survey on the living conditions of the LGBTI population. It found comparatively lower results, with 37.4% of the trans persons interviewed reporting they are or were involved in sex work.<sup>531</sup>

- 276. Many of the conditions in which sex work is performed expose trans women to grave risk of becoming victims of exploitation and extreme violence at the hands of clients, security agents, or even those who live nearby when they do this work on the street.<sup>532</sup> For example, a 2017 study conducted in the province of Neuquén, Argentina, found that over the last five years, of those trans persons who perform sex work, 64% suffered physical and verbal attacks from clients, 33% experienced this from neighbors, 33% had contact with the police, and 18% were infected by some illness. Only 12% said they had not experienced any of these problems.<sup>533</sup> Likewise, 97% of the trans persons surveyed in Venezuela reported having experienced harassment from the police, and 56% said this type of violence was constant.<sup>534</sup> In some contexts, trans women who perform sex work are also the victims of organized crime and gangs, which extort them and require them to participate in violence against their will.<sup>535</sup>
- 277. The IACHR is aware of the existence of the vigorous debates surrounding the nature of sex work. The Commission has received information indicating that a significant portion of the trans women who do this kind of work do not wish to continue doing it. Surveys have found that in Venezuela, 86% of the trans women surveyed perform sex work, and that of that group, more than 90% said they "would leave sex work if

<sup>533</sup> Undersecretary of Human Rights of the Province of Neuquén, *Personas trans y derechos económicos, sociales, culturales y ambientales en la Provincia de Neuquén* (2018), pg. 13.

<sup>534</sup> Carsten Balzer, Carla LaGata, and Jan Simon Hutta, <u>The social experiences of trans and gender-diverse people</u> <u>in Colombia, India, the Philippines, Serbia, Thailand, Tonga, Turkey and Venezuela</u> (TGEU, 2015), pg. 19.

<sup>&</sup>lt;sup>530</sup> Ministry of the Public Defender and Bachillerato Popular Trans 'Mocha Celis,' <u>La Revolución de las Mariposas.</u> <u>A diez años de La Gesta del Nombre Propio</u> (Ministry of the Public Defender, 2017), pg. 45.

<sup>&</sup>lt;sup>531</sup> National Council on Gender Equality (Ecuador), Una aproximación a la situación de los derechos humanos de las personas trans en Ecuador (2017), pg. 85.

<sup>&</sup>lt;sup>532</sup> Carsten Balzer and Jan Simon Hutta, <u>Transrespect Versus Transphobia Worldwide: a comparative review of the human-rights situation of Gender-variant/Trans people</u> (Berlin: TGEU, 2012), pg. 46; Panambí Asociación de Travestis, Transexuales y Transgéneros, Informe 2017: Situación de violencia hacia el colectivo trans (Asunción: Panambí, 2018), 10 and 24; Instituto Runa, Realidades Invisibles: Violencia contra Travestis, Transexuales y Transgéneros que Ejercen Comercio Sexual en la Ciudad de Lima (Lima: Instituto Runa, 2007); Miluska del Carmen Luzquiños Tafur, CEDOSTALC PERU 2017: Un informe, que demuestra que nos siguen vulnerando el derecho a la identidad (2017), 11; LGBT Platform Suriname, Human Rights Situation for LGBTI Persons and Sexual Rights in the Republic of Suriname: List of Issues submitted to the Working Group on the Suriname report (2014), para. 12.

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by CDHFMC (Mexico), pg. 12.The IACHR also underscores that the lack of protection for different types of work, including sex work, exposes trans persons to situations of enhanced vulnerability, such as the manipulation of their work by exploitative criminal agents and networks. The comparative case law of the European Union Court of Justice addresses the lack of protection from this type of exploitation: C-340/14 and C-341/14 Trijber and Harmsen [2015] EU:C:2015:641).

they had any other type of work that would enable them to live."<sup>536</sup> In Argentina, 87.2% of the trans women and *travestis* surveyed said they would leave prostitution if they had access to employment.<sup>537</sup> It is worth noting that the persons interviewed frequently described sex work as something to which they are "condemned "or something they are "forced" to do, or they describe it as something that they have "fallen into."<sup>538</sup>

- 278. The IACHR is concerned at information indicating that numerous trans and genderdiverse girls have been involved in prostitution, especially starting in their adolescence.<sup>539</sup> The IACHR emphasizes that any involvement of an individual under the age of 18 in sex work cannot, from any perspective, be considered labor. Rather, it is a grave form of child sex exploitation.
- 279. Lastly, although it is impossible to generalize, some sources indicate that trans men do not turn to sex work as often and can find other ways to engage in labor, as long as their gender identities as trans are not noticed.<sup>540</sup> For example, in Argentina, a study found that 85% of the trans men surveyed said they had a job—48.5% in the informal sector and 36.4% in the informal sector—and the other 15% were supported by family.<sup>541</sup>

## 4. Exclusion from the Right to Social Security

- 280. One of the consequences of the exclusion from the labor force experienced by trans and gender-diverse persons is the inability to enjoy the benefits of social security. By supporting themselves through informal labor, they are kept out of the formal system of social benefits that tends to be available from formal employment.
- 281. The Yogyakarta Principles urge States to take all necessary legislative, administrative and other measures to ensure equal access, without discrimination on the basis of sexual orientation or gender identity, to social security and other social protection measures, including employment benefits, parental leave,

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Venezuela Diversa Asociación Civil (Venezuela), pg. 2.

<sup>&</sup>lt;sup>537</sup> Ministry of the Public Defender and Bachillerato Popular Trans 'Mocha Celis,' <u>La Revolución de las Mariposas.</u> <u>A diez años de La Gesta del Nombre Propio</u> (Ministry of the Public Defender, 2017), pg. 61.

<sup>&</sup>lt;sup>538</sup> National Council on Gender Equality (Ecuador), Una aproximación a la situación de los derechos humanos de las personas trans en Ecuador (2017), pg. 88. International Labour Organization (ILO), <u>ORGULLO (PRIDE) en el</u> trabajo Un estudio sobre la discriminación en el trabajo por motivos de orientación sexual e identidad de <u>aénero en Argentina</u> (2016), pg. 36.

<sup>&</sup>lt;sup>539</sup> IACHR, <u>Violence against Lesbians, Gays, Bisexuals, Trans and Intersex persons (LGBTI) in the Americas</u>, November 12, 2015, para. 280; Carsten Balzer, Carla LaGata, and Jan Simon Hutta, <u>The social experiences of</u> <u>trans and gender-diverse people in Colombia, India, the Philippines, Serbia, Thailand, Tonga, Turkey and</u> <u>Venezuela</u> (TGEU, 2015), pg. 17.

<sup>&</sup>lt;sup>540</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by "Hombres XX" (Mexico), pg. 11.

<sup>&</sup>lt;sup>541</sup> Ministry of the Public Defender and Bachillerato Popular Trans 'Mocha Celis,' <u>La Revolución de las Mariposas.</u> <u>A diez años de La Gesta del Nombre Propio</u> (Ministry of the Public Defender, 2017), pg. 45.

unemployment benefits, health insurance or health care or benefits, other social insurance, family benefits, funeral benefits, pensions and benefits with regard to the loss of support for spouses or partners as the result of illness or death.<sup>542</sup> The human right of trans persons to social security will be looked at in more detail later in this report.

282. Regarding this, the IACHR also recalls that the bodies of the Inter-American system have recognized protection of the right to Social Security under both Article 26 of the ACHR<sup>543</sup> and Article XVI of the American Declaration.<sup>544</sup> The Commission has specifically indicated that States must ensure their legislation, policies, programs, and resources facilitate access to social security for all members of society. In this context, they must adopt specific measures on the application of social security plans, particularly plans intended to protect disadvantaged and marginalized individuals and groups, and adopt oversight measures to assess to what degree this right is exercised. The Commission has also indicated that the approach of State social security programs to health must be based on this right. Not only must their design and scope take into account the financial capacity and employment status of recipient populations, they must also consider specific health needs.<sup>545</sup>

# C. Inclusion of Trans and Gender-Diverse Persons in the Workforce

- 283. OAS States face a significant challenge in guaranteeing the right to work to trans and gender-diverse persons and ensuring they are fully included in the labor market. The level of exclusion the majority of them face is so significant that in order to reverse it, strategies must be designed that include the implementation of measures of affirmative action in the short term.
- 284. It is the IACHR's view that in order to achieve this and effectively comply with general international obligations to guarantee rights and adopt domestic measures, States must address the issue with a series of complementary measures.-Among them, the Commission would emphasize the following: enact a workplace antidiscrimination regulatory framework; implement public policies aimed specifically at inserting trans persons into the labor market; adopt measures to involve the private sector and businesses in the strategy for including trans and gender-diverse persons in the labor market; promote the participation of unions in the area of addressing discrimination based on gender identity and expression; and

<sup>&</sup>lt;sup>542</sup> Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity: "The Yogyakarta Principles, March 2007, Principle 13(a).

<sup>&</sup>lt;sup>543</sup> Inter-American Court. Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of March 6, 2019. Series C No. 375, paras. 170 and following.

<sup>&</sup>lt;sup>544</sup> IACHR Report No. 50/16 Case 12,834, Merits (publication), Undocumented Workers (United States) November 30, 2016, paras 115 and following.

<sup>&</sup>lt;sup>545</sup> IACHR. Report 64/18. Case 12,738. Merits. Opario Lemoth Morris *et al.* (Miskito divers). Honduras. May 8, 2018, paras. 266 and 268.

adopt positive measures to reverse the effects of decades of exclusion and marginalization.

285. Also, the IACHR welcomes the recommendation made by the Committee on Economic, Social, and Cultural Rights that laws and policies related to the right to just and favorable conditions of work must be formulated in consultation not only with traditional social partners such as workers and employers and their representative organizations, but also with direct beneficiaries who could be organized in collectives, such as those representing trans and gender-diverse persons.<sup>546</sup>

## 1. Antidiscrimination Labor Regulations

- 286. The Inter-American Court has found that the principle of nondiscrimination in the area of labor rights is especially relevant because the very nature of this branch of law is grounded in the protection of the worker as the more vulnerable party in the unequal relationship with the employer.<sup>547</sup> Thus, States must ensure strict compliance with those labor regulations that best protect workers and do so without any discrimination. They must adopt all administrative, legislative, or judicial measures necessary to amend *de jure* discriminatory situations and eradicate discriminatory practices used by individual employers or groups of employers.<sup>548</sup> Along these lines, the Committee on Economic, Social, Cultural, and Environmental Rights underscored that juridical equality with regard to labor rights must be guaranteed to all workers, without distinctions based on gender identity.<sup>549</sup>
- 287. In this framework, one basic measure for protecting trans and gender-diverse persons as regards their right to work is the enactment of laws explicitly prohibiting discrimination based on gender identity or expression. The scope of the law must include protecting those who already have jobs as well as those who are seeking employment, so as to protect from discriminatory treatment or decisions in the context of hiring processes. In this regard, the Yogyakarta Principles urge States to prohibit discrimination based on gender identity and expression in public and

<sup>&</sup>lt;sup>546</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 23 (2016) on the right to just and favourable conditions of work (Article 7 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/23, April 27, 2016, para. 56.

<sup>&</sup>lt;sup>547</sup> Inter-American Court. Juridical Condition and Rights of Undocumented Migrants. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 149.

<sup>&</sup>lt;sup>548</sup> Inter-American Court. Juridical Condition and Rights of Undocumented Migrants. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 149.

<sup>&</sup>lt;sup>549</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 23 (2016) on the right to just and favourable conditions of work (Article 7 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/23, April 27, 2016, para. 11.

private employment, including with regard to professional training, hiring, promotions, dismissals, working conditions, and remuneration.<sup>550</sup>

- 288. So far, only several States have moved forward in enacting antidiscrimination laws whose scope specifically focuses on labor discrimination. In Canada, the Canadian Human Right Act bans employment discrimination based on gender identity or expression.<sup>551</sup> In Chile, Law 20,940, on the modernization of labor relations, added gender identity to the Labor Code as a prohibited grounds for discrimination.<sup>552</sup> In the United States, although there is no federal labor law enacted by Congress that protects gender identity or expression, more than 20 states and jurisdictions have enacted local legislation providing such protection.<sup>553</sup> Additionally, the IACHR highlights the decision of the Supreme Court of the United States in the consolidated cases known as Bostock *v*. Clayton County,<sup>554</sup> in which it found that employers who fire a person for being gay or trans violate the ban on labor discrimination set forth in Title VII of the Civil Rights Act. The Commission takes note that the protection granted for the protected category of "sex" extends to the entire federal jurisdiction of the United States.
- 289. In other OAS States, general antidiscrimination laws have been enacted that specifically banned discrimination based on gender identity and that also apply to labor issues. In this regard, the Commission takes note of the experience of Ecuador, the only OAS State so far that has enshrined protection from discrimination based on gender identity in its Constitution.<sup>555</sup> Countries that have enacted laws in this regard include Bolivia,<sup>556</sup> Colombia,<sup>557</sup> Honduras,<sup>558</sup> and Uruguay.<sup>559</sup> Lastly, some antidiscrimination laws explicitly include gender identity but are more narrow in scope. For example, in El Salvador<sup>560</sup> and Costa Rica,<sup>561</sup> the ban only covers people who work in public administration.
- 290. It is the Commission's view that enacting these types of antidiscrimination laws must be a priority for OAS Member States. The lack of a protective legal framework enhances the vulnerability faced by trans and gender-diverse persons and, with regard to their access to the right to work, allows for their arbitrary exclusion from

- <sup>554</sup> Supreme Court of the United States, Bostock v. Clayton County, Georgia, judgment of June 15, 2020.
- <sup>555</sup> Constitution of Ecuador, Article 11(2).
- <sup>556</sup> Criminal Code of Bolivia, Article 281; Youth Act (2013), Article 6(7)
- <sup>557</sup> Criminal Code, Article 134(A) (added by Law 1482 of November 30, 2011).
- <sup>558</sup> Article 321 of the Criminal Code (amended by Decree 23 of 2013).
- Law 17,817 (Struggle against Racism, Xenophobia, and Discrimination), Article 2 (includes "sexual identity" among grounds for discrimination that are prohibited).

<sup>&</sup>lt;sup>550</sup> Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity: "The Yogyakarta Principles, March 2007, Principle 12(a).

<sup>&</sup>lt;sup>551</sup> *Canadian Human Rights Act*, R.S.C., 1985, c. H-6, Articles 2 and 3(1).

<sup>&</sup>lt;sup>552</sup> Law 20,940, "Modernizing the labor relations system," and acted on August 29, 2016, Article 1(1).

For a full list of the states that provide protection, see: Movement Advancement Project (MAP), <u>State</u> <u>Employment Non-Discrimination Laws</u> (2018). Also, with regard to Puerto Rico, see Law 22-2013 (Senate Bill 238); 2013.

<sup>&</sup>lt;sup>560</sup> Decree No. 56 (2010), *Official Newspaper*, Volume 387, Article 1.

<sup>&</sup>lt;sup>561</sup> Decree No. 38,999: Policy of the executive branch to eradicate discrimination against the sexually-diverse population from its institutions. *Gazette* 93, May 15, 2015.

hiring processes, for discrimination against them, for harassment and mistreatment as they do their work; or for their arbitrary dismissals for the simple fact of being trans or gender-diverse. Without a law that explicitly includes gender identity and expression as prohibited grounds for discrimination, victims are unprotected and at a disadvantage when asserting their rights. In this context, the IACHR views it as essential for OAS Member States to move forward with the ratification of the Inter-American Convention against all Forms of Discrimination and Intolerance.

#### 2. Public Policies on Entry to the Labor Market

- 291. The Commission underscores the importance of the leadership role played by the Executive Branch in sending a clear message that the inclusion of trans persons in the workforce is a priority. There are many and varied initiatives that can be advanced from the Executive Branch.
- 292. Regarding progress made by States in this area, the IACHR highlights that the United States' Office of Personnel Management<sup>562</sup> has issued "Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace."<sup>563</sup> It addresses critical legal questions around trans and gender-diverse persons, such as confidentiality regarding their transition processes, the protection of medical information, the elimination of dress codes that establish requirements based on the gender of the person, unconditional respect for self-perceived identity, the obligation to speak and refer to everyone in accordance with their gender identities regardless of whether their documentation has been formally changed, and access to bathrooms based on self-identification, among other things.
- 293. In Argentina, the Ministry of Labor, Employment, and Social Security established the Secretariat of Labor, Gender Advisory Services, and Sexual Diversity with the aim of moving towards crosscutting labor policies, programs, and affirmative actions aimed at incorporating individuals who are the victims of discrimination, violence, and/or exclusion based on their genders and/or sexual orientations. Additionally, the Ministry of Labor, Employment, and Social Security worked with UNDP to issue the *Guía de acciones para una inclusión sociolaboral de travestis, transexuales y transgéneros* [Action guide for the socio-labor inclusion of *travestis*, transsexuals, and trans persons].<sup>564</sup> The document includes specific recommendations, with a series of good practices on designing and implementing actions to improve the employability and socio-labor inclusion of trans persons.
- 294. With regard to the high rates of prejudice that currently exist against trans and gender-diverse persons, the IACHR emphasizes that programs to help insert trans

<sup>&</sup>lt;sup>562</sup> The United States' Office of Personnel Management (OPM) is an independent agency of the United States federal government that administers human resources for the civil service side of the federal government.

<sup>&</sup>lt;sup>563</sup> Office of Personnel Management, <u>Guidance Regarding the Employment of Transgender Individuals in the</u> <u>Federal Workplace</u> (2011).

<sup>&</sup>lt;sup>564</sup> Ministry of Labor, Employment, and Social Security – Violeta Alegre, <u>Guía de acciones para una inclusión</u> sociolaboral de travestis, transexuales y transgéneros: Recomendaciones basadas en las acciones implementadas en ocho localidades de la Argentina (Buenos Aires: UNDP, 2017).

persons into the labor market must necessarily be accompanied by ongoing training processes for the people in charge of their implementation and for those with whom the beneficiaries are supposed to work. Additionally, the programs must include monitoring to provide close support to beneficiaries during the incorporation process and address any problems that may arise as implementation moves forward.

- 295. During a hearing held in 2013, the representation of the State of El Salvador informed the IACHR that trans women were being hired at different sites of the "Ciudad Mujer" program with proper recognition of their gender identities, facilitating access to a formal job and the support needed.<sup>565</sup> However, years later, the Commission received information indicating that the trans women hired had been harassed—even with death threats—by the program heads, and so many of them had needed to quit.<sup>566</sup> In the words of the ILO, "a workplace that has not been prepared ahead of time for the inclusion of trans women can lead to their expulsion, adding to the many that have been historically expelled."<sup>567</sup>
- 296. The IACHR reiterates that, from a human rights approach, the principle of participation in the public policy cycle is particularly relevant when pursuing the inclusion of trans and gender-diverse person in the labor market. The planning, implementation, monitoring, and evaluation of these policies will not be successful without provisions for the specific needs and modalities under which these beneficiaries could take advantage of them.

#### a. Coordination with Companies and the Private Sector

297. The relationship between human rights and the business world was placed on the world policy agenda in 1990, heightening global social awareness as to the impact that businesses have on human rights.<sup>568</sup> Years later, in 2005, in the framework of the United Nations, the mandate was established for the General Secretary's Special Representative on human rights and transnational and other commercial enterprises, the main result of which was the "UN Guiding Principles on Business and Human Rights," formally adopted by the Human Rights Council in its resolution 17/4 of 2011.<sup>569</sup> Although the principle of State responsibility is the same, this instrument establishes categorically that businesses must respect human rights, which means that "they should avoid infringing on the human rights of others and

<sup>&</sup>lt;sup>565</sup> IACHR, <u>Public hearing: Allegations of violence against trans persons in El Salvador</u>, 149th Period of Sessions, October 30, 2013 (see minute 33:12). Available at:

<sup>&</sup>lt;sup>566</sup> REDLACTRANS, Violaciones a los Derechos Humanos de Mujeres Trans en Costa Rica, El Salvador, Guatemala, Honduras y Panamá (2016), 29.

<sup>&</sup>lt;sup>567</sup> International Labour Organization (ILO), <u>ORGULLO (PRIDE) en el trabajo Un estudio sobre la discriminación en</u> <u>el trabajo por motivos de orientación sexual e identidad de género en Argentina</u> (2016), pg. 37.

<sup>&</sup>lt;sup>568</sup> Human Rights Council, "Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises." A/HRC/17/31. March 21, 2011, para. 1.

<sup>&</sup>lt;sup>569</sup> Human Rights Council, <u>Resolution 17/4. Human rights and transnational corporations and other business</u> enterprises, A/HRC/RES/17/4, July 6, 2011.

should address adverse human rights impacts with which they are involved."<sup>570</sup> It is noteworthy that, among their first paragraphs, the Principles refer to the principle of nondiscrimination and even to its crosscutting application, indicating that businesses should pay "particular attention to the rights and needs of, as well as the challenges faced by, individuals from groups or populations that may be at heightened risk of becoming vulnerable or marginalized."<sup>571</sup>

- 298. Complementary to this, in 2017, the United Nations High Commissioner on Human Rights developed the "Standards of Conduct for Tackling Discrimination against LGBTI people."<sup>572</sup> The guidelines of this particular document are based on the "Guiding Principles on Business and Human Rights" and set forth a series of minimum standards that businesses must meet in order to respect and promote diversity. The elimination of all forms of discrimination in business, including discrimination based on gender identity or expression, is included among the priorities that businesses must set.<sup>573</sup> Specific recommendations are also included on implementing policies within businesses to help prevent and eradicate all forms of harassment and raise awareness on diversity. The instrument also points to a series of economic reasons to help explain the benefits of adopting these types of business policies, including reduction of the macroeconomic costs resulting from discrimination in businesses, as well as the cost to businesses themselves from the loss of talent, missed days of work, and decline in motivation when diversity is not valued.<sup>574</sup>
- 299. The Principles and Standards of Conduct do not aim to establish new obligations, but rather to maintain the central role of State responsibility for human rights. They therefore offer guidelines on how the State can play an active promotional role with the private sector while at the same time guaranteeing human rights, ensuring that laws are followed and expeditiously processing all allegations of rights violations.
- 300. For its part, in 2019, the Commission approved the report "Business and Human Rights: Inter-American Standards," prepared by its REDESCA. The report serves to analytically document pronouncements from within the inter-American system on the subject and provide a systematic and developmental analysis that seeks to clarify, organize, and develop State duties and their impacts on business compliance based on the inter-American juridical experience. Regarding trans and gender-diverse persons, it presents information including certain challenges and risks they face in the framework of business activities, recognizing that the workplace is an area where LGBTI persons tend to be the victims of discrimination. It urges States

<sup>&</sup>lt;sup>570</sup> Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (Annex), A/HRC/17/31, March 21, 2011, Principle 11.

<sup>&</sup>lt;sup>571</sup> Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (Annex), A/HRC/17/31, March 21, 2011, General Principles.

<sup>&</sup>lt;sup>572</sup> United Nations Office of the High Commissioner for Human Rights, <u>Tackling Discrimination against Lesbian</u>, <u>Gay, Bi, Trans, and Intersex People: Standards of Conduct for Businesses</u>, (New York: OHCHR, 2017).

<sup>&</sup>lt;sup>573</sup> United Nations Office of the High Commissioner for Human Rights, <u>Tackling Discrimination against Lesbian</u>, <u>Gay, Bi, Trans, and Intersex People: Standards of Conduct for Businesses</u>, (New York: OHCHR, 2017), 9.

<sup>&</sup>lt;sup>574</sup> United Nations Office of the High Commissioner for Human Rights, <u>Tackling Discrimination against Lesbian</u>, <u>Gay, Bi, Trans, and Intersex People: Standards of Conduct for Businesses</u>, (New York: OHCHR, 2017), 19.

to enhance their efforts toward guaranteeing that companies, as key actors in the labor market, fulfill their responsibilities with regard to the human rights of these individuals. Likewise, it recommends that States adopt special measures of protection for vulnerable groups—such as trans persons—in the area of business and human rights.<sup>575</sup>

- 301. As an example of progress reported to the IACHR on this issue, the Secretariat of Human Rights of Argentina coordinates a project called Businesses, Organizations, and Unions Committed to the Human Rights of the LGBTIQ Population as part of the National State Program on Businesses and Unions: Human Rights Policies to Protect, Respect, and Remediate. According to the State, one of the central objectives of this project is to promote the inclusion of trans persons in the businesses sector labor market, as well as in that of public, private, and mixed organizations. As part of this work, support is being provided to an initiative of a group of businesses called "Opening Doors," in the form of technical support and forwarding curriculum vitae. Implementation of this program began in 2017 with the hiring of four trans persons by these businesses.<sup>576</sup>
- 302. There are also initiatives within the private sector that can make significant contributions to promoting the human rights of trans and gender-diverse persons. In Brazil, the Businesses for LGBT Rights Forum was established as an informal organization built around large enterprises—many of them multinationals—and their commitment to respect and promote the human rights of LGBT persons. It also serves as a space to discuss and exchange good practices for creating a working environment that is free from discrimination. The Forum was established in 2013 and promotes the 10 Business Commitments to the Promotion of LGBT Rights.<sup>577</sup> Similarly, in Costa Rica, several private enterprises decided in 2014 to form the LGBTI Business Group, with the aim of providing a "space for discussion, reflection, and exchange of experiences to create tools enabling companies to identify themselves as workplaces that are free from discrimination and stigma."<sup>578</sup> In Mexico, the Mexican Federation of LGBT Business Owners is a not-for-profit body made up of business owners, entrepreneurs, and professionals who identify as part of the LGBT community.
- 303. Although the Commission understands that States are the ones with the duty to comply with international obligations by incorporating into their legal frameworks and public policies protective actions that benefit trans and gender-diverse persons, it has also indicated more generally that these obligations apply to businesses and

<sup>578</sup> International Labour Organization (ILO), <u>ORGULLO (PRIDE) en el trabajo Un estudio sobre la discriminación en</u> <u>el trabajo por motivos de orientación sexual e identidad de género en Costa Rica</u> (2016), pg. 65.

<sup>&</sup>lt;sup>575</sup> IACHR. Business and Human Rights: Inter-American Standards, report of the Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights (REDESCA) November 1, 2019. See, *inter alia*, paras. 384 and 413.22.

<sup>&</sup>lt;sup>576</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Secretariat for Human Rights and Cultural Pluralism, the Ministry of Justice and Human Rights (Argentina), pg. 35.

<sup>&</sup>lt;sup>577</sup> Laís Abramo, *Uma década de promoção do trabalho decente no Brasil: uma estratégia de ação baseada no diálogo social* (Brasilia: OIT, 2015), 111.

entail legal responsibilities in terms of avoiding provoking or contributing to provoking human rights violations through their operations. They have a duty to operate with due diligence in this area and be held accountable for the results of their actions.<sup>579</sup> Along with this, States are the ones with the responsibility to ensure that enterprises—whether public or private—acting within their jurisdictions, including transnational activities, operate within the bounds of the international legal frameworks and guarantees to which States<sup>580</sup> have committed by enabling trans and gender-diverse persons to realize their right to work under just and equitable conditions. Complementary to this obligation, States must also coordinate in promoting, raising awareness, and changing culture to contribute to breaking the circle of workplace exclusion through public-private partnerships.

#### b. Coordination with Unions

- 304. Unions can play a key role in efforts to achieve full labor market inclusion for trans persons. This requires fully raising awareness on the need to value diversity and defend the labor rights of trans and gender-diverse persons among those who lead and are members of unions and worker associations in general. Their interventions with management and the State can serve as a vitally important tool in producing dignified working conditions, preventing the legitimization of discrimination in the workplace, improving working conditions, and defending the rights of trans and gender-diverse persons.
- 305. The Commission also recalls that, in July 2019, it activated the Inter-American Court's advisory mechanism when it presented a request for an advisory opinion, prepared jointly with its REDESCA.<sup>581</sup> The request is related to the scope of State obligations with regard to guaranteeing the freedom to join labor unions, its relationship with other rights, and its application from a gender perspective. Among its central points, the request seeks to clarify the expansion of the principle of equal protection and nondiscrimination with regard to women in the area of unions and the workplace. The Inter-American Court's considerations in this regard will also be fundamental and guiding to the exercise of the freedom to join unions of trans and gender-diverse persons.
- 306. For example, the Commission notes that in Argentina, the Ministry of Labor, the National Institute against Discrimination, Xenophobia, and Racism (INADI), and more than 80 labor unions comprised the group *Intersindical por la Diversidad Sexual*, which aims to promote diversity in collective bargaining and add clauses prohibiting discrimination based on sexual orientation and gender identity to collective bargaining agreements.<sup>582</sup> The INADI also published an informational

<sup>&</sup>lt;sup>579</sup> IACHR. Business and Human Rights: Inter-American Standards, report of the Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights (REDESCA), para. 196.

IACHR. Business and Human Rights: Inter-American Standards, report of the Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights (REDESCA) November 1, 2019, para. 174.

<sup>&</sup>lt;sup>581</sup> IACHR. <u>Request to the Inter-American Court of Human Rights for Advisory Opinion</u>, July 31, 2019.

<sup>&</sup>lt;sup>582</sup> Ministry of Labor, Employment, and Social Security, <u>Empleo y Diversidad Sexual: Un material para la formación</u> <u>sindical</u> (2015), 5.

guide on sexual diversity for unions, with a specific section on labor inclusion for the trans population.<sup>583</sup>

- 307. The ILO has reported that in El Salvador, the Coordinator of the Social and Union Unit added the issue of sexual diversity to their agenda. Also, the Federation of Independent Associations and Unions of El Salvador published a study entitled *Desafiando el heterosexismo en el mundo del trabajo y sindical* [challenging heterosexism in labor and labor unions] in May 2016.<sup>584</sup> In Canada, several unions work to defend the labor rights of LGBT persons, taking action before courts and in communities, and by using inclusive language in collective bargaining agreements to promote equality and protect workers from discrimination.<sup>585</sup>
- 308. Additionally, the Commission highlights that the coordination of the work of unions with civil society organizations is key for moving forward toward the inclusion of the labor needs of trans and gender-diverse persons. Regarding this, the IACHR has been informed of a number of agreements signed between unions and LGBT organizations in Argentina to build spaces within labor that are inclusive of sexual diversity.<sup>586</sup>
- 309. The Commission urges States to establish sponsorship measures to help trans and gender-diverse persons to take part in unions and other spaces of political participation in order to guarantee the effectiveness of legislation, policies, and programs intended to improve their working conditions, as well as to guarantee the full enjoyment and exercise of their human rights toward the realization of their life projects.

## c. Measures of Affirmative Action

310. The IACHR has noted the importance of the existence of measures of affirmative action, such as reserving jobs for trans persons, and has stated that:

These types of measures seek to encourage trans persons' access to public areas and to further the exercise of their economic and social rights. These measures contribute not only to reduce the levels of poverty faced by trans persons, but also to reduce homicides and police violence as a result of reducing the number of trans persons

<sup>&</sup>lt;sup>583</sup> National Institute against Discrimination, Xenophobia, and Racism (INADI), <u>Diversidad sexual en el ámbito del</u> <u>trabajo Guía informativa para sindicatos</u> (2016).

<sup>&</sup>lt;sup>584</sup> International Labour Organization (ILO), <u>ORGULLO (PRIDE) en el trabajo Un estudio sobre la discriminación en</u> <u>el trabajo por motivos de orientación sexual e identidad de género en Costa Rica</u> (2016), pg. 68.

Jane Pillinger, *Violencia y acoso contra las mujeres y los hombres en el mundo del trabajo perspectivas y acción sindical* (Geneva: ILO, 2017), 18.

<sup>&</sup>lt;sup>586</sup> International Labour Organization (ILO), <u>ORGULLO (PRIDE) en el trabajo Un estudio sobre la discriminación en</u> <u>el trabajo por motivos de orientación sexual e identidad de género en Argentina</u> (2016), pg. 45.

working in criminalized informal economies, and bringing down stereotypes and prejudice related to gender identity.<sup>587</sup>

- In Uruguay, the Youth Employment Act requires State agencies and nonstate public 311. persons to set aside 2% of positions for young trans persons.<sup>588</sup> Additionally, the Ministry of Social Development has opened some hiring processes exclusively to trans persons with the objective of supporting their inclusion in society and the workforce and for the symbolic effects it will have on society as a whole.<sup>589</sup> In 2013, Uruguay also established a 2% trans persons quota in the framework of the Uruguay Works Program, a social program to temporarily employ individuals who had been unemployed for several years with the aim of improving their trade skills and abilities, their educations, and their access to basic computing tools.<sup>590</sup> Also, since 2012, Uruguay has implemented a cash transfer program that provides trans persons with universal access to the Uruguay Social Card, which can be used to purchase food and cleaning products.<sup>591</sup> Finally, the Commission emphasizes the important step forward with the passage of the Comprehensive Trans Persons Act, which aims to provide comprehensive protection to a variety of human rights for trans persons.<sup>592</sup> The law establishes that 1% of all hiring processes conducted by the State must be reserved exclusively for trans persons.<sup>593</sup>
- 312. In Argentina, one of the main initiatives to reserve jobs for *travesti* and trans persons was enacted in the Province of Buenos Aires in September 2015<sup>594</sup> with the Diana Sacayán Provincial Act.<sup>595</sup> However, multiple sources have informed the IACHR regarding the law's lack of implementation, as its regulations have never been established.<sup>596</sup> According to the information received, other districts in the country

<sup>&</sup>lt;sup>587</sup> IACHR, <u>Press Release 122/15</u>: "IACHR Congratulates Argentina for Passing Provincial Quota Job Law for Trans Persons," October 30, 2015.

<sup>&</sup>lt;sup>588</sup> Law 19,133, Article 23 (October 16, 2013).

<sup>&</sup>lt;sup>589</sup> Ministry of Social Development (Uruguay), *Diversidad sexual en Uruguay Las políticas de inclusión social para personas LGBT del Ministerio de Desarrollo Social (2010-2014)* (2014), 123.

<sup>&</sup>lt;sup>590</sup> Ministry of Social Development (Uruguay), *Diversidad sexual en Uruguay Las políticas de inclusión social para personas LGBT del Ministerio de Desarrollo Social (2010-2014)* (2014), 139.

<sup>&</sup>lt;sup>591</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Uruguayan State, pg. 8. Also see: Ministry of Social Development (Uruguay), Diversidad sexual en Uruguay Las políticas de inclusión social para personas LGBT del Ministerio de Desarrollo Social (2010-2014) (2014), 133.

<sup>&</sup>lt;sup>592</sup> IACHR, <u>Press Release 275/18</u>: "IACHR Welcomes Progress towards the Recognition of Gender Identity in the Region, December 21, 2018.

<sup>&</sup>lt;sup>593</sup> Ministry of Social Development (Uruguay), *Transform 2017; Comprehensive Trans Persons Act: Toward new horizons* (2017), 4.

<sup>&</sup>lt;sup>594</sup> Law 14,783 of the Province of Buenos Aires.

<sup>&</sup>lt;sup>595</sup> The law was named after *travesti* leader Amancay Diana Sacayán, who led the civil society push for the law and was the victim of a *travestic*ide in 2015.

<sup>&</sup>lt;sup>596</sup> IACHR, <u>Public hearing: Human rights situation of the trans population in Argentina</u>, 167th Period of Sessions, March 2, 2018; Office of the Ombudsperson of Buenos Aires, *Derecho al trabajo de las personas trans y travestis en la Provincia de Buenos Aires: Obstáculos para la implementación de la ley de cupo laboral* (2018); Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Federación Argentina de Lesbianas, Gays, Bisexuales y Trans (FALGBT), Asociación

have also move forward with similar measures, although with different levels of implementation because many districts depend on implementation at the level of the Province of Buenos Aires.<sup>597</sup> Quotas and job placement programs for trans persons have also been opened in autonomous State bodies, such as universities<sup>598</sup> and the Office of the Ombudsperson.<sup>599</sup>

de Travestis, Transexuales y Transgéneros de Argentina (ATTTA), and Defensoría LGBT, pg. 6. Agencia Presentes, "<u>MAPA: Así está el cupo laboral trans en Argentina</u>," May 25, 2018.

<sup>&</sup>lt;sup>597</sup> These districts include cities and neighborhoods in the provinces of Buenos Aires, Chaco, Córdoba, Corrientes, La Pampa, Mendoza, Río Negro, San Luisa, Santa Fe, Tierra del Fuego, and Tucumán. Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Secretariat for Human Rights and Cultural Pluralism, the Ministry of Justice and Human Rights (Argentina), pg. 3.

<sup>&</sup>lt;sup>598</sup> La Capital de Mar del Plata, "<u>La Universidad Nacional sumó las primeras ingresantes por cupo laboral trans</u>," December 12, 2017.

<sup>&</sup>lt;sup>599</sup> Office of the Ombudsperson, Resolution 164/16 (2016). The resolution sets aside a minimum of 2% of the staff positions for trans persons, *travestis*, transsexuals, transgender persons, and intersex persons who meet the requirements for the position. Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by la Office of the Ombudsperson (Argentina), pg. 15.

# CHAPTER 5 RIGHT TO HEALTH

# **RIGHT TO HEALTH**

# A. The Human Right to Health

- The right to health is enshrined in a considerable number of human rights 313. instruments, both in the universal system and regionally.<sup>600</sup> In the inter-American system, the American Declaration establishes in its Article XI that "[e]very person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care," thus explicitly enshrining the right and articulating a broad concept of health.<sup>601</sup> At the same time, Article 10 of the Protocol of San Salvador confirms this by proclaiming that "[e]veryone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being" and classifying it as a "public good." It also establishes a State commitment to guarantee "primary health care," "extension of the benefits of health services to all individuals subject to the State's jurisdiction," "universal immunization against the principal infectious diseases," "Prevention and treatment of endemic, occupational and other diseases," "education of the population on the prevention and treatment of health problems," and "satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable."602
- 314. For its part, the Inter-American Convention against All Forms of Discrimination and Intolerance stipulates in its Article 7 that States commit to adopting legislation that defines and prohibits discrimination in—among other areas—health and sets forth in its Article 1(1) that discrimination may be based on gender identity and expression. For its part, the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belem Do Para) recognizes in its Article 5 that the State must protect the economic, social, cultural, and environmental rights of all women and ensure they are able to exercise them freely and fully. It also states explicitly that violence against women can take

- <sup>601</sup> American Declaration of the Rights and Duties of Man, Article XI.
- <sup>602</sup> Protocol of San Salvador, Article 10.

Regarding the universal system, see: Universal Declaration of Human Rights (1948), Article 25(1); International Covenant on Economic, Social and Cultural Rights (1966), Article 12; International Convention on the Elimination of All Forms of Racial Discrimination (1965), Article 5(e); Convention on the Elimination of All Forms of Discrimination Against Women (1979), Article 12(1); Convention on the Rights of the Child (1989), Article 24(1); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), Article 28; Convention on the Rights of Persons with Disabilities (2006), Article 25; Vienna Declaration and Programme of Action (1993), section II.41; in the European system: European Social Charter (1961), Article 11; in the African system: African Charter on Human and Peoples' Rights (1981, entry into force 1986), Article 16. Along with these treaties and declarations, there have been numerous resolutions and decisions, some of which will be addressed in this chapter due to their relevance in the inter-American system.

place in health facilities (Article 3). Other regional legal instruments likewise enshrine the right to health, reflecting the new national and international developments in this area. They include the Social Charter of the Americas<sup>603</sup> and the Inter-American Convention on Protecting the Human Rights of Older Persons.<sup>604</sup>

- 315. The American Convention does not have a specific provision in this regard. However, as the Inter-American Court has held in its recent judgments on the issue, a literal, systematic, and teleological interpretation of the treaty, based also on other complementary approaches, allows for the conclusion that the right to health, to which the aforementioned body of international law gives content and scope, is protected under Article 26 of the Convention.<sup>605</sup> To start with, this means the general obligations to respect and guarantee set forth in Articles 1(1) and 2<sup>606</sup> apply, as do the principles of non-regression, progressiveness, and equal protection and nondiscrimination.<sup>607</sup>
- 316. In its Resolution 1/2020, the Commission noted that health is a public good that must be protected by all States and that the human right to health is an inclusive right related to the enjoyment of other rights, whose basic and social determinants include the series of factors on which its exercise and enjoyment depend.<sup>608</sup> In its resolution, the IACHR recommended that States adopt immediate and conscientious

<sup>&</sup>lt;sup>603</sup> <u>Social Charter of the Americas</u>, approved in the second plenary session held on June 4, 2012, Article 17.

<sup>&</sup>lt;sup>604</sup> <u>Inter-American Convention on Protecting the Human Rights of Older Persons</u>, adopted on June 15, 2015, Article 19.

<sup>&</sup>lt;sup>605</sup> Inter-American Court. Case of Cuscul Pivaral *et al. v.* Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, paras. 75-99; Case of Poblete Vilches *et al. v. Chile.* Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, paras. 100-103 and 106-110.

Inter-American Court. Case of Cuscul Pivaral *et al. v.* Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, paras. 73, 83-85, 96, 97, and 100; Case of Poblete Vilches *et al. v.* Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, para. 100; Case of San Miguel Sosa *et al.* Venezuela. Merits, Reparations, and Costs. Judgment of February 8, 2018. Series C No. 348, para. 220; Case of Dismissed Employees of Petroperú *et al. v.* Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2017. Series C No. 340, para. 142; Case of Acevedo Buendía *et al.* ("Discharged and Retired Employees of the Comptroller") *v.* Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 1, 2009. Series C No. 198, para. 100.

<sup>&</sup>lt;sup>607</sup> IACHR. Report 38/09, Case 12,670, Admissibility and Merits, National Association of Ex-employees of the Peruvian Social Security Institute *et al.* (Peru), March 27, 2009, paras. 134-137, 139 and 140; Inter-American Court. Case of Acevedo Buendía *et al.* ("Discharged and Retired Employees of the Comptroller") *v.* Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 1, 2009. Series C No. 198, paras. 102 and 103; Case of Poblete Vilches *et al. v.* Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, para. 104; Case of Cuscul Pivaral *et al. v.* Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, paras. 79-81. For a more comprehensive development of the implications of these principles for general State obligations and specifically with regard to the right to health, see the CESCR. *General Comment* 3: "The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)," E/1991/23, December 14, 1990, and General Comment 14: "The Right to the Highest Attainable Standard of Health (Art. 12) International Covenant on Economic, Social and Cultural Rights)", E/C.12/2000/4, August 11, 2000, paras. 30-45, respectively.

<sup>&</sup>lt;sup>608</sup> IACHR, <u>Resolution 1/2020: Pandemic and Human Rights in the Americas</u>, April 10, 2020.

reform measures to prevent violations of the right to health, personal integrity, and life.

- 317. In the inter-American system, the right to health is conceived as "not only the absence of afflictions and infirmities but also a complete state of physical, mental, and social well-being resulting from a lifestyle that enables people to achieve overall balance,"<sup>609</sup> which was underscored in the above-cited Resolution 1/2020. It is likewise defined by its instrumental nature<sup>610</sup> and by four essential and interrelated elements that States must guarantee in the provision of medical services—whether public or private—in view of their duties to regulate, supervise, and oversee them continuously.<sup>611</sup>
- 318. Availability means these medical services must be available in sufficient quantity and include the underlying determinants of health. Accessibility means that these services must be accessible to everyone—especially the most vulnerable or marginalized sections of the population—both physically and economically and without *de jure* or *de facto* discrimination. It includes the right to request, receive, and disseminate information and ideas on issues related to health.
- 319. *Acceptability* means services must be respectful of medical ethics and culturally appropriate, sensitive to gender and life-cycle requirements, and designed to respect confidentiality and improve the health status of persons. Lastly, services must be good *quality*, meaning scientifically and medically appropriate. This requires, *inter alia*, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.<sup>612</sup>

<sup>&</sup>lt;sup>609</sup> Inter-American Court. Case of Cuscul Pivaral *et al. v.* Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, para. 105; Case of Poblete Vilches *et al. v.* Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, para. 118; CESCR. *General Comment* 14: "The Right to the Highest Attainable Standard of Health (Art. 12) International Covenant on Economic, Social and Cultural Rights)", E/C.12/2000/4, August 11, 2000, paras. 1 and 4.

<sup>&</sup>lt;sup>610</sup> CESCR. General Comment 14: "The Right to the Highest Attainable Standard of Health (Art. 12) International Covenant on Economic, Social and Cultural Rights)", E/C.12/2000/4, August 11, 2000, para. 1; Inter-American Court. Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17 of August 20, 2002. Series A No. 17, para. 86; Case of Poblete Vilches et al. v. Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, para. 118; Case of Cuscul Pivaral et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, para. 105.

<sup>&</sup>lt;sup>611</sup> Inter-American Court. Case of Ximenes Lopes v. Brazil. Judgment of July 4, 2006. Series C No. 149, paras. 89, 90, 96, 99, 141; Case of Suárez Peralta v. *Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 21, 2013. Series C No. 261, paras. 130, 134, and 135; Case of Albán Cornejo *et al.* v. Ecuador. Merits, Reparations, and Costs. Judgment of November 22, 2007. Series C No. 171, paras. 119 and 121; Case of Gonzales Lluy *et al.* v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 1, 2015. Series C No. 298, paras. 171, 175, 177, 184; Case of Poblete Vilches *et al.* v. Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, paras. 120, 121, 124, and 152; Case of Cuscul Pivaral *et al.* v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, para. 106.

<sup>&</sup>lt;sup>612</sup> CESCR. General Comment 14: "The Right to the Highest Attainable Standard of Health (Art. 12) International Covenant on Economic, Social and Cultural Rights)", E/C.12/2000/4, August 11, 2000, para. 12; Inter-American Court. Case of Gonzales Lluy *et al. v.* Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 1, 2015. Series C No. 298, para. 173; *Case of Poblete Vilches et al. v.* Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, paras. 120, 122, and 123; Case of Cuscul

In general, the obligation to protect health translates into a State duty to guarantee access to services, goods, and medications that are essential for health and guarantee provision of good quality and effective medical care, while pushing to improve the population's health conditions.

- 320. The Commission and its REDESCA underscore that in order to comply with their international obligations in this area, not only must States guarantee the provision of health services without discrimination, but they also must supervise to guarantee the conditions allowing for a life with dignity and social equality with respect to the right to health. That is, the Commission highlights States' obligation to include the basic and social determinants for the effective realization of the right to health in their policies and legal frameworks, particularly with regard to vulnerable populations.
- 321. Among the central determinants is the guarantee of other rights to enable the enjoyment of a healthy life with access to adequate food and water, as well as healthy working conditions. The Commission notes that the right to health must be understood as a right in itself. However, it is crucial to take into account the social determinants with a direct impact on health, such as of the equitable distribution of resources; cultural, ethno-racial, and gender perspectives; the population's effective participation in health policies; the impact of harmful stereotypes and stigmatization on services; and the identification of power relationships, violence, legal, institutional, social, and domestic discrimination; and harmful community practices that impede the effective realization and exercise of this right.<sup>613</sup> In this context, for the IACHR, States must adopt measures to not only provide adequate medical goods and services themselves but also to provide the physical and psychosocial environments required for the enjoyment of the right to health, both physical and mental.
- 322. In this context, the Commission and its REDESCA observe that, as with other vulnerable populations that face historic discrimination, in many cases, existing threats and violations as regards the right to health of trans and gender-diverse persons also have to do with the State's failure to address basic social determinants of the right to health, as these persons tend to face obstacles to the enjoyment of this right not only as a result of a lack of access to adequate healthcare goods and services but also because multiple basic social determinants that play an interconnected role in their human rights are not taken into account. The following are some of the main challenges in this regard.

Pivaral *et al. v.* Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, paras. 106 and 107.

<sup>613</sup> In this regard, see the Committee on Economic, Social and Cultural Rights. General Comment 14, "The right to the highest attainable standard of health." E/C.12/2000/4, August 11, 2000, paras. 4, 11, 16, and 18; WHO, "Closing the gap in a generation: Health equity through action on the social determinants of health – Final report of the Commission on social determinants of health" (Geneva, 2008); UN. Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. A/HRC/41/34, April 12, 2019.

# B. Exclusion of Trans and Gender-Diverse Persons

- 323. The information received by the Commission indicates that the right to health is one of the ones most impacted by the systemic exclusion forced upon trans and genderdiverse persons in the region, something that has been made particularly clear in the context of the COVID-19 pandemic.
- 324. Based on the information received, the IACHR notes that trans and gender-diverse persons see their enjoyment of the right to health severely limited mainly as a result of the pathologization of their identities; the lack of recognition of their gender identities; and the high rates of violence and discrimination they experience when they seek medical care. These situations are connected with economic and social exclusion where they tend to occur, exposing trans and gender-diverse persons to greater risk of contracting HIV when they are forced to perform sex work to support themselves and when they seek body modification without the necessary medical supervision, endangering their health and even their lives.<sup>614</sup> The stigma and social stereotypes surrounding trans persons means they are often mistakenly associated only with certain health needs, generally services related to sexually transmitted infections (STIs) or transition processes.<sup>615</sup>
- 325. The fact of having to live in contexts harboring violence, discrimination, and rejection of their identities and forms of expression means trans and gender-diverse persons often have prematurely poor physical and mental health, contributing to their short life expectancy in the region.<sup>616</sup>

# 1. Pathologizing Diverse Gender Identities and Expressions

326. Pathologizing has been defined as a psycho-medical, legal, and cultural practice of identifying a trait, an individual, or a population as "intrinsically disordered."<sup>617</sup> Pursuant to this understanding, diverse gender identities and expressions are conceived and conceptualized as the result of a mental disorder or illness.<sup>618</sup> Thus, trans and gender-diverse persons have been identified as inherently pathological

<sup>&</sup>lt;sup>614</sup> Human Right Division – National Office on Socio-cultural Promotion; Evaluation Division – National Office on Evaluation and Monitoring; and Ministry of Social Development of Uruguay, *Transform 2016: Revealing realities: Preliminary results of the first census of trans persons "* (2016), pg. 12.

<sup>&</sup>lt;sup>615</sup> Red Latinoamericana y del Caribe de personas Trans (REDLACTRANS), <u>Esperando la muerte: Informe Regional</u> <u>CeDoSTALC 2016-2017</u> (2018), pg. 37; Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Unión Latinoamericana de Hombres Trans (ULTRANS), pg. 20.

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Mexico (Mexico City Council to Prevent and Eliminate Discrimination), pg. 20.

<sup>&</sup>lt;sup>617</sup> Sheherezade Kara, *Gender is not an illness. How pathologizing trans people violates international human rights law* (GATE, 2017), 4.

<sup>&</sup>lt;sup>618</sup> IACHR, <u>Press Release</u> 64/16: "Pathologization: Being Lesbian, Gay, Bisexual and/or Trans is Not an Illness – International Day Against Homophobia, Transphobia and Biphobia," May 12, 2016.

based only on the way in which they express their gender.<sup>619</sup> This impacts not only the health of trans and gender-diverse persons but also their human rights. Effectively, pathologization is a broad basis for discrimination and violence against trans and gender-diverse persons.<sup>620</sup>

- In 2018, the World Health Organization took an important step toward 327. depathologizing trans and gender-diverse person when it adopted the latest revision of its International Classification of Diseases (ICD-11).<sup>621</sup> Therein, the WHO eliminated categories related to trans identities from the chapter on mental disorders and created a new chapter on "conditions related to sexual health." 622 This new edition is based on the need to include certain situations that can indeed have health implications, although not under a paradigm that is pathologizing. In this way, the WHO established that the fact of being trans or expressing a diverse gender does not constitute a mental illness. The IACHR welcomed the adoption of the new ICD revision, emphasizing that "the right to personal identity is a grounding element of human character and failing to recognize it directly impacts on trans persons' comprehensive enjoyment of their human rights." 623 The IACHR had noted prior to the adoption of ICD-11 that pathologizing and stigmatizing medical classifications have been used to justify subjecting trans persons to forced or coercive sterilization, hormone therapy, surgeries, and psychiatric evaluations, and in other ways abusively conditioning their human rights and recognition of their gender identities.624
- 328. The IACHR has been informed that the pathologization of trans and gender-diverse persons in the provision of health services continues to be one of trans persons' greatest obstacles to accessing medical care. Although some States have moved forward with specific measures to eradicating the pathologizing paradigm, the change is not yet reflected in the attitudes of healthcare staff and the way that they attend to trans patients.<sup>625</sup>
- 329. Regarding the legal processes for the recognition of gender identity, pathologization takes the form of requirements forcing trans persons to subject themselves to invasive and humiliating medical examinations and having to secure diagnoses characterizing their identities as pathologies. Specifically, as described in Chapter 2 of this report, the pathologization paradigm has been the basis for many of the legal requirements in the majority of states for amending identification documentation.

<sup>&</sup>lt;sup>619</sup> Sheherezade Kara, *Gender is not an illness. How pathologizing trans people violates international human rights law* (GATE, 2017), 4.

<sup>&</sup>lt;sup>620</sup> IACHR, <u>Press Release</u> 64/16: "Pathologization: Being Lesbian, Gay, Bisexual and/or Trans is Not an Illness – International Day Against Homophobia, Transphobia and Biphobia," May 12, 2016.

<sup>&</sup>lt;sup>621</sup> World Health Organization (WHO), <u>Clasificación Internacional de Enfermedades</u> (2018).

<sup>&</sup>lt;sup>622</sup> World Health Organization (WHO), *Clasificación Internacional de Enfermedades* (2018).

<sup>&</sup>lt;sup>623</sup> IACHR, <u>Press Release 153/18</u>: "IACHR Welcomes Change by WHO to Stop Regarding Gender Identity as a Disorder," July 18, 2018.

<sup>&</sup>lt;sup>624</sup> IACHR, <u>Press Release</u> 64/16: "Pathologization: Being Lesbian, Gay, Bisexual and/or Trans is Not an Illness – International Day Against Homophobia, Transphobia and Biphobia," May 12, 2016.

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Unión Latinoamericana de Hombres Trans (ULTRANS), pg. 21.

Regarding this, the Inter-American Court has emphasized that the medical, psychological, or psychiatric certifications that are often required in order to amend identification documents are invasive and call into question the legitimacy of the identity of the person requesting the change.<sup>626</sup> It also added that these requirements "are based on the assumption that having an identity that is not the same as the sex assigned at birth is a pathology" and they therefore contribute to perpetuating the prejudices associated with the binary masculine/feminine construction of gender.<sup>627</sup>

#### 2. Discrimination and Violence in Health

- 330. In its 2015 report, the IACHR found that health is an area in which discrimination and violence against LGBTI persons manifest strongly.<sup>628</sup> At that time, the Commission also indicated that trans persons are especially vulnerable to this type of violence. In the same regard, the information received for preparing this report demonstrates how those acts of discrimination and violence constitute one of the main barriers to the effective enjoyment of the right to health by trans and genderdiverse persons.
- 331. The lack of training and sensitivity among those who work as healthcare professionals or workers perpetuates this situation. Based on the information received, the IACHR observes that the lack of permanent public policies oriented toward training and raising awareness on sexual and gender diversity mean that social prejudice persists in public health institutions and in healthcare spaces in general.<sup>629</sup> Multiple sources informed the IACHR that because of this violence and discrimination, many trans and gender-diverse persons decide to protect themselves by avoiding health centers, which makes them more vulnerable. A

<sup>&</sup>lt;sup>626</sup> Inter-American Court, Advisory Opinion 24, para. 130.

<sup>&</sup>lt;sup>627</sup> Inter-American Court, Advisory Opinion 24, para. 130.

<sup>&</sup>lt;sup>628</sup> IACHR, <u>Violence against LGBTI Persons</u>, November 12, 2015, para. 196.

<sup>629</sup> This concern was put forward in the following responses: [Jamaica] Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Transwave Jamaica, pg. 6; [México] Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Mexico (Mexico City Council to Prevent and Eliminate Discrimination), pg. 10; Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by "Hombres XX" (Mexico), pg. 11; [Nicaragua] Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Comunidad Homosexual de Nicaragua (Nicaragua), pgs. 14 and 15; [Paraguay]Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Asociación Panambi (Paraguay), pg. 23; [Perú] Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by PROMSEX (Peru), pg. 13; [Venezuela] Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Venezuela Diversa Asociación Civil (Venezuela), pg. 7. Also see: TransLatin@ Coalition, The State of Trans Health: Trans Latin@s and their Healthcare Needs, 2016, pg. 11.

regional study found that healthcare workers or professionals are among the main perpetrators of human rights violations against trans women.<sup>630</sup>

- 332. As far as the information collected in OAS Member States, a survey carried out in Ontario, Canada, found that up to 33.2% of trans persons said their medical care needs were not met, partly because of denial of medical care and the lack of training of medical staff on issues surrounding gender identity.<sup>631</sup> In Ecuador, a study carried out by the National Council for Gender Equality found that 62% of the trans persons surveyed experienced discrimination in healthcare.<sup>632</sup> It also found that such violence was the main reason trans persons stopped seeking care from health professionals.<sup>633</sup> In the United States, a survey found that a third (33%) of the trans persons surveyed said they had had at least one negative experience in receiving healthcare services over the last year, including verbal harassment, physical attacks, or having to explain to healthcare professionals issues related to trans or gender-diverse identities in order to receive adequate care.<sup>634</sup> In addition, 23% said they had not visited health professionals over the last year when they needed to over fear of being mistreated as a trans person.<sup>635</sup>
- 333. Meanwhile, in Nicaragua, civil society organizations have reported that a large portion of medical and health services staff, in both the public and private sector, openly stigmatize and discriminate against trans persons, calling them "mentally ill."<sup>636</sup> In fact, there have been cases of denial of medical services "because they believe [trans persons] are evil or possessed by a demon and what they need is to read the Bible and conduct an exorcism."<sup>637</sup> Likewise, according to the information received from Paraguay, numerous cases have been documented of mistreatment and discrimination against trans persons by health professionals, including everything from belittling looks, stigmatizing comments, whispering, and poor care, to physical violence.<sup>638</sup> In Venezuela, the organizations reported that in public and private health services, trans persons are subjected to psychological aggressions,

<sup>635</sup> National Center for Transgender Equality, <u>The Report of the 2015 U.S. Transgender Survey</u>, 2016, pg. 10.

<sup>&</sup>lt;sup>630</sup> Red Latinoamericana y del Caribe de personas Trans (REDLACTRANS), <u>Esperando la muerte: Informe Regional</u> <u>CeDoSTALC 2016-2017</u> (2018), pgs. 34 and 35.

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Egale Canada Human Rights Trust (Canada), pgs. 5 and 6.

<sup>&</sup>lt;sup>632</sup> National Council on Gender Equality (Ecuador), <u>Una aproximación a la situación de los derechos humanos de</u> <u>las personas trans en Ecuador</u>, (2017), pg. 71.

<sup>&</sup>lt;sup>633</sup> National Council on Gender Equality (Ecuador), <u>Una aproximación a la situación de los derechos humanos de</u> <u>las personas trans en Ecuador</u>, (2017), pg. 73.

<sup>&</sup>lt;sup>634</sup> National Center for Transgender Equality, <u>The Report of the 2015 U.S. Transgender Survey</u>, 2016, pg. 10.

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Comunidad Homosexual de Nicaragua (Nicaragua), pgs. 14 and 15.

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Comunidad Homosexual de Nicaragua (Nicaragua), pgs. 14 and 15.

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Asociación Panambi (Paraguay), pg. 23;

humiliation, and denigrating treatment because of their gender identities and expression.<sup>639</sup>

- 334. From Uruguay, the IACHR received data from the National Trans Persons Census indicating that 30% of trans persons did not go for a medical checkup even when they were ill (a figure that increased to 40% in the case of trans men).<sup>640</sup> With regard to the reasons for not having gone, 18.2% said they wanted to avoid a situation of discrimination.<sup>641</sup>
- 335. In many OAS Member States, the facilities and organizational structures of health institutions still segregate people by binary gender. The IACHR has received reports from Paraguay<sup>642</sup> and Venezuela<sup>643</sup> indicating that trans persons face serious difficulties when they need hospitalization or to be admitted to a health facility because of a lack of clear policies on accommodations for trans and gender-diverse persons.
- 336. The IACHR has also received information on the difficulties trans persons face when seeking care that is "marked" as corresponding to a certain gender, such as mammograms, gynecological exams, Pap smears, and reproductive health services for trans men, and urology services for trans women.<sup>644</sup> Because of this, many trans persons who could access the health system prefer not to, which may end up delaying the preventative examinations needed for early identification of illnesses like cancer.<sup>645</sup> This is a serious obstacle to self-care and can aggravate preventable health problems.

### 3. Failure of Health Systems to Recognize Gender Identity

337. The failure to recognize gender identity and healthcare contexts is another of the major reasons that trans and gender-diverse persons are limited in their exercise of the right to health. The nonrecognition of their identities means that they often must

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Venezuela Diversa Asociación Civil (Venezuela), pg. 7.

<sup>&</sup>lt;sup>640</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Uruguay (Permanent Mission to the Organization of American States), pg. 53.

<sup>&</sup>lt;sup>641</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Uruguay (Permanent Mission to the Organization of American States), pg. 53.

<sup>&</sup>lt;sup>642</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted Asociación Panambi (Paraguay), pgs. 25 and 26.

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Venezuela Diversa Asociación Civil (Venezuela), pg. 7.

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Colombia Diversa (Colombia), pg. 10;

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Colombia Diversa (Colombia), pg. 10; Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by PROMSEX (Peru), pg. 13.

suffer the humiliation of being called in public by the name found in registry documents or having clinical records filed only under that name.<sup>646</sup>

- 338. Regarding this, the Commission has been informed of documented cases in which health personnel insist on calling trans persons by their names found in registry documents, including when their birth certificates recognize their self-perceived genders.<sup>647</sup>
- 339. In 2017, the IACHR recognized the progress made in Paraguay with the adoption of Resolution 695/2016 of the Ministry of Public Health and Social Welfare permitting trans persons to use their social names in health institutions.<sup>648</sup> However, civil society organizations reported that healthcare staff continually failed to comply and that trans women continue to be listed as men.<sup>649</sup> Organizations in Nicaragua reported that the Ministry of Health has authorized the use of a social name for medical records. However, they say compliance by healthcare providers is spotty, and because the name on registry documents must be included with the social name, the registry name is often used intentionally.<sup>650</sup> Similar reports have been received from Brazil, where, despite a right to use social names in the public health system, numerous staff members and health professionals refused to do so.<sup>651</sup>
- 340. The IACHR received information indicating that in Mexico, a lack of federal or general legislation on the right to gender identity has resulted in not only an overwhelming number of bureaucratic procedures for changing documents but also a persistent lack of legal certainty for persons who were born in other states who must undertake legal proceedings there to complete the recognition process. This means that people in this legally-confusing situation are exposed to higher risk of violence and discrimination in healthcare environments when their documentation is not consistent.<sup>652</sup>

<sup>648</sup> Ministry of Public Health and Social Welfare. Resolution 695/2016, October 31, 2016. See: IACHR, <u>Press</u> <u>Release No. 28/17</u>: "<u>IACHR Hails Regional Progress on Human Rights of LGBTI People in the Americas</u>," March 10, 2017.

<sup>&</sup>lt;sup>646</sup> Red Latinoamericana y del Caribe de personas Trans (REDLACTRANS), <u>Esperando la muerte: Informe Regional</u> <u>CeDoSTALC 2016-2017</u> (2018), pg. 36.

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by "Hombres XX" (Mexico), pg. 11.

<sup>&</sup>lt;sup>649</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Asociación Panambi (Paraguay), pgs. 24 and 25; Rosa Posa Guinea and Carolina Robledo Desh, <u>Frente al Terrorismo de Estado, Dignidad y Resistencia: Derechos Humanos de Lesbianas, Gays, Personas Trans, Bisexuales e Intersexuales</u> (Asunción: Codehupy, 2017), 19.

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Comunidad Homosexual de Nicaragua (Nicaragua), pg. 11.

<sup>&</sup>lt;sup>651</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Unión Latinoamericana de Hombres Trans (ULTRANS), pg. 20.

<sup>&</sup>lt;sup>652</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Mexico (Mexico City Council to Prevent and Eliminate Discrimination), pg. 10.

#### 4. Body Modifications without Medical Supervision

- 341. The IACHR has been informed that trans and gender-diverse persons find themselves having to seek body modification without medical supervision to ensure aseptic and hygienic conditions, adequate materials and instruments, and the professional care and follow-up necessary.<sup>653</sup> This exposes them to body modification methods that are invasive, unhealthy, and risky that can severely impact their health and bodily integrity, and even end their lives.<sup>654</sup>
- 342. Based on the information collected, the IACHR notes that this circumstance is the result of a series of factors of exclusion and lack of interest on the part of the State, which frequently operate cumulatively. Essentially, the fact that trans persons view their access to health services from professionals as systematically obstructed by the mistreatment, pathologization, discrimination, and violence they tend to suffer in healthcare environments—as described throughout this chapter—is the primary reason they distance themselves from it. Additionally, the laws in force frequently do not require health services to specifically offer body modification services; the professional staff is not trained or sensitized in this area; or they do not have the medical materials necessary for these types of procedures. There are also economic barriers when the services are available but not covered by health insurance or the benefits offered by public systems. The Commission has indicated that some of these circumstances prevent trans persons from accessing safe body modification processes, which has led to premature and preventable deaths from unsafe and clandestine procedures throughout the region.<sup>655</sup>
- 343. The IACHR observes that among the most common practices is the selfadministration of hormones without a prescription. For example, the State of Uruguay reported that according to the trans survey it conducted, 42.9% of trans

<sup>655</sup> IACHR, <u>Press Release 64/16</u>: "Pathologization: Being Lesbian, Gay, Bisexual and/or Trans is Not an Illness – International Day Against Homophobia, Transphobia and Biphobia," May 12, 2016.

<sup>&</sup>lt;sup>653</sup> Red Latinoamericana y del Caribe de personas Trans (REDLACTRANS), <u>Esperando la muerte: Informe Regional</u> <u>CeDoSTALC 2016-2017</u> (2018), pg. 38.

<sup>&</sup>lt;sup>654</sup> [Colombia] Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Grupo de Acción y Apoyo a Personas Trans, pgs. 2 and 3; Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted Colombia Diversa (Colombia), pg. 10; [Jamaica] Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted Colombia Diversa (Colombia), pg. 10; [Jamaica] Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Transwave Jamaica, pg. 6; [Nicaragua] Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Comunidad Homosexual de Nicaragua (Nicaragua), pgs. 13 and 14. [Peru] Red Latinoamericana y del Caribe de personas Trans (REDLACTRANS), *Informe CEDOSTALC Perú*, 2017, pg. 8. [Venezuela] Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Venezuela Diversa Asociación Civil (Venezuela), pg. 8.

women surveyed took hormones on their own.<sup>656</sup> This practice is more common among trans women than trans men. Among trans men, only 7.4% self medicate.<sup>657</sup>

- The IACHR has also received information indicating that it is common to use soft 344. tissue filler injections to modify the appearance and shape of different parts of the body. In these unsupervised procedures, filler materials like industrial silicone, fat, or oils are injected that can be extremely harmful to health. Also, the lack of supervision means they are generally carried out in settings that are not aseptic and without the proper instruments, posing a high risk of bacterial contamination and different infections that can lead to death.<sup>658</sup> Cases have been documented of complications caused by harmful fillers where extremities have had to be amputated in order to avoid greater harm when it was impossible to extract the fillers because they had shifted or leaked, or because of other complications. Although these types of procedures are often because individuals want to change their bodies to match their self-perception, the IACHR has also received information highlighting the pressures of the logic of sex work, especially on trans women (and especially with regard to the need to change their bodies to match socially and culturally hegemonic patterns of "feminine" beauty).659
- 345. An investigation conducted in Bogotá found that 96% of trans women reported using informal mechanisms to transform their bodies: 55.4% at the home of a friend and 13.8% in garages or underground clinics. Additionally, 62% repeated such informal body transformation processes more than four times.<sup>660</sup> A study of trans persons born in Latin America who live in the United States found that 57% had injected various substances to improve or maintain their physical appearances.<sup>661</sup>
- 346. Economic barriers can also block access to body modification processes under medical supervision.<sup>662</sup> For example, it has been reported in Canada that, although public health services and programs are publicly funded, many medical care services that are crucial for trans persons are not covered, including access to gender-affirming hormone therapy. Such services must therefore be fully paid for

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Uruguay (Permanent Mission to the Organization of American States), pgs. 59 and 60.

<sup>&</sup>lt;sup>657</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Uruguay (Permanent Mission to the Organization of American States), pgs. 59 and 60.

<sup>&</sup>lt;sup>658</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Colombia Diversa (Colombia), pg. 9.

<sup>&</sup>lt;sup>659</sup> Red Latinoamericana y del Caribe de personas Trans (REDLACTRANS), <u>Esperando la muerte: Informe Regional</u> <u>CeDoSTALC 2016-2017</u> (2018), pg. 38.

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Colombia Diversa (Colombia), pg. 9.

<sup>&</sup>lt;sup>661</sup> TransLatin@ Coalition, <u>TransVisible: Transgender Latina Immigrants in U.S. Society</u>, 2013, pg. 25.

Red Latinoamericana y del Caribe de personas Trans (REDLACTRANS), <u>Esperando la muerte: Informe Regional</u> <u>CeDoSTALC 2016-2017</u> (2018), pg. 38; Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Unión Latinoamericana de Hombres Trans (ULTRANS), pg. 20.

by the individual seeking them.<sup>663</sup> According to the information received, in Panama, the majority of those offering professional health services with knowledge of gender identity issues work in the private sector and their services are very expensive. Although the public sector does have "trans-friendly clinics," they do not have specialists in endocrinology or professionals trained in hormone treatment.<sup>664</sup> An exploratory study carried out in Lima found that there were no public health services covering the needs of the trans population related to body modification, and that gender affirmation hormonal or surgical therapies were prohibitively expensive for most people,<sup>665</sup> especially when 89% of the trans-women surveyed said they did not have social security.<sup>666</sup>

- 347. For its part, the State of St. Vincent and the Grenadines explicitly informed the IACHR that it does not recognize trans persons by their self-perceived gender, and therefore it also does not provide them with body modification services or specific healthcare services.<sup>667</sup>
- 348. The Commission was also informed of the challenges surrounding implementation in States that have made progress toward protecting and guaranteeing the rights of trans and gender-diverse persons through progressive laws and public policies. For example, although the Gender Identity Act in Argentina guarantees comprehensive access to health, including, under the Obligatory Medical Plan, all gender affirmation procedures and treatments,<sup>668</sup>the information received by the IACHR shows that serious disparities still exist with regard to this law's implementation. The communications received indicate that the regulations of the article with regard to health issues do not require funds for this to be specifically budgeted to the public health system. Hospitals are not prepared to meet these needs, and professionals are not properly trained in this area. This has led to long waiting lists, with delays of up to four years. Instances have also been documented of trans persons meeting with formal resistance and denial of specific services by private companies and service providers within the social work system.<sup>669</sup> Similarly, in Chile, organizations

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Egale Canada Human Rights Trust (Canada), pg. 5.

<sup>&</sup>lt;sup>664</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Hombres Trans (Panama), pgs. 8-10.

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by PROMSEX (Peru), pg. 13; Red Latinoamericana y del Caribe de personas Trans (REDLACTRANS), *Informe CEDOSTALC Perú*, 2017, pg. 8.

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Red Latinoamericana y del Caribe de personas Trans (REDLACTRANS) Perú (Peru), pg. 10.

<sup>&</sup>lt;sup>667</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by St. Vincent and the Grenadines (Permanent Mission to the Organization of American States), pgs. 3 and 5.

<sup>&</sup>lt;sup>668</sup> Law 26,743, Gender Identity Act (2012), Article 11.

<sup>&</sup>lt;sup>669</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Unión Latinoamericana de Hombres Trans (ULTRANS), pg. 19.

have reported that in the entire public health service, there is only a single medical team in with the training necessary to perform gender affirmation surgeries.<sup>670</sup>

#### 5. Exposure to HIV

- 349. As explored in preceding chapters, the structural exclusion forced upon the majority of trans and gender-diverse persons, particularly trans women, means they find in sex work the only way to support themselves.<sup>671</sup> In this context, exposed to high rates of violence and serious difficulties finding safe conditions, they are often exposed to sexually transmitted infections, especially HIV. Regarding this, the Commission recalls that it is not "being trans" that makes infection by HIV more likely; rather it is the discrimination and vulnerability they face that makes them more vulnerable to HIV.<sup>672</sup>
- 350. Indeed, trans women are one of the populations most affected by the HIV-AIDS epidemic, with infection rates that are notoriously higher than for the general population. The information received by the IACHR indicates that in Latin America, the prevalence of HIV in the general population ranges between 0.5% and 1%, while for trans women, it stands at around 35%.<sup>673</sup> Along these lines, the IACHR has received information on local assessments that are equally concerning. For example, Honduras has found HIV prevalence among trans women of 17.2% in Tegucigalpa, 23.6% in San Pedro Sula, and 33.3% in La Ceiba<sup>674</sup>. Meanwhile, in Lima, Peru, the figures show that 30% of trans women live with HIV.<sup>675</sup>
- 351. The situation is no less concerning in North America. In the United States, a national survey carried out in 2015 found that the rate of trans persons living with HIV is almost five times higher than for the general population, and that rates are even higher among trans women, especially among black, indigenous, and Latina trans women.<sup>676</sup> In Ontario, Canada, HIV cases within the trans community were 10 times the provincial estimate. Also, in that province, criminalization of the failure to

<sup>&</sup>lt;sup>670</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Asociación Organizando Trans Diversidades (OTD) (Chile), pg. 4.

<sup>&</sup>lt;sup>671</sup> See, especially, Chapter 5 of this report on the right to work.

<sup>&</sup>lt;sup>672</sup> IACHR, <u>Advances and challenges towards the recognition of the rights of LGBTI Persons in the Americas</u>, December 7, 2018, para. 169.

<sup>&</sup>lt;sup>673</sup> Red Latinoamericana y del Caribe de personas Trans (REDLACTRANS), <u>Esperando la muerte: Informe Regional</u> <u>CeDoSTALC 2016-2017</u> (2018), pg. 37.

<sup>&</sup>lt;sup>674</sup> Comité de la Diversidad Sexual de Honduras, *Informe sobre la Situación de los Derechos Humanos de las Personas LGTB en Honduras* (2017), pgs. 6 and 7.

<sup>&</sup>lt;sup>675</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Red Latinoamericana y del Caribe de personas Trans (REDLACTRANS) Perú (Peru), pg. 10.

<sup>&</sup>lt;sup>676</sup> This is the largest survey on the experiences of trans persons in the United States, with 27,715 participants in all 50 states plus Washington DC, American Samoa, Guam, Puerto Rico, and US military bases abroad. See: National Center for Transgender Equality, <u>The Report of the 2015 U.S. Transgender Survey</u>, 2016, pg. 10.

disclose HIV positivity poses an additional obstacle to diagnosing and accessing other healthcare services.<sup>677</sup>

- 352. The Commission notes that this situation further worsens the stigma on trans and gender-diverse persons. For example, organizations from a number of OAS Member States informed the IACHR of extremely high levels of discrimination and stigma faced by trans persons who are automatically associated with persons living with HIV. This leads to more stigma and discrimination in access to treatment.<sup>678</sup> Nicaragua has clinics that specialize in providing HIV-AIDS<sup>679</sup> care to LGBTI persons that are informally and pejoratively called "cochón clinics"<sup>680</sup> or "AIDS clinics."<sup>681</sup> Additionally, Peruvian civil society organizations indicated that trans persons are only taken into account when it comes to public policies on infections and/or illnesses and not in instruments or laws to fully recognize their right to health— among other rights—thus reinforcing the social stigma faced by this group.<sup>682</sup>
- 353. The IACHR notes that epidemiological and statistical studies and reports that were sent to the IACHR focus almost exclusively on the trans women population. There is little information regarding HIV-AIDS and trans men, much less gender non-binary persons.<sup>683</sup> One study did find that, in the case of trans men, there is a reverse and equally concerning prejudice, which is that because they are considered "biologically women," trans men are not viewed as people who could have HIV.<sup>684</sup> In this regard, the IACHR notes with concern that this prejudicial and stereotypical belief could make the population of people with trans mesculine identities invisible to public policies on preventing and treating HIV.

<sup>&</sup>lt;sup>677</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Egale Canada Human Rights Trust (Canada), pg. 5.

<sup>&</sup>lt;sup>678</sup> Red Latinoamericana y del Caribe de personas Trans (REDLACTRANS), <u>Esperando la muerte: Informe Regional CeDoSTALC 2016-2017</u> (2018), pg. 37; Comité de la Diversidad Sexual de Honduras, Informe sobre la Situación de los Derechos Humanos de las Personas LGTB en Honduras (2017), pg. 8; Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Unión Latinoamericana de Hombres Trans (ULTRANS), pg. 20.

<sup>&</sup>lt;sup>679</sup> So-called VICITS clinics specialize in providing care to the LGBTIQ population under a mandate from Law 249-2009. These clinics offer services related to diagnosing and treating STIs.

<sup>&</sup>lt;sup>680</sup> " *Cochón*" is a vulgar term used to disparage and discriminate against members of the LGBTIQ community. It has a strong discriminatory connotation and stigma.

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Comunidad Homosexual de Nicaragua (Nicaragua), pgs. 13 and 14.

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by PROMSEX (Peru), pgs. 2 and 3.

<sup>&</sup>lt;sup>683</sup> The IACHR has found a few studies, carried out especially in the United States and Canada. See, among other examples: Jae Sevelius "There's no pamphlet for the kind of sex I have": HIV-related risk factors and protective behaviors among transgender men who have sex with non-transgender men" *Journal of the Association of Nurses in AIDS Care* 20, No. 5 (2009), 398-410; Jeffrey H. Herbst et al., "Estimating HIV Prevalence and Risk Behaviors of Transgender Persons in the United States: A Systematic Review" *AIDS and Behaviour* 12, No. 1 (2008), 8.

<sup>&</sup>lt;sup>684</sup> National Council on Gender Equality (Ecuador), <u>Una aproximación a la situación de los derechos humanos de las personas trans en Ecuador</u>, (2017), pg. 76.

354. Lastly, the Commission notes that the lack of public policies on methods for preventing the transmission of sexually transmitted infections and the importance of regular testing mean that many vulnerable trans and gender-diverse persons are not aware of the effective means of protecting their health and learning their HIV status.<sup>685</sup>

#### 6. Mental health

- 355. The Commission received information on the impact that the systemic exclusion forced upon trans persons and the discrimination and violence to which they are generally exposed have on their mental health. The rejection that they tend to experience from a young age within their families and from society as a whole, as well as the pathologization of their diverse identities and expressions tend to have an impact on their psychological integrity and mental health in the form of high rates of stress, sadness, depression, and feelings of abandonment.<sup>686</sup>
- 356. In the United States, a study found that the 50.5% of the trans persons surveyed reported suffering anxiety, while 26.4% said they were experiencing some degree of depression. Likewise, 46.7% said that the lack of care for their mental health needs was because of a lack of resources, while 43.7% said it was principally because of the lack of support groups.<sup>687</sup> Among the trans persons of Latin American origin living in the United States, almost 75% said they felt or had felt depressed in the last 12 months, although only 32% said they were seeing a mental health specialist at the time of the survey.<sup>688</sup> According to a survey conducted in Chile, 56% of the trans persons surveyed there said they had attempted to commit suicide, most of them between the ages of 11 and 15.<sup>689</sup>
- 357. The IACHR also notes that the transphobic and homophobic violence, harassment, and bullying experienced by young people as a result of their gender identities have a severe impact on their mental and physical health and well-being, reflected in high rates of suicide, depression, and self-harm.<sup>690</sup>

<sup>&</sup>lt;sup>685</sup> See, among others: Red Latinoamericana y del Caribe de personas Trans (REDLACTRANS), Informe CEDOSTALC Perú, 2017, pg. 4.

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Centro de Derechos Humanos Fray Matías de Córdoba (CDH-FMC) (Mexico), pg. 10.

<sup>&</sup>lt;sup>687</sup> TransLatin@ Coalition, <u>The State of Trans Health: Trans Latin@s and their Healthcare Needs</u>, 2016, pg. 11.

<sup>&</sup>lt;sup>688</sup> TransLatin@ Coalition, <u>TransVisible: Transgender Latina Immigrants in U.S. Society</u>, 2013, pg. 26.

<sup>&</sup>lt;sup>689</sup> Organizando Trans Diversidades, <u>1ª Encuesta para personas trans y de género no-conforme en Chile</u>, October 2017.

<sup>&</sup>lt;sup>690</sup> IACHR, <u>Press Release</u>64/16: "Pathologization: Being Lesbian, Gay, Bisexual and/or Trans is Not an Illness – International Day Against Homophobia, Transphobia and Biphobia," May 12, 2016.

#### C. Toward the Provision of Comprehensive and Inclusive Health Services

- 358. OAS States face a significant challenge when it comes to reversing the effects of the exclusion forced upon trans and gender-diverse persons. In this regard, the Inter-American Court has emphasized that State obligations regarding the right to health take on a special dimension when it comes to protecting vulnerable persons<sup>691</sup> given that, under the crosscutting condition that health services be accessible to all, the State is required to guarantee equal treatment to everyone.<sup>692</sup>
- 359. Regarding this, the Court has indicated that the right to equal protection and nondiscrimination has two sides: A negative one, related to the prohibition of arbitrary differentiation of treatment, and an affirmative one related to the obligation of States Party to create real equal conditions toward groups who have been historically excluded or who are exposed to a greater risk of discrimination.<sup>693</sup> In this regard, the adoption of positive measures is even more important when it comes to the protection of vulnerable or at risk individuals, as their access to health services must be guaranteed equally.<sup>694</sup>
- 360. The Court has found that the general obligation to protect health begins with the duty to regulate. It has therefore indicated that States are responsible for constant regulation of the provision of services (both public and private) and the execution of national programs aimed at providing good quality services.<sup>695</sup> The Court has taken into account General Comment 14 of the ESCER on the right to enjoy the highest attainable standard of health. Specifically, the comment emphasizes that the right to health means care that is timely and suitable, as well as the essential and interrelated elements of availability, accessibility, acceptability, and quality, application of which will depend on the prevailing conditions in each State.<sup>696</sup>
- 361. Additionally, the IACHR emphasizes that, pursuant to the obligations arising from Articles 1(1), 2, and 26 of the American Convention, as well as the corresponding provisions of the American Declaration, OAS Member States must adopt a series of complementary measures with the aim of making the right to health effective for the trans and gender-diverse persons under their jurisdiction. These measures must include the adoption of laws prohibiting discrimination based on gender identity

<sup>&</sup>lt;sup>691</sup> Inter-American Court. Case of Cuscul Pivaral *et al. v.* Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, para. 131.

<sup>&</sup>lt;sup>692</sup> Inter-American Court. Case of Cuscul Pivaral *et al. v.* Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, para. 129.

<sup>&</sup>lt;sup>693</sup> Inter-American Court. Case of Poblete Vilches *et al. v.* Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, para. 123.

<sup>&</sup>lt;sup>694</sup> Inter-American Court. Case of Poblete Vilches *et al. v.* Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, para. 123.

<sup>&</sup>lt;sup>695</sup> Cf. Case of Suárez Peralta v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 21, 2013. Series C No. 261, para. 134, and Case of Poblete Vilches *et al. v.* Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, para. 119.

<sup>&</sup>lt;sup>696</sup> Inter-American Court. Case of Cuscul Pivaral *et al. v.* Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, para. 106.

and/or expression, specifically in the provision of health services; the adoption of specific measures against pathologizing gender-diverse identities; the adoption of inclusive public policy; and the provision of specialized health services that meet the specific needs of trans and gender-diverse persons.

#### 1. Antidiscrimination Laws and Regulations

- 362. Recalling the Inter-American standards highlighted at the beginning of this chapter, the IACHR also underscores that the Yogyakarta Principles established that all individuals have the right to the highest possible level of physical and mental health, without discrimination based on gender identity or expression, and urge States to ensure that all health service providers provide care without discrimination on the basis of sexual orientation or gender identity.<sup>697</sup>
- 363. In this regard, some OAS Member States have adopted measures that explicitly prohibit this type of discrimination. For example, in Uruguay, the Comprehensive Trans Persons Act guarantees access to health services without any type of discrimination based on gender identity.<sup>698</sup> In Nicaragua, a 2014 resolution from the Ministry of Health prohibits all acts of discrimination based on gender identity in public and private health establishments.<sup>699</sup> Like regulation 249-2009 that came before, which required public servants and State healthcare centers to provide health services to trans persons without discrimination, it does not have the rank of law; 5% of medical staff are aware of its existence and very few apply it. Those who do know of it apply it however they like and at whim, saying it does not have the legal weight and backing necessary for application.<sup>700</sup>

#### 2. Depathologizing Diverse Gender Identities and Expressions

- 364. According to the information received by the IACHR, OAS Member States are making steady progress on taking measures to depathologize diverse gender identities and expressions. Such measures have been adopted in the form of laws, regulations issued by the executive branch, and judicial rulings.
- 365. In Argentina, the National Mental Health Act, enacted in 2010, explicitly prohibits diagnoses based on "sexual identity."<sup>701</sup> Similarly, Uruguay's Mental Health Act,

<sup>&</sup>lt;sup>697</sup> Yogyakarta Principles, Principle 17(h).

<sup>&</sup>lt;sup>698</sup> Law 19,684 (Uruguay), "Comprehensive Trans Persons Act," October 26, 2018.

<sup>&</sup>lt;sup>699</sup> <u>Ministerial Resolution 671-2014</u>, July 23, 2014; Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted ANDISEX Diversa (Nicaragua), pg. 5.

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Comunidad Homosexual de Nicaragua (Nicaragua), pg. 10.

<sup>&</sup>lt;sup>701</sup> Law 26,657 (Argentina), National Mental Health Act, Article 3(c).

enacted in 2017, prohibits any diagnoses based exclusively on an individual's gender identity.  $^{702}\,$ 

- 366. In Brazil, the Federal Psychology Council issued Resolution 1 of January 29, 2018, which aims to serve as a code of ethics for the treatment of trans persons based on a non-pathologizing approach.<sup>703</sup> Under this resolution, trans persons who work as psychology professionals "shall take no action to foster the pathologization of transsexual and *travesti* persons" and will recognize the self-determination of gender identity.<sup>704</sup> Additionally, the resolution prohibits proposing, conducting, or taking part in private, public, instructional, community, or promotional events or services that, using a pathologizing approach, promote conversion therapy for transsexual and *travesti* persons.<sup>705</sup>
- 367. In 2012, the Colombian Constitutional Court found that under no circumstances did being a trans person constitute an illness or a psychiatric condition, nor was a diagnosis of "gender dysphoria" required to access health services associated with a trans person's identity.<sup>706</sup> The following year, this Court found that the diagnoses are necessary "in order to access medical care, as this condition precedes the prescription of procedures related to sexual or gender affirmation,"<sup>707</sup> indicating as well that "although the diagnosis is psychiatric, the treatment is medical. Consequently, although this is not a disorder, it is a condition that needs the appropriate medical care in order to make the rights to identity and health comprehensively effective." In this ruling, the Court reiterated that "guaranteeing access to appropriate medical care for trans persons means recognizing not only the specific characteristics of health issues associated with emotional, mental, and physical transitions during the identity affirmation but also the marginalization and discrimination they face, which constitute a barrier to accessing the Social Security System." Lastly, in a judgment from 2015, the Court recognized that requiring medical tests or dysphoria diagnoses in order to amend the registry is invasive and "calls into question the individual's identity registration (because) they are based on the supposition that having an identity that does not match the one assigned at birth is a pathology (...) that must be treated medically and psychiatrically."<sup>708</sup> The IACHR recognizes the developments of the jurisprudence in this area, particularly where it recognizes the right of trans persons to self-determination over and above a medical diagnosis requirement.

<sup>&</sup>lt;sup>702</sup> Law No. 19,529 (Uruguay), Mental Health Act, Article 4(d).

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Unión Latinoamericana de Hombres Trans (ULTRANS), pg. 21.

<sup>&</sup>lt;sup>704</sup> Federal Psychology Council (Brazil), <u>Resolution 1</u>, January 29, 2018, Article 6.

<sup>&</sup>lt;sup>705</sup> Federal Psychology Council (Brazil), <u>Resolution 1</u>, January 29, 2018, Article 7.

<sup>&</sup>lt;sup>706</sup> Constitutional Court (Colombia), Judgment T-918/12 (2012).

<sup>&</sup>lt;sup>707</sup> Constitutional Court (Colombia), Judgment T- 771/13 (2013); Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Colombia Diversa (Colombia), pg. 9.

<sup>&</sup>lt;sup>708</sup> Constitutional Court (Colombia), Judgment T-063/15 (2015).

- 368. Additionally, the Commission notes positively that the Manual on Health Care for LGBTI Persons prepared by the Ministry of Public Health in Ecuador, application of which is obligatory in the National Health System, includes a section specifically on health care for trans persons with an approach that depathologizes diverse identities.<sup>709</sup>
- 369. It should also be noted that, as explored in Chapter 2 of this report, several States have taken measures to eliminate pathologizing requirements for recognizing the gender identities of trans and gender-diverse persons. They include Argentina,<sup>710</sup> Colombia,<sup>711</sup> Brazil,<sup>712</sup> and Mexico City.<sup>713</sup>

## 3. Public Health Policies that are Inclusive and Do Not Discriminate

370. The Commission notes that in order to effectively guarantee the right to health for trans and gender-diverse persons, States must design and implement public health policies that are inclusive of their specific needs and that guarantee that all health services are available, without any discrimination based on gender expression or identity. In this regard, States are in charge of supervising and overseeing the provision of health services, both public and private, as well as ensuring that

<sup>&</sup>lt;sup>709</sup> Ministry of Public Health of Ecuador, <u>Resolution 125</u>, November 15, 2016, pg. 22-27.

<sup>&</sup>lt;sup>710</sup> The Gender Identity Act, enacted in 2012, was a milestone in the depathologization of trans identities in the region because it completely eliminated all pathologizing requirements for a person to access legal recognition of their gender identities. It abandoned the mythologizing paradigm to fully adopt a paradigm of self perception, guaranteeing the full right to free development of personality. See: Law 26,743 (Argentina), Gender Identity Act (2012).

<sup>&</sup>lt;sup>711</sup> In 2015, Ministerial Decree 1227 was issued, permitting changes to the sex component of the birth certificate through an administrative procedure before a notary public, the presentation of an affidavit, and simple copies of the birth certificate and national citizen identification card, with no requirement to submit any other documentation or additional evidence. IACHR, <u>Press Release No.</u> 75/15, "IACHR Congratulates Mexico and Colombia for Measures Recognizing Identity of Trans Persons," July 1, 2015.

<sup>&</sup>lt;sup>712</sup> In 2018, the Supreme Federal Tribunal authorized amendment of trans persons' birth certificates without the need for any surgical interventions or medical or psychological reports, marking a significant step forward toward eradicating the pathologization of diverse gender identities. Also see: IACHR, <u>Press Release No. 85/18</u>: "IACHR Welcomes Brazilian Supreme Court Decision to Allow Trans Persons to Change Name through Self-Declaration," April 23, 2018.

<sup>&</sup>lt;sup>713</sup> In 2015, a decree took effect permitting recognition of the gender identity of trans persons in the Federal District via an administrative procedure, eliminating pathologizing requirements like the need to submit evidence of a psychiatric diagnoses and/or medical examinations. According to the information received, this decree was the result of the joint work carried out by a number of state entities, the Mexico City Council to Prevent and Eliminate Discrimination, and civil society organizations that defend the rights of trans persons, particularly Coalición T47. Also see: IACHR, <u>Press Release No.</u> 75/15, "IACHR Congratulates Mexico and Colombia for Measures Recognizing Identity of Trans Persons," July 1, 2015.

professionals have the necessary qualifications to perform such services in order to protect the lives of their patients.<sup>714715</sup>

- 371. Along the same lines, the Yogyakarta Principles urged States to adopt the education and training policies and programs necessary to make it possible for those working in the health sector to provide all individuals with the highest possible level of healthcare while fully respecting each one's gender identity.<sup>716</sup>
- 372. For these reasons, States must work to guarantee the right to health for trans and gender-diverse persons living with HIV. To do so, a comprehensive approach is needed that includes a continual sequence of prevention, treatment, care, and support.<sup>717</sup> A limited response to access to antiretroviral drugs is a failure to comply with the obligations to prevent, address, and support derived from the right to the highest possible level of health. States must foster safe environments with good quality and comprehensive services that provide information, testing, condoms, lubricants, sterile injection materials, health education, and advise as appropriate, strengthening sexual and reproductive health programs.<sup>718</sup>
- 373. Additionally, serious efforts must be made to combat the prejudices and inequalities causing the stigma and vulnerability that trans and gender-diverse persons who live with HIV-AIDS often experience. Along the same lines, the 2030 Agenda for Sustainable Development establishes the objective of ensuring that people of all ages can live a healthy life and promoting their universal well-being, with emphasis on the vulnerability facing different groups, such as people who live with HIV-AIDS. States thus agreed to take the actions necessary to ensure that by 2030, they have put an end to epidemics such as AIDS and to other communicable diseases like HIV. States also committed to providing universal healthcare, including access to medications and vaccinations for everyone.<sup>719</sup>
- 374. Additionally, States must guarantee that people who live in poverty are effectively able to fully exercise their right to health. Indeed, those who live in poverty— including many trans and gender-diverse persons in the region—often do not have equal access to health services and information, exposing them to enhanced risk of

<sup>&</sup>lt;sup>714</sup> Inter-American Court. Case of Poblete Vilches et al. v. Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, paras. 120 and 121; Case of Albán Cornejo et al. v. Ecuador. Merits, Reparations, and Costs. Judgment of November 22, 2007. Series C No. 171, para. 119

<sup>&</sup>lt;sup>715</sup> Inter-American Court. Case of Poblete Vilches *et al. v.* Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, para. 146.

<sup>&</sup>lt;sup>716</sup> Yogyakarta Principles, Principle 17(i).

<sup>&</sup>lt;sup>717</sup> Inter-American Court. Case of Gonzales Lluy *et al. v.* Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 1, 2015. Series C No. 298, para. 198.

See: Inter-American Court. Case of Gonzales Lluy *et al.* v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 1, 2015. Series C No. 298, para. 197; Case of Cuscul Pivaral *et al.* v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, para. 113.

<sup>&</sup>lt;sup>719</sup> Inter-American Court. Case of Cuscul Pivaral *et al. v.* Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, para. 109.

infection and to receiving medical care that is inadequate or incomplete.<sup>720</sup> The Inter-American Court has held that medical care in institutions that are unprepared, that do not have the right infrastructure or cleanliness to provide medical services, or whose professionals do not have the proper qualifications for providing such services could significantly impact the rights to life or integrity of the individuals receiving the services.<sup>721</sup>

- 375. The IACHR highlights as a step forward in the region that in recent years, many OAS Member States have moved to implement measures in the framework of their health policies to improve care for trans and gender-diverse persons and offer specialized services to meet their specific needs.
- 376. The Argentine State reported to the IACHR that the Ministry of Health's National Office on Sexual and Reproductive Health is maintaining a rolling survey of specialists and health centers offering hormone therapy or body modification surgical procedures in order to make progress in determining the number of trans persons who seek such treatments.<sup>722</sup> This office also conducts a training program for healthcare staff, including administrative and patient records staff, nurses, laboratory personnel, medical professionals in different specializations, social workers, and health advocates.<sup>723</sup> Additionally, in 2015, this office published a guide to providing comprehensive care for trans persons.<sup>724</sup> It establishes guidelines and recommendations intended to improve trans persons' access to comprehensive health care in a context of respect for sexual and reproductive rights and with a depathologizing approach focused on good quality care.725 Additionally, in the Autonomous City of Buenos Aires, Casa Trans, opened in 2017, has become a point of reference for the city's trans population. Services at Casa Trans include rapid HIV tests, vaccinations, and psychological support provided by trans persons for trans persons.726
- 377. The IACHR has been informed that the Ministry of Health and Wellness of Jamaica, in collaboration with the Regional Health Authorities and sexual and gender

<sup>&</sup>lt;sup>720</sup> Inter-American Court. Case of Cuscul Pivaral *et al. v.* Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, para. 131.

<sup>&</sup>lt;sup>721</sup> Inter-American Court. Case of Poblete Vilches *et al. v.* Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, para. 124; Case of Suárez Peralta v. Ecuador, para. 149

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Argentina (Secretariat for Human Rights and Cultural Pluralism, the Ministry of Justice and Human Rights – Office of the President), pg. 20.

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Argentina (Secretariat for Human Rights and Cultural Pluralism, the Ministry of Justice and Human Rights – Office of the President), pgs. 31 and 32.

<sup>&</sup>lt;sup>724</sup> Office of the President, Argentina, <u>Comprehensive Care for Trans Persons</u>, Guide for Health Teams, June 2015.

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Argentina (Secretariat for Human Rights and Cultural Pluralism, the Ministry of Justice and Human Rights – Office of the President), pgs. 31 and 32.

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Argentina (LGBT Office of the Ombudsperson's Office of the City of Buenos Aires), the Federación Argentina de Lesbianas, Gays, Bisexuales y Trans (FALGBT) and the Asociación de Travestis, Transexuales y Transgéneros de Argentina (ATTTA), pg. 7.

diversity organizations have provided training and resources to facilitate trans persons' access to medical care. This initiative included specific materials documenting the life experiences of trans persons to raise awareness and inform health professionals and the general public.

- 378. Also, in 2014, the Ministry of Health of Bolivia drafted a Comprehensive Care Manual for the Trans Population whose application is required in the national health system.<sup>727</sup>
- 379. In 2016, the National Penitentiaries and Prisons Institute of Colombia issued new general rules for the country's prisons that included guidelines on providing health care to trans persons deprived of liberty.<sup>728</sup> The resolution established that trans persons receiving hormone treatment or with health problems as a result of body transformations carried out prior to or during their imprisonment must receive comprehensive health care.<sup>729</sup>
- 380. For its part, Ecuador's Ministry of Public Health issued Resolution 125 of 2016, requiring use of the Manual on Health Care for Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) Persons," which includes a specific section on health care for trans persons that stresses depathologizing trans identities.<sup>730</sup> Likewise, in response to discrimination reported in health centers, a number of trans organizations joined the Ministry of Public Health to organize and form ties to specific centers—known as "trans-friendlies"—where trans persons can receive medical care from trained and sensitized professionals.<sup>731</sup>
- 381. In Mexico City, the Human Rights Program of the Federal District is in charge of guaranteeing access and healthcare—of good quality, that follows scientific principles, and that is free from discrimination—to the sectors comprising the LGBTI population. It is also in charge of training health services personnel at all levels to generally raise awareness regarding gender identity.<sup>732</sup> According to the information received, there are health programs that specialize in sexually transmitted infections<sup>733</sup> where trans persons—including migrants—can get

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted Bolivia (Unidad de Diversidades Sexuales), pg. 4.

<sup>&</sup>lt;sup>728</sup> National Penitentiaries and Prisons Institute of Colombia, <u>*Resolution 006349*</u>, December 16, 2016.

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted Colombia Diversa (Colombia), pg. 6.

<sup>&</sup>lt;sup>730</sup> Ministry of Public Health of Ecuador, <u>Resolution 125</u>, November 15, 2016, pg. 22-27.

<sup>&</sup>lt;sup>731</sup> National Council on Gender Equality (Ecuador), <u>Una aproximación a la situación de los derechos humanos de las personas trans en Ecuador</u>, (2017), pg. 74.

<sup>&</sup>lt;sup>732</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Mexico (Mexico City Council to Prevent and Eliminate Discrimination), pg. 13.

<sup>&</sup>lt;sup>733</sup> Including the CAPASITSS (Outpatient Centers for AIDS and STI Care and Prevention) and the SAIHs (Comprehensive Hospital Care Centers). Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Centro de Derechos Humanos Fray Matías de Córdoba (CDH-FMC) (Mexico), pg. 9 and 10.

regular care.<sup>734</sup> The Condesa Specialized Clinic offers support for hormone treatment, comprehensive care for HIV and sexual transmitted infections, and mental health care.<sup>735</sup> The specialized clinic has a free specialized care clinic for trans persons between the ages of 16 and 71, where the median age is 29. Of registered participants, 79% are trans women and 21% are trans men.<sup>736</sup>

382. Additionally, in Mexico City, a series of provisions are in place on diversity and health, including the Preventing and Eliminating Discrimination in CDMX Act, which requires public agencies to implement health programs to provide care, support, information, education, and advice, especially regarding sexual health, including HIV and sexually transmitted infections. The law requires care that is comprehensive, up-to-date, personalized, and free of stereotypes, prejudices, and stigma that takes into account the specific conditions and needs of each individual, and also promotes access to public health services, specifically regarding trans persons.<sup>737</sup> Likewise, the Rights of Young Persons in CDMX Act establishes that the State shall provide support and guidance to young persons so they can obtain the medical, legal, and informational services they need to enable them to build their sexual and gender identities.<sup>738</sup> For its part, the Federal District Health Act establishes in its Article 24 that the State must implement a specialized healthcare program to meet the health needs of trans persons, including the administration of hormones, psychotherapy, preventative measures, and medical treatment for STIs and HIV.<sup>739</sup> Additionally, the Comprehensive HIV-AIDS Care and Prevention Act of the Federal District establishes that its implementation authority is in charge of providing specialized medical care and support for hormone therapy, hormone therapy support, HIV-AIDS prevention and care, and prevention and care for other STIs to the trans persons living in the Federal District.740

<sup>&</sup>lt;sup>734</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Centro de Derechos Humanos Fray Matías de Córdoba (CDH-FMC) (Mexico), pg. 9 and 10.

<sup>&</sup>lt;sup>735</sup> The IACHR also received information on the lack of crosscutting care in services for trans person. Frequently, trans persons with any health issue are told they must go exclusively to the specialized clinic, where there is a hormone replacement treatment program for trans persons. Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by "Hombres XX" (Mexico), pg. 11.

Article 38; response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Mexico (Mexico City Council to Prevent and Eliminate Discrimination), pgs. 3-5.

Preventing and Eliminating Discrimination in CDMX Act, published in the Official Gazette of the Federal District on February 24, 2011. Latest amendment published in the Official Gazette of the Federal District on November 18, 2015.

<sup>&</sup>lt;sup>738</sup> <u>Rights of Young Persons in CDMX Act</u>, published in the Official Gazette of the Federal District on August 13, 2015, Article 40.

<sup>&</sup>lt;sup>739</sup> Federal District Health Act, published in the Official Gazette of the Federal District, September 17, 2009, Article 24(XXI).

<sup>&</sup>lt;sup>740</sup> <u>Comprehensive HIV-AIDS Care and Prevention Act of the Federal District</u>, published in the Official Gazette of the Federal District on June 20, 2012. Latest amendment published in the Official Gazette of the Federal District on September 23, 2014, Article 24(II)(d).

- 383. In Peru, the 2014-2016 National Human Rights Plan for the first time included LGBTI persons as a group needing special protection, with one of the strategic objectives in that regard being guaranteeing access to health services.<sup>741</sup> Although under this plan, procedures were established for providing comprehensive care to LGBTI persons through the public health system, the development of protocols for the private sector on specialized care and specific measures remains pending.<sup>742</sup> Although it is limited to HIV-AIDS, the Peruvian Ministry of Health also issued Resolution 980 and approved Technical Regulation 126 on Comprehensive Care for Trans Women, establishing specific guidelines on providing care to trans women as part of the differentiated services aimed at preventing STIs and HIV.<sup>743</sup> It also approved the Strategic Multisector Plan on Preventing and Controlling STIs and HIV-AIDS 2015-2019, which aims to improve access to preventing these illnesses for the trans population by combating the stigma on them.<sup>744</sup>
- 384. The State of Uruguay reported that the trans population census found that 96% of respondents have access to care in a health center.<sup>745</sup> The city of Montevideo has found success with comprehensive health care for the trans population in the teaching unit (*Unidad Docente Asistencial*, UDA) of Saint Bois Hospital, under the State Health Services Administration (ASSE).<sup>746</sup> More than 60% of trans persons—regardless of origin—find care at ASSE facilities or the Hospital de Clínicas. Regarding the quality of care that trans persons receive in the health centers where they go most frequently, the State reported that, according to users, it was good or very good, although this was less true for trans men (69.6%) than for trans women (80.9%).<sup>747</sup> The service provided by Saint Bois Hospital stands out, with 73.3% of patients reporting the care was very good.<sup>748</sup> The Center on Infectious Diseases also has the highest levels of satisfaction by users, with 63.8% reporting the care received was very good and 29.3% reporting it as good.<sup>749</sup>

<sup>&</sup>lt;sup>741</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by PROMSEX (Peru), pg. 3.

<sup>&</sup>lt;sup>742</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by PROMSEX (Peru), pgs. 14 and 15.

<sup>&</sup>lt;sup>743</sup> Ministry of Health of Peru, <u>Ministerial Resolution 980</u>, December 21, 2016.

<sup>&</sup>lt;sup>744</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by PROMSEX (Peru), pg. 12.

<sup>&</sup>lt;sup>745</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted Uruguay (Permanent Mission to the Organization of American States), pg. 52.

<sup>&</sup>lt;sup>746</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Uruguay (Secretariat of Diversity – Montevideo Department), pg. 7.

<sup>&</sup>lt;sup>747</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted Uruguay (Permanent Mission to the Organization of American States), pg. 56.

<sup>&</sup>lt;sup>748</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted Uruguay (Permanent Mission to the Organization of American States), pg. 56.

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Uruguay (Permanent Mission to the Organization of American States), pgs. 56 and 57.

#### 4. Medical services related to body modification

- 385. The information available to the Commission indicates that some States have begun taking measures to guarantee that people can access body modification with the proper medical supervision. These measures are in line with the Yogyakarta Principles, which urge States to facilitate access to non-discriminatory and competent treatment, care, and support for individuals seeking body modification related to gender reassignment<sup>750</sup> and to provide the best-quality health services for gender affirmation based on consent freely expressed by the individual. It states that these services must be provided through a public health system or through insurance or reimbursement systems that cover their costs.<sup>751</sup>
- 386. In Argentina, Article 11 of the Gender Identity Act guarantees comprehensive access to health, including, under the Obligatory Medical Plan, all gender affirmation procedures and treatments.<sup>752</sup> According to the information received, individuals wishing to undergo these types of surgeries can in principle do so free of charge. In order to promote good quality care under medical supervision and with the recommended materials, a number of procurement processes have been undertaken since 2015 through the Office of Sexual and Reproductive Health of the Ministry of Health of Argentina. The aim is for people turning to the public health subsystem for hormone treatments under the Gender Identity Acts to be able to access materials free of charge.<sup>753</sup>
- 387. In Canada, a number of provinces—including British Columbia,<sup>754</sup> Ontario,<sup>755</sup> and New Brunswick<sup>756</sup>—have adopted measures so provincial health insurance could extend coverage to health services specifically for trans persons, including gender affirmation. However, civil society organizations have reported that in other provinces and territories, such medical care is still not covered.<sup>757</sup>

<sup>&</sup>lt;sup>750</sup> Yogyakarta Principles, Principle 17(g).

<sup>&</sup>lt;sup>751</sup> Yogyakarta Principles, Principle 17(k) and 17(l).

Senate and Chamber of Deputies of the Argentine Nation, Law 26,743, promulgated on May 23, 2012.

<sup>&</sup>lt;sup>753</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Argentina (Secretariat for Human Rights and Cultural Pluralism, the Ministry of Justice and Human Rights – Office of the President), pg. 33.

<sup>&</sup>lt;sup>754</sup> In 2015, British Columbia's Provincial Health Services Authority launched <u>Trans Care BC</u>, which is the first program in Canada to provide support for the health issues faced by trans persons. Its aim is to support the delivery of equitable and accessible care, surgical planning, and peer and community support. Also see Frohard-Dourlent, Hélène, Coronel Villalobos, Mauricio and Saewyc, Elizabeth, "<u>A survey of experiences with surgery readiness assessment and gender-affirming surgery among trans people in Canada: Focus on British Columbia</u>," Vancouver, BC: Stigma and Resilience Among Vulnerable Youth Centre, School of Nursing, University of British Columbia, 2017, pgs. 1 and 2.

<sup>&</sup>lt;sup>755</sup> In March 2016, Ontario announced that gender affirmation surgeries would be covered by the Ontario Health Insurance Plan.

<sup>&</sup>lt;sup>756</sup> In June 2016, New Bruswick announced that gender affirmation surgeries would be covered by Medicare.

<sup>&</sup>lt;sup>757</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Egale Canada Human Rights Trust (Canada), pgs. 5 and 6.

- 388. In Colombia, the Constitutional Court found that gender affirmation processes must be covered by the Obligatory Health Plan, as such processes are closely tied to the rights to a life with dignity, to health, and to the free development of personality.<sup>758</sup> Thus, a number of procedures for body modification used by the trans population were added to the Obligatory Health Plan through Resolution 29 of 2011 of the Health Regulation Commission.<sup>759</sup>
- 389. In the United States, 23 states and the District of Columbia have explicitly prohibited private insurance providers from excluding services from coverage based on gender identity,<sup>760</sup> and in another 21 states, Puerto Rico, and the District of Columbia, social security programs explicitly cover such services.<sup>761</sup>
- 390. In Uruguay, the Comprehensive Trans Persons Act guarantees all persons over the age of 18 access to full and partial surgical procedures and/or comprehensive hormone treatment to modify their bodies without the need for judicial or administrative authorization. Under this law, these procedures are included in the National Comprehensive Health System, and cover private healthcare providers as well.<sup>762</sup> Additionally, the State Health Services Administration has prepared a Crosssex Hormone Therapy Protocol on providing these services.<sup>763</sup> In 2017, the Ministry of Public Health presented a Clinical Guide on Hormone Therapy for Trans Persons with the aim of improving the healthcare response offered in this area. According to the information received, these policies were prepared based on intersectional dialogue and direct work with users. It is based on a paradigm of depathologizing trans identities.<sup>764</sup>

<sup>&</sup>lt;sup>758</sup> See: Constitutional Court (Colombia), Judgments T-876/2012, T-918/2012, T-771/2013, and T-522/2013.

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted Colombia (Permanent Mission to the Organization of American States), pgs. 13 and 14.

<sup>&</sup>lt;sup>760</sup> They are: Washington, Oregon, Nevada, California, Nuevo Mexico, Montana, Colorado, Minnesota, Illinois, Michigan, Pennsylvania, Maine, Maryland, Delaware, New Jersey, Connecticut, New York, New Hampshire, Vermont, Virginia, Massachusetts, Rhode Island, and Hawaii. Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Movement Advancement Project (MAP) and other organizations (United States), pg. 3. And Movement Advancement Project. "Equality Maps: Healthcare Laws and Policies." <u>https://www.lgbtmap.org/equality-maps/healthcare laws and policies</u>. Visited on June 22, 2020.

<sup>&</sup>lt;sup>761</sup> They are: Washington, Oregon, California, Nevada, Montana, Colorado, Minnesota, Illinois, Wisconsin, Michigan, Pennsylvania, Maryland, New Jersey, Connecticut, Rhode Island, Massachusetts, Maine, New Hampshire, Vermont, New York, and Hawaii, as well as Puerto Rico and D.C. Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Movement Advancement Project (MAP) and other organizations (United States), pg. 3, and Movement Advancement Project. "Equality Maps: Healthcare Laws and Policies.". Visited on June 6, 2020.

<sup>&</sup>lt;sup>762</sup> Law No. Law 19,684 (Uruguay), "Comprehensive Trans Persons Act," October 26, 2018.

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Uruguay (Permanent Mission to the Organization of American States), pgs. 20 and 21.

Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Uruguay (Permanent Mission to the Organization of American States), pgs. 20 and 21.

- 391. Lastly, the IACHR received information on at least five hospitals offering medical services related to gender affirmation treatments in Brazil.<sup>765</sup> Despite this progress, the organizations note that these institutions cannot keep up with demand.<sup>766</sup> The IACHR was also informed that, in Mexico City, the Condesa Specialized Clinic is the institution that offers support for hormone treatment.<sup>767</sup>
- 392. Finally, the Commission underscores that despite the significant progress made in access to health for trans and gender-diverse persons, including the recognition of access to health services without the need for diagnoses that are pathologizing, significant challenges persist in the region if the right to health is to be realized with equal protection and nondiscrimination. Most importantly, the IACHR highlights that the lack of training and sensitivity among those who work as healthcare professionals or workers perpetuates this situation, and this must be taken into account by States in their corresponding policies and legislation.

According to the information received, the services are offered in the following health centers: Hospital das Clínicas da Universidade Federal de Goiás Goiânia; Hospital Universitário Pedro Ernesto Universidade Estadual do Rio de Janeiro; Hospital de Clínicas de Porto Alegre Universidade Federal do Rio Grande do Sul; Hospital de Clínicas da Faculdade de Medicina FMUSP Fundação Faculdade de Medicina MECMPAS; and Hospital das Clínicas da Universidade Federal de Pernambuco. Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Unión Latinoamericana de Hombres Trans (ULTRANS), pg. 20.

<sup>&</sup>lt;sup>766</sup> Response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by the Unión Latinoamericana de Hombres Trans (ULTRANS), pg. 20.

Article 38; response to the questionnaire on trans persons and economic, social, cultural, and environmental rights in the Americas, submitted by Mexico (Mexico City Council to Prevent and Eliminate Discrimination), pgs. 3-5.

### CHAPTER 6

# EFFECTS OF THE COVID-19 PANDEMIC ON THE ESCER OF TRANS AND GENDER-DIVERSE PERSONS

# **EFFECTS OF THE COVID-19 PANDEMIC ON THE ESCER OF TRANS AND GENDER-DIVERSE PERSONS**

#### A. The IACHR Response to the Pandemic

- 393. During the drafting of this report, the global community has been impacted by the pandemic illness caused by the novel coronavirus 19 (COVID-19). Recognizing the complexity of the problem faced by the States in the region with the global pandemic caused by COVID-19, the Inter-American Commission installed its Rapid and Integrated Response Coordination Unit to the crisis in relation to the COVID-19 pandemic (SACROI COVID-19) to strengthen its institutional capacities to protect and defend fundamental freedoms and human rights in this context, especially the right to health and other ESCER.<sup>768</sup>
- 394. Regarding this emergency and in the operating context of its SACROI COVID-19, the IACHR adopted Resolution 1/2020, "Pandemic and Human Rights," which is a comprehensive approach by the Commission to the situation of the pandemic, which includes the standards of the Inter-American Human Rights System and a set of recommendations to the States of the region to address the COVID-19 from a human rights perspective.<sup>769</sup> In its Resolution, the IACHR recommended that States immediately, urgently, and with all due diligence adopt all measures necessary to protect the rights to life, health, and humane treatment of the persons under their jurisdiction from the risks presented by this pandemic.
- 395. The IACHR also received information on the measures taken by different States in the region to address the pandemic, as well as the impacts it has had on different groups within society. The information indicates that the COVID-19 pandemic has had differentiated and intersectional impacts on the realization of ESCER for certain particularly vulnerable groups and populations.<sup>770</sup>
- 396. Therefore, in its resolution, the Commission included a section of recommendations regarding particularly vulnerable groups, such as older persons, persons deprived of liberty, women, indigenous peoples, persons in a state of human mobility, children and adolescents, LGBTI people, people of African descent, persons with disabilities. The IACHR emphasize that when issuing emergency and containment measures in response to COVID-19, the States of the region must apply intersectional approach and pay special attention to the needs and differentiated

<sup>&</sup>lt;sup>768</sup> IACHR, <u>SACROI COVID-19 website</u>, visited on June 16, 2020.

<sup>&</sup>lt;sup>769</sup> IACHR, <u>Press Release 73/2020</u> "IACHR adopts Resolution on Pandemic and Human Rights in the Americas", April 10, 2020.

<sup>&</sup>lt;sup>770</sup> IACHR, <u>Resolution 1/2020</u>, Pandemic and Human Rights in the Americas, April 10, 2020.

impact of those measures on the human rights of historically excluded or high-risk groups.

#### B. LGBTI Persons during the Pandemic

- 397. In the framework of the SACROI COVID-19, the IACHR took note that LGBTI persons have been particularly affected during the crisis caused by the pandemic as a result of pre-existing conditions of violence, exclusion, and want<sup>771</sup> due to the invisibility of LGBTI persons and, particularly, of trans and gender-diverse persons when drafting policies to respond to national and global emergencies, including plans for humanitarian assistance and economic recovery. In view of this reality, in addition to the recommendations set forth in the resolution, the Commission issued a press release exploring in more depth the rights situation of LGBTI persons during the pandemic and formulating recommendations complementary to those set forth in the resolution.
- 398. The main recommendations made by the IACHR in this area generally involve the social inclusion of trans persons in eventual economic recovery measures; the adoption of healthcare protocols and protocols on domestic violence reporting; adopting or strengthening policies to guarantee respect for gender identity in hospitals and to guarantee the continuity of medical services provided to trans persons; and the implementation of campaigns to prevent and combat homophobia, transphobia, and discrimination based on sexual orientation, thereby guaranteeing protection of the right to gender identity.
- 399. Based on these general recommendations, the following sections provide an overview of two of the main situations the Commission would point to during the pandemic as resulting from trans and gender-diverse persons' lack of access to ESCER. The Commission will also highlight some relevant recommendations for protecting the rights of trans and gender-diverse persons.

#### 1. The Persistence of Acts of Violence and Discrimination Based on Gender Identity/Expression

- 400. During the pandemic, incidents of violence and discrimination against LGBTI persons continued. The Commission has received information from the region indicating that some of the provisions adopted by States in response to the pandemic put the rights of trans and gender-diverse persons at risk or are perceived as doing so, leading to acts of prejudice-based discrimination and violence.
- 401. For example, the Commission learned that a number of States in the region established measures to restrict the free movement of persons that set certain days for the movement of women and others for men. The IACHR underscores that such

<sup>&</sup>lt;sup>771</sup> OutRight Action International, <u>Vulnerability Amplified</u>, May 2020.

measures are in themselves discriminatory against trans and gender-diverse persons, as protocols were not generally in place for their movement, nor were there guidelines for how security forces should act should a person's identification documents not match their gender identity or expression.<sup>772</sup>

- 402. This was particularly important during security forces interventions and interactions with trans and gender-diverse persons moving about on the day corresponding to their true gender identities. Regarding this, the Commission noted with concern the incidents of violence and discrimination perpetrated by security forces against trans women whose identification documents did not correspond to their gender identities and expression. This highlights how important it is for States to provide simple and quick legal mechanisms to enable all persons to register and/or change, rectify, or amend their names and other essential components of their identities, such as their images or the reference to sex or gender, and for this to be a priority, especially during the pandemic.<sup>773</sup>
- 403. Regarding the actions of security forces agents, the Commission called on States to implement policies to sensitize security forces and judicial authorities on issues of gender identity and expression that take into account that trans and gender-diverse persons frequently do not have a personal identification document that correctly reflects their identities and/or gender expressions.

#### 2. Intensification of Social Exclusion and Poverty Affecting Trans and Gender-Diverse Persons

- 404. The IACHR also received information on trans women and sex workers who continued to work even during efforts to contain COVID-19 because they did not have other sources of income in a context of social exclusion and high homelessness rates. The Commission received information from organizations that work on the rights of trans and gender-diverse persons indicating that it was impossible to continue paying rent for residences that are often also used as a workplace. The IACHR also received information describing the particular vulnerability of trans persons who, given the impossibility of obtaining economic resources and work, are forced to migrate, exposing them to risks that include human trafficking.<sup>774</sup>
- 405. In response to this, the Commission called on States to guarantee LGBTI persons access to social programs with an integrated human security approach, guaranteeing LGBTI persons living on the street access to food and medication, especially for trans women who perform sex work.

<sup>&</sup>lt;sup>772</sup> IACHR, <u>Press Release 81/2020</u>: "The IACHR calls on States to guarantee the rights of LGBTI people in the response to the COVID-19 pandemic", April 20, 2020.

<sup>&</sup>lt;sup>773</sup> IACHR, <u>Press Release 81/2020</u>: "The IACHR calls on States to guarantee the rights of LGBTI people in the response to the COVID-19 pandemic", April 20, 2020.

<sup>&</sup>lt;sup>774</sup> Caleidoscopio, Situation of LGBTIQ Persons in Venezuela:The Complex Humanitarian Emergency and COVID-19, document received on June 22.

- 406. As good practices in this area, the IACHR received information from the State of Mexico on actions taken by the Secretariat of Inclusion and Social Welfare, jointly with Mexico City government, to provide care and protection to especially vulnerable populations, including economic support for sex workers and persons living on the street.
- 407. The Commission takes note of the essential role that civil society has played during the pandemic, with information indicating that in response to State pandemic response measures that excluded trans and gender-diverse persons, they were supported by civil society organizations through activities including collection and distribution of food and water, sanitary materials and masks; the activation of communications networks; access to sources of financing; and other measures, as the Commission joined other international bodies and human rights experts in highlighting.<sup>775</sup>
- 408. Lastly, the IACHR underscores the importance of States reacting during national, regional, or global emergencies like the pandemic to redouble their efforts in the struggle against homophobia, lesbophobia, transphobia, and biphobia, clearly condemning prejudicial acts of violence and discrimination and working to guarantee their prevention, investigation, prosecution, punishment, and reparation.

<sup>&</sup>lt;sup>775</sup> IACHR, <u>Press Release 110/2020</u>: "On the eve of the International Day against Homophobia, Biphobia and Transphobia, the IACHR and various international experts call attention to the suffering and resilience of LGBT people during the COVID-19 pandemic" May 14, 2020.

## CHAPTER 7

# CONCLUSIONS AND RECOMMENDATIONS

#### **CONCLUSIONS AND RECOMMENDATIONS**

- 409. In this report, the Inter-American Commission has highlighted some specific measures adopted by States in the area of economic, social, cultural, and environmental rights in an attempt to address, to a greater or lesser extent, the structural exclusion facing trans and gender-diverse persons. In this regard, the Commission notes that the ever-increasing number of measures adopted shows that States are beginning to recognize the need to move in that direction and act in accordance with their Inter-American obligations to protect human rights.
- 410. The Commission reiterates the importance of the progress made by some OAS Member States to implement a variety of legislative, judicial, executive, and public policy measures that recognize gender identity and gender expression as prohibited categories of discrimination, along with other specific actions to enable the legal recognition of gender identity through the correction of identification documents.
- 411. While the IACHR welcomes this trend, it also emphasizes—as shown throughout this report—that the road to fully meeting the needs of the region's trans and gender-diverse persons for protection and recognition remains long. Indeed, the effects of the structural exclusion forced upon them will only be eliminated by continuous work, given the widespread persecution, violence, and discrimination inflicted upon trans and gender-diverse persons. The situation is a historical one: It has been widely normalized and rarely questioned until this day.
- 412. The Commission notes that violations of the rights of trans and gender-diverse persons were not even considered within the human rights field until they themselves began to steadily organize to raise awareness about their situation, denounce it, and demand recognition for their rights before State authorities and international bodies, openly questioning the paradigms of pathologization and criminalization of their diverse identities and expressions.
- 413. Trans and gender-diverse persons have lived most of their lives without any protection, in the context of social exclusion described in this report, which tends to trap them in a vicious circle of poverty, lack of opportunity, exposure to grave risks to their lives, discrimination, and violence. This situation is extremely difficult to reverse without a strategy designed to address both the roots of the problem and the consequences and effects of this spiral of exclusion that seriously impacts their fundamental rights, particularly impeding their access to ESCER.
- 414. Consequently, the IACHR reiterates that OAS Member States must design and implement legal and public policy frameworks that explicitly address the specific impacts of the exclusion that trans and gender-diverse persons have historically faced, and these frameworks must include an integrated strategy aimed at reducing the inequalities suffered by these persons. Additionally, States must include tools and conceptual frameworks in their efforts to effectively comply with the general

duty to guarantee all the human rights of trans and gender-diverse persons under their jurisdiction, particularly with regard to their economic, social, cultural, and environmental rights. Lastly, the courts must also take into account inter-American law and standards in this regard when applying, analyzing, and interpreting domestic laws to rule on remedies sought to protect the rights of trans and genderdiverse persons.

- 415. The framework used should be the 2030 Agenda, which applies universally to the benefit of all persons, as emphasized multiple times in the resolution.<sup>776</sup> This repeated emphasis that the SDGs apply "to everyone" necessarily means that trans and gender-diverse persons must be included in the efforts made to achieve the objectives set forth in the agenda. The Commission reiterates that the promise that "no one will be left behind"<sup>777</sup> can never be kept if certain groups that have historically been excluded from effectively realizing their rights and subjected to discrimination—as is the case with trans and gender-diverse persons—do not share equally in the benefits of sustainable development.
- 416. In this regard, the IACHR underscores that affirmative-action measures are among States' most important tools for reversing historical and systematic exclusion. The Commission has repeatedly expressed its positions regarding the juridical nature, scope, implications, and compliance requirements of these types of measures— known also as "affirmative action measures," "special temporary measures," "measures of positive discrimination," or "inverse discrimination"<sup>778</sup>—aimed at addressing inequalities in the internal distribution and opportunities<sup>779</sup> available to different social groups that face structural inequalities or have been the victims of historical exclusion, especially with regard to women, persons of African descent, and trans persons.<sup>780</sup> These measures are exceptional, as they have a specific objective, and their temporary nature is contingent on the attainment of the expected results and their consistency over time. These measures are temporary

<sup>&</sup>lt;sup>776</sup> United Nations, General Assembly, <u>Resolution 70/1. Transforming our World: The 2030 Agenda for Sustainable</u> <u>Development</u>, A/RES/70/1, October 21, 2015.

<sup>&</sup>lt;sup>777</sup> United Nations, General Assembly, <u>Resolution 70/1. Transforming our World: The 2030 Agenda for Sustainable Development</u>, A/RES/70/1, October 21, 2015, para. 4. In this regard, see: IACHR, <u>Press Release No.</u> 110/18: " Leave no LGBT person behind," May 16, 2018.

<sup>&</sup>lt;sup>778</sup> IACHR, <u>Report on Poverty and Human Rights</u> (2017), para. 161; <u>Situation of Afro-Descendant Persons in the Americas</u>, (2011), para. 227; <u>The Road to Substantive Democracy: Women's Political Participation in the Americas</u> (2011), para. <u>36</u>; <u>Annual Report 1999: Chapter VI: Considerations Regarding the Compatibility of Affirmative Action Measures Designed to Promote the Political Participation of Women with the Principles of Equality and Non-Discrimination (1999); IACHR, <u>Press Release 40/16</u>: "IACHR Urges States to Adopt Measures to Protect the Rights of Afro-Descendent Women," March 21, 2016.</u>

<sup>&</sup>lt;sup>779</sup> IACHR, <u>Situation of Afro-Descendant Persons in the Americas</u> (2011), para. 202; IACHR, Report on the Human Rights Situation in Ecuador 1997, Chapter II. B, Legal and Institutional Guarantees in the Republic of Ecuador; <u>Annual Report 1999: Chapter VI: Considerations Regarding the Compatibility of Affirmative Action Measures</u> <u>Designed to Promote the Political Participation of Women with the Principles of Equality and Non-Discrimination</u> (1999).

<sup>&</sup>lt;sup>780</sup> See, among other examples: IACHR, <u>Report on Poverty and Human Rights</u> (2017), Recommendation 11; IACHR, <u>Violence against LGBTI Persons in the Americas</u> (2015), Recommendation 68; <u>Situation of Afro-Descendant</u> <u>Persons in the Americas</u> (2011), Recommendation 23; IACHR, <u>Press Release No.</u>040/16, <u>IACHR Urges States</u> <u>to Adopt Measures to Protect the Rights of Afro-Descendent Women</u>, March 21, 2016.

and progressive, and they seek to foster a process of building equality in the effort to construct more just, diverse, and equal societies. Therefore, they must be subject to strict validation criteria, and must be: i) appropriate to the situation in question; ii) legitimate; iii) necessary in a democratic society; iv) respectful of the principles of justice and proportionality; v) temporary; vi) designed and implemented to meet a need; and vii) based on a realistic assessment of the situation of the individuals and communities affected.<sup>781</sup>

- 417. The consensus on the usefulness of these types of measures as tools in the struggle against the effects of historical patterns of exclusion is clear in the large number of international bodies that have issued pronouncements on them under a variety of international legal frameworks.<sup>782</sup> In the OAS, both the Inter-American Court of Human Rights<sup>783</sup> and the Inter-American Commission of Women<sup>784</sup> have addressed such measures. In the universal system, the Committee On Economic, Social, and Cultural Rights has addressed them,<sup>785</sup> as have the Human Rights Committee,<sup>786</sup> the Committee on the Elimination of Discrimination against Women (CEDAW Committee),<sup>787</sup> and the Committee on the Elimination of Racial Discrimination.<sup>788</sup> Additionally, when it adopted the "Plan of Action for the Decade for Persons of African Descent in the Americas (2016-2025)," the OAS General Assembly included affirmative action measures to benefit persons of African descent in the framework of several of its main objectives, especially access to education,<sup>789</sup> work opportunities,<sup>790</sup> and implementation of the 2030 Agenda.<sup>791</sup>
- 418. Multiple affirmative-action measures proposed and implemented by different OAS Member States have been analyzed in this report, especially measures on the right

<sup>&</sup>lt;sup>781</sup> IACHR, <u>Situation of Afro-Descendant Persons in the Americas</u> (2011), para. 240.

The treaties that specifically provide for affirmative-action measures include the Inter-American Convention against all Forms of Discrimination and Intolerance, Article 5; the Convention on the Elimination of Discrimination against Women, Article 4(1); the Convention on the Elimination of all Forms of Racial Discrimination, Article 1(4).

<sup>&</sup>lt;sup>783</sup> Inter-American Court. Case of Yean and Bosico Children v. Dominican Republic. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 8, 2005, Series C No. 130, para. 141.

<sup>&</sup>lt;sup>784</sup> Inter-American Commission of Women (CIM), "Plan of Action of the CIM on Women's Participation in Power and Decision-Making Structures," CIM/Ser.L/II.8.1 (1999), pgs. 27-30; Inter-American Commission of Women (CIM), CIM/DEC. 10 (XXXV-O/10): Declaration of the Inter-American Year of Women, "Women in Power: For a World of Equality," adopted at the fifth plenary session, held on November 4, 2010.

<sup>&</sup>lt;sup>785</sup> CESCR, General Comment 20, para. 8(b).

<sup>&</sup>lt;sup>786</sup> Human Rights Committee, General Comment No. 18, para. 10.

<sup>&</sup>lt;sup>787</sup> CEDAW Committee, General Comment 25, para. 12.

<sup>&</sup>lt;sup>788</sup> CERD, General Recommendation 32, para. 11.

OAS General Assembly, AG/RES. 2891 (XLVI-O/16): "Plan of action for the decade for persons of African descent in the Americas (2016-2025)," adopted at the second plenary session, held on June 14, 2016, objectives I(a)(2)(7); II(b)(1)(1); and II(b)(1)(2).

OAS General Assembly, AG/RES. 2891 (XLVI-O/16): "Plan of action for the decade for persons of African descent in the Americas (2016-2025)," adopted at the second plenary session, held on June 14, 2016, objectives II(b)(1)(2); II(b)(2)(1).

OAS General Assembly, AG/RES. 2891 (XLVI-O/16): "Plan of action for the decade for persons of African descent in the Americas (2016-2025)," adopted at the second plenary session, held on June 14, 2016, objective III(a)(1)(2).

to education and the right to work.<sup>792</sup> The Commission also views it as pertinent to recall it has already indicated that when setting public policy, States are required to conduct an exhaustive and continual analysis of their human rights obligations in order to arrive at the policies needed to comply with its duty to promote, protect, and guarantee human rights. This State duty means prioritizing populations that have historically faced discrimination and exclusion not only in identifying the problems to be solved but also in making them visible during the design, implementation, and evaluation processes. This means adopting affirmative action measures, but it also means including measures with differentiated approaches in policies that are universal in scope.<sup>793</sup>

- 419. Lastly, the IACHR underscores good practices for providing reparations for structural violence committed against trans and gender-diverse persons. It highlights Uruguay's Comprehensive Trans Persons Act, which establishes a reparations regime for trans persons born before December 31, 1975, who can demonstrate that they were victims of institutional violence or deprived of liberty because of their gender identities, having suffered moral or physical damages and been prevented from fully exercising their rights to movement, work, and education under discriminatory practices carried out by State agents or by those who, while not State agents, acted with their authorization, support, or acquiescence.<sup>794</sup> Likewise, in Argentina, judgments have been issued recognizing trans persons as victims of structural violence by awarding them "extraordinary and reparatory subsidies."<sup>795</sup>
- 420. Along these lines, in the framework of the historical exclusion that States must reverse, clear forums must be established for recognition of State responsibility with regard to trans and gender-diverse persons who, as in the above-cited law, can prove having been the victims of institutional violence, deprived of liberty, or subjected to torture, punishment, or cruel, inhuman, or degrading treatment as a result of their gender identities or expression.
- 421. Acts of recognition of responsibility can involve a variety of different measures, including symbolic acts of reparation, such as official declarations, asking forgiveness, and historical recognition. They can also take the form of State support for initiatives aimed at documenting and disseminating the recollections and testimony of trans and gender-diverse persons who were able to survive in the context of exclusion and violence that were forced upon them, especially during military dictatorships. These policies must be designed and implemented with the final goal raising awareness on the history surrounding this issue.
- 422. Reparations can also be implemented through pecuniary compensation in the form of *ex gratia* pensions, subsidies, or specific financial support for older trans persons who lived their lives almost entirely in this framework of systematic oppression,

<sup>&</sup>lt;sup>792</sup> In particular, see chapters 4 and 5 of this report.

<sup>&</sup>lt;sup>793</sup> IACHR. <u>Public Policies with a Human Rights Focus.</u>, September 15, 2018, paras. 85 and 158.

<sup>&</sup>lt;sup>794</sup> Law No. Law 19,684 (Uruguay), "Comprehensive Trans Persons Act," October 26, 2018, Article 10.

Página 12, "Reparación por tantos daños," October 3, 2013. Also see Diario Popular, "Ordenan al Gobierno porteño que otorgue subsidio a una trans," October 3, 2013.

encroachment of their rights, pathologization, criminalization, and lack of recognition of their gender identities.

423. In any case, the Commission recalls that a comprehensive reparations policy cannot be limited to investigating, restoring, rehabilitating, and compensating direct victims. Rather, pursuant to the jurisprudence of the Inter-American system, the end goal must also be to promote justice and strengthen the democratic rule of law in the region as a collective matter, including all juridical, political, administrative, and cultural measures to promote the protection of human rights of—in this particular case—trans and gender-diverse persons.<sup>796</sup>

#### RECOMMENDATIONS

- 424. Under the provisions of Article 41, subparagraph b of the American Convention on Human Rights, the Commission has the authority to make recommendations to the governments of the member states, when it considers such action advisable, for the adoption of progressive human rights measures within the framework of their domestic law and constitutional provisions as well as appropriate measures to further the observance of those rights.
- 425. In the exercise of this authority, in this section, the IACHR will make recommendations to States on matters that affect trans and gender-diverse persons' enjoyment of their ESCER, along with general recommendations on respecting and guaranteeing these rights. Lastly, it will make specific recommendations on the rights to education, culture, and health that were addressed in the body of this report. These recommendations are made with the aim of providing States with guidelines on effectively guaranteeing these rights and securing the social inclusion of trans and gender-diverse persons.
- 426. However, prior to making these recommendations, the Commission views it as important to reiterate the recommendations issued to States in its report on "Violence against LGBTI Persons in the Americas"<sup>797</sup> and its report on "Progress on and challenges to recognizing the rights of LGBTI persons in the Americas"<sup>798</sup> where they are applicable to the protection of the economic, social, cultural, and environmental rights of trans and gender-diverse persons. It does so because compliance with the recommendations made in those reports remains essential for the comprehensive enjoyment of rights by trans and gender-diverse persons. While some of them are repeated in this report, the Commission emphasizes the importance of States taking them into account simultaneously, complementarily,

<sup>&</sup>lt;sup>796</sup> IACHR. <u>Public Policies with a Human Rights Focus.</u> OEA/SER.L/V/II. Doc. 191, September 15, 2018, para. 199.

<sup>&</sup>lt;sup>797</sup> IACHR. <u>Violence against Lesbians, Gays, Bisexuals, Trans and Intersex persons (LGBTI) in the Americas</u>, November 12, 2015.

<sup>&</sup>lt;sup>798</sup> IACHR. <u>Progress on and Challenges to Recognizing the Rights of LGBTI Persons in the Americas</u>, December 7, 2018.

and comprehensively as they comply with their international obligations in this area.

427. Along with this, the IACHR deems it necessary to reiterate the recommendations set forth in its Resolution 1/2020 and its press release issued on April 20, 2020, as the impacts of the global Cove 19 pandemic continue to affect trans and gender-diverse persons' access to their ESCER. Therefore, the IACHR makes the following recommendations to States:

#### A. Recommendations on Matters that Impact Trans and Gender-Diverse Persons' Enjoyment of ESCER

- 1. Adopt all measures necessary to guarantee due diligence in preventing, investigating, punishing, and providing reparations for discrimination and violence against trans persons.
- 2. Adjust the legal framework so as to:
  - a) Avoid directly or indirectly criminalizing persons' conduct in exercising their gender identities or expression. Also, work to ensure domestic laws and regulations do not make distinctions based on stereotypes of these persons that are baseless or disproportional.
  - b) Include protections from discrimination based on gender identity, in both the public and private sectors.
  - c) Adopt a gender identity law that recognizes the right of trans and gender diverse persons to change the name and sex or gender marker on birth certificates, identity documents, and other legal documents. These procedures must be quick; they must guarantee the right of children and adolescents to recognition of their gender identities based on their emerging autonomy and best interest; they must not require the submission of medical or psychological/psychiatric evaluations or certifications or other unnecessary, pathologizing, or humiliating requirements; and they also must not require trans and gender-diverse persons to renounce vested rights or deprive them of the conditions for a life with dignity.
- 3. Devise and implement policies and programs to promote respect for the rights of trans and gender diverse persons and their social acceptance and inclusion. These policies and programs must be integrated, crosscutting, and based on a human rights approach, and they must specifically include a gender perspective.
- 4. Guarantee the establishment and operation of national human rights mechanisms, entities, or structures with a specific mandate to tackle and eradicate the causes of discrimination, including discrimination based on gender identity and expression. These structures must also have the capacity to make legislative and public policy recommendations against discrimination, carry out awareness-raising campaigns,

and take other de facto measures to prevent and eradicate the causes of discrimination.

- 5. Devise and execute sensitization and awareness raising campaigns in public and private media on body diversity, sexual diversity, and the gender approach. These campaigns must be aimed at promoting respect, tolerance, and comprehensive social inclusion for trans persons; at combating stigmas and stereotypes; and at highlighting the main causes and consequences of exclusion, discrimination, and violence against trans persons.
- 6. Promote informational campaigns targeting trans and gender-diverse persons on their human rights and existing protective mechanisms.
- 7. Combat hate speech and discriminatory speech, particularly by ensuring that public statements and messages from authorities, especially the most senior authorities, are not stigmatizing or discriminatory toward trans and gender-diverse persons.
- 8. Ensure that the private sector respects the human rights of trans and gender diverse persons, particularly that companies operate with due diligence with regard to human rights within their operations, and that they are held accountable for actions with negative impacts on certain groups, taking into account the standards set forth in the report "Business and Human Rights: Inter-American Standards," prepared by the IACHR's REDESCA.
- 9. Implement policies for collecting, generating, and analyzing statistical data on the realization of ESCER for trans persons with the aim of designing appropriate and timely action plans and policies targeting this population. Specifically:
  - a) Allocate sufficient resources to collect data and work in coordination with the various State entities in charge of access to economic, social, cultural, environmental rights.
  - b) Include the indicators pertinent to monitoring the level of access that trans and gender diverse persons have to their economic, social, cultural, and environmental rights, and identify the main obstacles they face. In particular, for collecting data, States should take into account and incorporate the "Guidebook for the Operationalization of the Indicators of the Protocol of San Salvador from a Cross-cutting LGBTI Perspective," mentioned in this report.
  - c) Develop indicators to measure the degree to which trans and gender diverse persons' right to development is guaranteed, in keeping with national programs on development and monitoring of the SDGs.
  - d) The data generated and analyzed by the State must be public and easy to access. Also, States must ensure it is accessible to civil society organizations and trans rights defenders, including in rural areas.
  - e) The information must be compiled to include indicators for identifying conditions causing vulnerability—for example, ethnic and racial origin, age,

education, economic status, human rights defender, person deprived of liberty, etc.

- 10. Guarantee that personal information regarding gender identity is not stored or used without the consent of its owner, except where necessary to take specific actions that are legal and whose aims are legitimate and proportional. The information must be kept as confidential as possible.
- 11. Sign and ratify the Inter-American Convention against all Forms of Discrimination and Intolerance, adopted by the OAS General Assembly on June 5, 2013.
- 12. Adopt all the measures necessary to implement the standards set forth in the framework of Advisory Opinion 24/2018 of the Inter-American Court of Human Rights.
- 13. Adopt comprehensive reparations measures or programs for trans and genderdiverse persons who were the victims of historic violations due to their gender identities or expression.

#### B. General Recommendations on Respecting and Guaranteeing the ESCER of Trans and Gender-Diverse Persons

- 14. Develop objective and reasonable distinction criteria to guarantee substantive conditions of equality for trans and gender-diverse persons and increased access to and guarantee of their ESCER. Specifically, adopt the affirmative actions and measures necessary depending on context to overcome the historic and structural barriers preventing them from enjoying their ESCER, including the right to development.
- 15. Guarantee that civil society organizations and trans and gender-diverse persons are consulted and involved in designing and implementing these public policies. The planning, implementation, monitoring, and evaluation of these policies will not be successful without provisions for the specific needs and modalities under which these beneficiaries could take advantage of them.
- 16. Conduct regular and ongoing training activities for public officials on gender identity and expression, on the main causes of violence and discrimination, and on the ways in which these individuals experience it. Such activities should especially target those working in human resources, culture, education, and health.
- 17. Design, disseminate, and implement specialized protocols to facilitate trans and gender-diverse persons' access to their ESCER without any kind of violence or discrimination. Any cisnormative regulations, protocols, or directives that pose obstacles to trans persons' access to economic, social, cultural, and environmental rights must therefore be revised and/or repealed.

18. Prohibit the illegitimate use of "conscientious objection" by public officials and professionals to discriminate against trans and gender-diverse persons, particularly in denying public or vital services. The objective is to prevent discriminatory acts and guarantee that trans and gender-diverse persons are able to fully exercise their ESCER on an equal footing and without any discrimination. Processes also must be established to sanction public servants and professionals who illegitimately use conscientious objections to discriminate against trans persons and deny them their ESCER.

#### C. Right to Education

- 19. Inclusion and respect for the rights of trans and gender-diverse persons in education must include both formal and informal education, education provided by public, private, or public-private institutions; and it should not be limited to primary school but rather permeate all levels of education. Specifically, it must ensure the following:
  - a) Nondiscrimination and access to a good quality education for trans and gender-diverse persons, including affirmative measures and coexistence plans to promote an inclusive educational environment: for example, by offering tutoring, psychosocial support, and advisory services, and establishing reserve spots or quotas, scholarships, and subsidies.
  - b) Systematic monitoring of incidents of harassment, violence, and discrimination based on gender identity and/or expression in educational spaces, as well as analysis of the data and production of statistics with an aim to eradicating school discrimination and violence.
  - c) Creation of educational materials that promote the acceptance and inclusion of trans and gender-diverse persons in society, specifically including issues related to equality and nondiscrimination, sexual diversity and gender identity, comprehensive sex education, and human rights education, all ageappropriate and objective, while taking into account the gender perspective.
  - d) Provision to teachers of guides addressing issues of inclusion, acceptance, and respect for diversity and persons with diverse sexual orientations and gender identities.
- 20. Guarantee that experts are able to participate in this area, and that students themselves—particularly those who are part of these groups—can take part in the educational processes that affect them. Thus, the opinions of diverse families should especially be taken into account, and the issue should be addressed from a real and impartial perspective, not stereotypes.
- 21. Educational institutions at all levels must review their regulations, protocols, and directives and repeal those that draw unwarranted distinctions based on gender identity. Thus, students should be permitted to use clothing or school uniforms in

accordance with their gender identities, and bathroom use should be facilitated from a gender perspective.

#### D. Right to Culture

- 22. Move forward in promoting public policies, legislation, and affirmative measures intended to foster access to culture, such as participation in cultural life without discrimination against trans or gender-diverse persons. Specifically, sufficient financial resources must be provided within educational and cultural programs to support the production of cultural content by trans and gender-diverse persons.
- 23. Urge the media and the private sector in general to offer trans and gender-diverse persons specific opportunities to make their own local and regional contributions to culture.
- 24. Take the affirmative actions necessary to enable trans and gender-diverse persons to participate actively in knowledge production, research, and cultural and scientific documentation.

#### E. Right to Health

- 25. Design and implement a legal and public policy framework aimed at guaranteeing trans and gender-diverse persons the greatest access possible to physical and mental health. Specifically, it must do the following:
  - a) Promote training of specialized medical personnel in areas that specifically meet the needs of trans persons; a lack of trained medical personnel cannot be used to justify denying these persons access to health services.
  - b) Combat masculine and feminine binary prejudices and stereotypes at all levels of health services.
  - c) Implement care directives and protocols for trans-patients that provide for their accommodation or hospitalization with full respect for their gender identities.
  - d) Guarantee health protocols that address the specific needs of trans persons, including gender affirmation treatments that are based on the free, prior, and informed consent of persons. These treatments must include psychological, endocrinological, and surgical care within the public health system, and they must be moving toward being free of charge. The requirements for accessing these treatments must be reasonable, objective, and free from prejudice and stigma.

- e) Move seriously toward banning activities claiming to offer "therapies" to "modify," "reorient," or "cure" gender identities, prosecuting and sanctioning them, as applicable.
- 26. Ensure that legal and policy frameworks on health prohibit discrimination against these persons regardless of whether the health services are private or public.

#### F. Right to Work

- 27. Respect and guarantee the right of trans or gender-diverse persons to freely choose a profession or job, and guarantee workplace conditions are just and equitable. Specifically:
  - a) Monitor the effective enjoyment of decent salaries, time off, and vacation time, as well as workplace health and safety.
  - b) Take adequate measures to prohibit unjustified dismissals based on gender identity or based on a trans person's transition, body modification, or gender expression.
  - c) Design public policies focused on the employability of trans persons that include access to promotion and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training, and recurrent training.
- 28. Adjust domestic legislation and take the measures necessary to guarantee effective protection from workplace discrimination based on identity and/or gender expression, in both the public and private sectors; also, establish adequate mechanisms to prevent, report, pursue, and sanction workplace harassment. Specifically:
  - a) Repeal laws restricting the legal rights of trans persons to job access and eliminate measures that indirectly have a disproportionately negative effect on their access to work.
  - b) Promulgate an anti-discriminatory labor law framework that takes into account the specific needs of trans persons in, prior to, during, and after their transition (if there is one) in the workplace.
  - c) Combat workplace harassment against trans persons and guarantee safe spaces for reporting.
  - d) Amend laws on paid maternity and/or paternity leave to fully guarantee the principles of equality and nondiscrimination with regard to the enjoyment of these rights by pregnant trans persons and those who are becoming mothers and/or fathers by, for example, adoption. In the same regard, States must review their domestic legislation to ensure it is not based on stereotypes regarding child care and who plays the primary role in raising children.

- 29. Foster equal hiring opportunities for trans and gender-diverse persons, including by implementing job fairs or campaigns jointly with private entities to facilitate trans persons' access to work.
- 30. Take action to ensure trans and gender-diverse persons can join labor unions and workers associations and groups, as well as take part in other spaces for political participation.

Historia anual de las personas LGBTIQA+

XX. Informe Anual de Derechos Humanos

Diversidad sexual y de género en Chile

HECHOS 2021





XX. Informe Anual de Derechos Humanos de la Diversidad Sexual y de Género en Chile

# **XX.** Informe Anual de Derechos Humanos de la Diversidad Sexual y de Género en Chile

Historia anual de las personas LGBTIQA+ en Chile

**Hechos 2021** 

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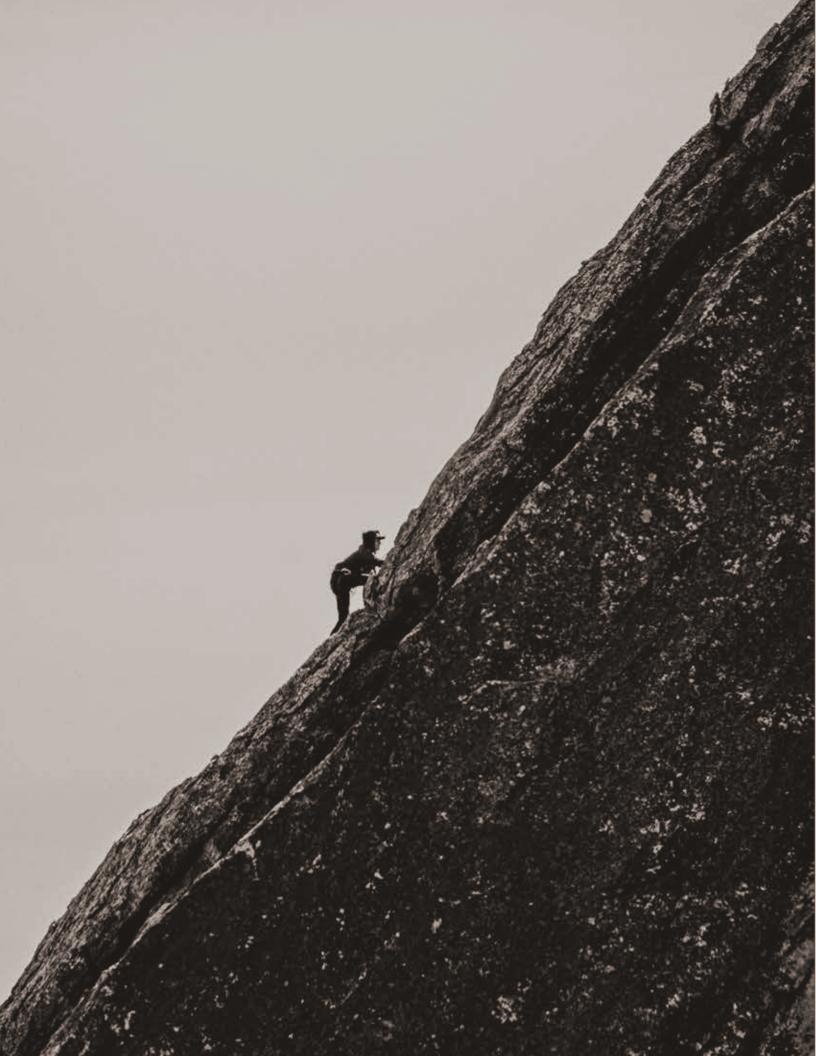
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# Introducción general

Veinte años han pasado desde la publicación del Primer Informe de los Derechos Humanos de la Diversidad Sexual y de Género.

En dos décadas, este Informe sigue siendo la única investigación del país que analiza y contabiliza todas las denuncias o casos de discriminación contra las personas en razón de su orientación sexual, identidad o expresión de género y describe cada uno de los avances, retrocesos o desafíos enfrentados por la población LGBTIQA+ en los campos legislativo, judicial, gubernamental, municipal, cultural, social, político o económico.

Al iniciarse la redacción de estos informes jamás se imaginó que su versión número 20 coincidiría con el cierre de un capítulo en la lucha por la igualdad social y legal del activismo LGBTIQA+ y con el inicio de un nuevo ciclo político en el país que impacta en todos sus niveles.

El 2021 es un año histórico y de mejores noticias que en el pasado. Las denuncias y casos de discriminación bajaron un 12%, siendo el primer descenso en 8 años. El matrimonio igualitario, una demanda histórica y la ley más resistida por sectores homo/transfóbicos en todo el mundo, por fin vio la luz, derribando a su paso mitos, prejuicios e ignorancia y caminado de la mano del término de la desigualdad legal que pesó sobre las parejas o familias diversas.

En medio de una pandemia, tras el estallido social, en pleno trabajo de la Convención Constitucional y de la elección de Gabriel Boric como el presidente más joven en la historia del país que renueva y cambia las fuerzas que habían gobernado Chile desde la recuperación de la democracia, la diversidad sexual y de género cerró también su propio capítulo y se encamina hacia nuevas luchas sobre sólidas bases, como son la profunda transformación sociocultural, donde una mayoría rechaza la homo/transfobia, y la existencia de 13 leyes que protegen explícitamente los derechos de las personas LGBTIQA+, más políticas públicas en Educación, Salud y Trabajo, entre otros.

A mayor abundancia, se añade en 2021 la elección o designación de 32 personas abiertamente LGBTIQA+ a cargos públicos, una muestra más de que las orientaciones sexuales o identidades de género diversas no son interpretadas por el mayoritario sentir como incompatibles para el ejercicio de alguna función o trabajo.

Los positivos cambios del 2021, que coinciden con los 30 años de lucha sistemática del activismo LGBTIQA+ en Chile, en ningún caso significan que la discriminación fue erradicada. Por el contrario, tres personas murieron asesinadas en razón de su orientación sexual o identidad de género y otras cientos fueron golpeadas, insultadas, expulsadas o inhabilitadas para el ejercicio de algún derecho al mismo tiempo que se debatían leyes pro-igualdad. Los sectores homo/tranfóbicos si bien cada vez son menos y han sido vencidos en distintos frentes, no se han rendido y están a la espera de cualquier coyuntura para que se cuestione o invalide lo avanzado y para detener nuevas transformaciones. En 2021 ello se expresó con especial fuerza en el primer semestre, antes de la suma urgencia dada por el presidente Sebastián Piñera al matrimonio igualitario, lo cual tuvo un impacto devastador en los grupos anti-derechos a un punto que tras ese anuncio su capacidad de resistencia fue casi inexistente. Sin embargo, no han desaparecido y aflorarán en cualquier contexto que les resulte favorable. La historia, así lo ha demostrado.

El devenir del 2021 tiene particularidades únicas, que de paso explicitan la insensibilidad y excesiva tardanza de las autoridades que se declaran pro-LGBTIQA+ para cumplir sus promesas.

Aun cuando la mayoría del Congreso Nacional se declaraba a favor del matrimonio igualitario hace casi una década, la iniciativa se transformó en ley tan tardíamente, que poco impacto provocó. Más debate generó el hecho de que Piñera le diera suma urgencia al proyecto, que la aprobación del mismo. Sin duda buena parte de la clase política debe explicaciones por el injustificado atraso que tanto daño causó y tantas víctimas sin reparaciones dejó, en especial a los/as hijos/as de las parejas del mismo sexo.

El nuevo capítulo que se inicia, lo hace además con resabios homo/transfóbicos. Crudos ejemplos son el artículo 365 del Código Penal; la única ley vigente explícitamente homófoba; la ausencia de sanciones contra el Estado de Chile por haber impedido desde el 2007 a la docente Sandra Pavez hacer clases solo por lesbiana y la impunidad que siguen gozando las Fuerzas Armadas, de Orden y Seguridad cuando vulneran derechos humanos de las personas LGBTIQA+.

A su vez, y lamentablemente, el Poder Judicial, no ha logrado superar su discrecionalidad o arbitrariedad en muchos casos relacionados con los derechos de las personas LGBTIQA+, aunque tras la aprobación del matrimonio igualitario ha quedado con menos margen de acción para los abusos.

El 2021 es, por donde se mire, el año cuando la causa LGBTIQA+ cerró un capítulo, el más difícil de su historia, que pasó desde el rechazo total del Estado y de la sociedad a cualquier asomo de las orientaciones sexuales o identidades de género diversas, hasta una apertura que reconoce derechos a todas las familias y protege con herramientas jurídicas, perfectibles o no, a todas las personas.

Junto con resolver y superar los resabios, sin duda aparecen como desafíos la descentralización de la apertura, de manera que llegue a todos los rincones del país, la implementación de medidas contra la discriminación interseccional y, por cierto, el perfeccionamiento o surgimiento de más políticas o normas protectoras que potencien la transformación cultural hasta que nunca más nadie sea asesinado/a o vea vulnerado alguno de su derechos solo por su orientación sexual, identidad o expresión de género.



# Balance General

XX. Informe Anual de Derechos Humanos de la Diversidad Sexual y de Género en Chile

HECHOS 2021

# I.-ANÁLISIS Y RESUMEN ANUAL

Esta sección resume el presente informe, así como los principales hechos y procesos del 2021 relacionados con las personas lesbianas, gays, bisexuales, trans, intersex, queer, asexuales y otras (LGBTIQA+), con las familias homoparentales y con las parejas del mismo sexo.

# 1. El cierre de un capítulo de 30 años

El 2021 es un año histórico para la diversidad sexual y de género. Por múltiples razones se cerró un capítulo en la lucha por la igualdad que se emprendió de manera sistemática desde 1991.

La aprobación del matrimonio igualitario marca un antes y un después, toda vez que dicha ley ha sido la más resistida por los sectores homo/transfóbicos en toda la historia, tanto nacional como extranjera, y por tanto su aprobación aparece como un triunfo de la inclusión y de la no discriminación que termina con las personas, parejas o familias de primera o segunda categoría, equipando derechos a todas, al margen de sus orientaciones sexuales o identidades de género.

Con el matrimonio igualitario el Estado dejó de ser eco y guardián de los prejuicios más poderosos y más antiguos que pesaban sobre las personas LGBTIQA+, como eran el carácter antinatural, inmoral o perjudicial de sus relaciones o el supuesto peligro que implicaban para los niños, niñas y adolescentes y para la denominada "familia tradicional".

Los principales discursos de odio perdieron la legitimidad y legalidad que les daba el Estado, un ente atrasado, pues en el plano sociocultural la mayoría de las personas ya no creía en estos prejuicios y, por el contrario, los rechazaba.

La aprobación del matrimonio igualitario se dio en un contexto donde ya existen otras muchas leyes y políticas públicas que protegen a las personas LGBTIQA+ de las discriminaciones y coincide con hechos de gran relevancia: los 30 años de lucha ininterrumpida del movimiento LGBTIQA+, los 20 años de los informes anuales de DDHH de la Diversidad Sexual y de Género y, muy especialmente, el inicio de un nuevo ciclo sociopolítico en el país gatillado por el Estallido social y expresado en la Convención Constitucional y la elección del presidente más joven en la historia del país que viene a cambiar las tradicionales fuerzas políticas que habían gobernado desde la recuperación de la democracia. Todo en medio de un contexto particular y mundial: la pandemia del Covid-19.

Así es como hechos puntuales y otros más generales coincidieron y confluyeron en un mismo momento y permiten, sin lugar a dudas, concluir que la lucha de los movimientos LGBTIQA+ cerró un ciclo, una etapa, dejando felizmente bases sólidas para futuras y nuevas transformaciones, siendo sin duda el aporte más significativo la mayoritaria aceptación y comprensión de la diversidad que existe entre los habitantes de Chile, una transformación cultural de décadas que cumple también su ciclo e inicia nuevos desafíos.

### 2. Primera merma de las denuncias o casos por discriminación en ocho años

Por primera vez desde el 2013 las denuncias y casos por discriminación por orientación sexual, identidad o expresión de género disminuyeron, registrándose en 2021 una baja del 12%.

En 2021 se conocieron 1.114 denuncias o casos de discriminación, que corresponden al 16,8% del total de 6.620 atropellos a los derechos humanos de las personas LGBTIQA+ ocurridos en los últimos 20 años.

Las denuncias o casos de discriminación del 2021 se dividen en 3 asesinatos, 78 agresiones físicas o verbales perpetradas por civiles lejanos o desconocidos por las víctimas, 12 atropellos policiales, 106 casos de homo/ transfobia laboral y 12 educacional, 391 episodios de marginación o intentos de exclusión institucional, 12 campañas contra las personas LGBTIQA+, 55 hechos de negación de derechos en espacios públicos o privados, 135 abusos comunitarios (familia, amigos/as, vecinos/as), 1 segregación en el ámbito de la cultura, espectáculo o medios de comunicación y 309 discursos o declaraciones de odio.

Del total de denuncias o casos por discriminación, el 19% afectó a gays, el 13,2% a lesbianas, el 11,4% a trans y el 56,4% a la población LGBTIQA+ como conjunto.

En torno a los gays, las denuncias o atropellos bajaron un -36,1%, en lesbianas un -19.6% y en trans -7,9%. En cambio los abusos contra la población LGBTIQA+ como colectivo aumentaron un 2,4%.

En las últimas dos décadas, del total de 6.620 denuncias o casos por discriminación, el 20% afectó a gays; el 15% a trans; el 14% a lesbianas y el 51% a la población LGBTIQA+ como colectivo. De las 11 categorías de discriminación analizadas en este informe en 9 bajaron los casos o denuncias en 2021, entre esas las que habitualmente más daño provocan a las víctimas, mientras solo 2 subieron: las declaraciones de odio y las exclusiones institucionales.

Las campañas o movilizaciones de odio bajaron un -80%, seguidas por la discriminación educacional (-63%), los asesinatos (-50%), la homo/transfobia comunitaria (familias, barrios, -46,6%), las agresiones físicas o verbales (-40,9%), los abusos policiales (-25%), la negación de derechos para el acceso a servicios o productos en espacios públicos o privados (-14%) y los atropellos laborales (-3.6%).

Por el contrario, la discriminación institucional subió un 3,1% y las declaraciones de odio incrementaron un 47,8%. En el primer caso, el alza obedeció a la sistemática discusión de normas pro derechos LGBTIQA+ en el Congreso Nacional; lo cual fue rechazado por grupos anti-derechos. En tanto, los discursos de odio aumentaron solo y exclusivamente porque personas y grupos anti-derechos se movilizaron de manera inmoral y aberrante en distintos espacios luego del asesinato del niño Emilio Jara, de 12 años, responsabilizando a las personas y activistas LGBTIQA+ del crimen solo porque sus verdugos eran homosexuales. Una muestra brutal y cavernaria de homo/transfobia que explicita la necesidad de seguir avanzando y perfeccionando las condiciones estatales y sociales para todas las personas, en tanto los peligros siempre acechan y sus impactos son altamente nocivos.

Un total de 48 instituciones y 767 personas fueron responsables de los 1.114 casos de discriminación por orientación sexual, identidad o expresión de género conocidos en 2021.

El perfil de las entidades responsables es el mismo del año precedente: organizaciones religiosas, partidos o colectividades políticas de ultra-derecha o muy influenciadas por religiones, así como Carabineros, Gendarmería y la Armada que han persistido en vulnerar derechos humanos, al igual que algunos tribunales.

La diferencia está dada en el campo laboral, pues cada vez más empleadores son denunciados por vulnerar derechos de las personas LGBTIQA+, en particular en el campo de las grandes empresas o de los servicios públicos y principalmente privados de la Salud.

#### 3. En 11 regiones bajan las denuncias por discriminación y en 5 suben

La Región de Valparaíso volvió a concentrar la mayor cantidad de denuncias y casos por discriminación acumulando el 36,4% del total nacional, seguida por la Metropolitana (17,5%), Biobío (2.7%), Coquimbo, (2,1%), Maule (1,8%), Los Lagos (1.3%), Antofagasta (1.1%), Atacama (1%), Bernardo O'Higgins (0.9%), Araucanía (0.9%), Tarapacá (0.8%), Ñuble (0,5%), Magallanes (0.5%), Los Ríos (0.4%), Arica y Parinacota (0.4%) y Aysén (0.1%).

En tanto, los episodios de discriminación que ocurrieron en redes sociales y/o medios de comunicación de alcance nacional acumularon el 31,6% del total.

De las 16 regiones, en 11 bajaron las denuncias o casos por discriminación en relación al año precedente y, en 5 subieron, lo cual concuerda con la merma a nivel nacional.

La región donde más bajaron las denuncias o casos fue Aysén, con un -66%; seguida por Los Ríos (-50%), Araucanía (-44%), Metropolitana (-35,6%), Antofagasta (-33%), Magallanes (-33%), Ñuble (-25%), O'Higgins (-23%), Biobío (-21%), Valparaíso (-7.9%) y Los Lagos (-6,2%).

En tanto en Arica y Parinacota los atropellos o reportes subieron un 300% en relación al año precedente, seguidos por Tarapacá (+80%), Atacama (+37.5%) Coquimbo (+9-5%) y Maule (+5.2%).

Por último, los episodios de discriminación en medios de comunicación de alcance nacional y/o en las redes sociales registraron un aumento del 4,5% en relación al año precedente. Es probable que estas cifras sigan al alza, dado el protagonismo en ascenso de las redes sociales para la comunicación humana.

# 4. Histórica aprobación del matrimonio igualitario: paradojas, particularidades e injustificado retraso

En 2021 Chile pasó a tener cuatro nuevas leyes que protegen los derechos humanos de las personas LGBTIQA+, destacando particularmente la histórica aprobación del matrimonio igualitario que marca el cierre de un ciclo en la lucha ininterrumpida iniciada hace tres décadas por los movimientos de la diversidad sexual y de género.

Junto al matrimonio igualitario, vio la luz la ley 21.369 que regula el acoso sexual, la violencia y la discriminación de género en el ámbito de la educación superior, incluyendo a las personas LGBTIQA+ como uno de sus sectores protegidos. Especialmente significativa fue la promulgación de la Ley 21.331 sobre el Reconocimiento y Protección de los Derechos de las Personas en la Atención en Salud Mental, que prohíbe las "terapias reparativas" de la homo/transexualidad, una demanda que el Movimiento LGBTIQA+ inició en 1991 y que expresó de manera sistemática desde el 2004.

Del mismo modo fue aprobada la Ley 21.373 que derogó el divorcio culposo por homosexualidad, aunque este avance de todas formas hubiese ocurrido con la aprobación del matrimonio igualitario, que tuvo lugar tres meses después, pues la eliminación de la homofóbica norma integraba el proyecto de ley y además el Tribunal Constitucional ya la había declarado como inaplicable.

Relevancia histórica y particularidades son los procesos que definen y permiten analizar los cambios legislativos del 2021, pues por un lado consolidan transformaciones revolucionarias en la concepción de familia y, por otra parte, explicitan la profunda indolencia de la clase política que se decía pro derechos LGBTIQA+, pero terminó aprobando el matrimonio igualitario y derogando el divorcio culposo por homosexualidad con una tardanza extrema.

Una demora injustificable que solo llegó a su fin, porque un presidente de Derecha, por un lado, y un poder de trayectoria homofóbica, como el Tribunal Constitucional, decidieron empujar el matrimonio y la derogación del divorcio culposo, en forma respectiva.

La aprobación del matrimonio igualitario lapidó una injusticia y discriminación histórica, que permitirá a todas las parejas y familias acceder a similares derechos y deberes, sin discriminaciones de ningún tipo, lo que era un sueño a comienzos de los 90. Muy especialmente, el matrimonio igualitario legaliza y equipara relaciones antes consideradas de segunda categoría por el Estado, lo cual servía de sustento teórico y práctico para los grupos homo/ transfóbicos que promueven la vulneración de derechos de las personas LGBTIQA+ incluso al interior de sus propias familias.

Ahora, una madre o un padre que prohíba a su hijo/a tener una pareja del mismo sexo, no tendrá a su favor la homofobia estatal. ¿Como prohibir o censurar una relación que para el Estado merece la misma protección legal sin con ello incurrir en una ilegalidad o abuso evidente?.

La relevancia del matrimonio igualitario trasciende a las parejas que lo contraerán, pues desestigmatiza a la población LGBTIQA+ como conjunto, al margen de cuántos se quieran casar o no.

Este avance destruye de raíz la norma discriminatoria más simbólica y que más protegieron los sectores anti-derechos desde iniciada la lucha del movimiento de la diversidad sexual y de género en Chile, quedando estos grupos desprovistos de todo "argumento" creíble para oponerse a la plena igualdad social y legal.

Lamentablemente la aprobación llegó muy tarde, casi una década después de que la mayoría de los/as congresistas; auto-declarados/as pro LGBTIQA+, se mostraran en el discurso a favor. Tan madura estaba la sociedad en torno al tema, y tan extrema fue la demora de la clase política, que hasta secuestraron las emociones en masa y por meses que provocó esta ley en los otros países donde se ha aprobado. Tantas veces se incumplió la promesa, que cuando vio la luz, no era merecedora de aplausos. Era lo esperable y lógico. Por fin.

Las particularidades del proceso chileno se exacerban al considerar que un presidente de Derecha, Sebastián Piñera, y ex opositor al matrimonio igualitario, es quien termina dando el impulso que permitió la aprobación, y no la mayoría del Congreso que se decía favorable. Misma lógica se da con la derogación del divorcio culposo, ocurrida luego de que el TC; una entidad que en diversas ocasiones ha aparecido en el Ranking Anual de la Homo/Transfobia, declarara inaplicable esa norma.

Con la aprobación del matrimonio igualitario, que garantiza la filiación y adopción homoparental, en Chile quedó vigente solo una ley explícitamente homofóbica, el artículo 365 del Código Penal, cuya derogación también ha sido tardía. Es exigible que esta vez quienes se declaran pro-LGBTIQA+ actúen ya y eliminen un artículo que estigmatiza a niños, niñas y adolescentes de la diversidad.

## 5. Impunidad homo/ transfóbica de los uniformados e inoperancia del Poder Político

Las violaciones a los derechos humanos contra personas LGBTIQA+ cometidas por funcionarios/ as de las Fuerzas Armadas y de Orden y Seguridad reforzaron su impunidad en un contexto donde el Poder Político es un espectador que en nada contribuye a prevenir y erradicar estas deleznables prácticas que en 2021 cobraron una vida e implicaron torturas y hasta intentos por re-institucionalizar la homo/transfobia.

Al ser la Armada, Carabineros y Gendarmería los principales responsables de estos atropellos, aparecen los ministerios de Defensa, del Interior y de Justicia y DDHH como los entes civiles que pasaron por alto sus deberes, al contribuir poco y nada a enfrentar los abusos.

El saldo más grave lo dejó Gendarmería. Junto a las torturas, negación de medicamentos o alimentos y abandono frente a los atropellos homo/transfóbicos que sufren cotidianamente los/as internos/as LGBTIQA+ en manos de funcionarios/as u otros/as reclusos/as, se sumó en 2021 el suicidio de Boris Esteban Castillo Arriagada, tras no soportar presiones discriminatorias. Estos abusos fueron advertidos con la debida antelación por el Movimiento de la Diversidad al Ministerio de Justicia, pero éste nada hizo.

La pocas veces que se cursan investigaciones por atropellos a los DDHH en Gendarmería, no derivan en sanciones contra los responsables, ni en reparaciones para las víctimas y sus resultados, en caso de existir, jamás son comunicados a los intervinientes. En todas las investigaciones por homo/transfobia, se encomienda además que éstas sean emprendidas por funcionarios que, de una u otra manera, están involucrados en el conflicto, careciendo así de toda rigurosidad o credibilidad el procedimiento.

La Armada no la hecho no mejor. En 2020 la institución llegó al extremo de validar las torturas homofóbicas sufridas por estudiantes de la Escuela Naval Playa Ancha de Valparaíso, calificando al hecho como juego, frente a la inoperancia y el silencio del Ministerio de Defensa. Un año más tarde, la situación no mejoró, pues se descubrieron los intentos de la Armada por re-institucionalizar la homo/transfobia al recomendar a sus estudiantes de la Academia de Guerra Naval leer textos que tratan a la diversidad sexual y de género como una "tiranía", una "inmoralidad" y una "actitud sexual depravada" que "desmantela las normas sexuales". Y si bien, en esta oportunidad el Ministerio de Defensa repudió públicamente el abuso, al cierre de este informe no había ninguna persona sancionada, ni se conocían resultados de investigaciones.

Finalmente Carabineros continuó con su funesta tradición de torturar, detener y obstaculizar derechos a las personas en razón de su orientación sexual e identidad de género, ya sea en el marco de procedimientos policiales o de burlas contra las personas LGBTIQA+ cuando denuncian actos homo/transfóbicos. En 2021 ningún funcionario fue sancionado por estos atropellos que dañan la dignidad humana y frente a los cuales el Ministerio del Interior nunca se ha pronunciado.

La antigua demanda de FFAA, de Orden y Seguridad efectivamente obedientes del poder civil y respetuosas de los derechos humanos sigue presente a la espera de ser resuelta.

## 6. Orientación sexual e identidad de género: irrelevante para cargos públicos

En 2021 se consolidó el resultado de una de las mayores luchas que los movimientos LGBTIQA+ emprendieron desde la década de los 90, cual fue demostrar la inexistencia de incompatibilidades entre el ejercicio de algún cargo o función con determinadas orientaciones sexuales o identidades de género.

La convicción sociocultural mayoritaria sobre la ausencia de incompatibilidades, existente desde hace más de una década, vino explicitándose en casos concretos desde el 2004 cuando Alejandra González se transformó de la primera persona abiertamente LGBTIQA+ en ser electa para un cargo público, asumiendo como concejala de Lampa.

Con ella, comenzaron a quedar completamente atrás los escándalos de semanas y meses, y que incluso se transformaban en noticia internacional, cuando se sabía que algún candidato/a a un cargo público era LGBTIQA+, travesía iniciada en 1995 por el histórico dirigente Rolando Jiménez en un contexto de total hostilidad sociopolítica y cultural y cuando las candidaturas solo perseguían ser un testimonio a favor de la lucha contra la homo/transfobia y ampliar así el debate sobre la diversidad.

Al 2021 la mayoría del país tiene internalizado que ser LGBTIQA+ no es incompatible con ningún cargo o función. Además, buena parte de las personas LGBTIQA+ no tiene conflictos en asumirse públicamente, a un punto que Chile es uno de los países del mundo donde más se reconocen las orientaciones sexuales o identidades de género diversas, según estudios dados a conocer en el año.

El proceso se expresa con fuerza en 2021 y a comienzos del 2022, cuando 32 personas abiertamente LGBTIQA+ asumen cargos públicos, sin que sus orientaciones sexuales o identidades de género provocaran rechazo, conflicto o impacto nacional de semanas o meses, como ocurría en el pasado.

Más aún, fue el movimiento LGBTIQA+ el que más destacó en 2021 el proceso, por considerarlo un hito, en tanto es una señal positiva y esperanzadora para las actuales y nuevas generaciones. Por su lado, la ciudadanía en general y la prensa lo asumieron como algo natural, además de resaltar de manera muy puntual y en escasas oportunidades el hecho, pero siempre con una mirada favorable y no condenatoria.

#### Chile ya es otro.

Resultaron electos/as 8 convencionales constituyentes<sup>1</sup>, 2 alcaldes/as<sup>2</sup>, 15 concejales<sup>3</sup>, 4 congresistas<sup>4</sup>, 1 presidenta de un partido<sup>5</sup>, más 2 ministros/as abiertamente LGBTIQA+<sup>6</sup> designados/as por el presidente electo Gabriel Boric.

Son personas cuya labor es asumida única y exclusivamente en función de su capacidad de propuestas y convocataria, importando nada sus orientaciones sexuales o identidades de género.

Son autoridades que cierran un ciclo de la lucha por la igualdad en el campo electoral-político y que generan un efecto relevante para el futuro, pues cuando nuevas personas abiertamente LGBTIQA+ resulten electas o designadas para cargos públicos, su orientación sexual o identidad de género pasará a ser un tema total y masivamente irrelevante y no constituirá un hito para la causa anti-discriminatoria, como siempre debió haber sido. Quizás, las únicas excepciones, serían las elecciones de una/a presidente/a de la República o la nominación de algún/a comandante en jefe/a abiertamente LGBTIQA+.

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<sup>[5]</sup> Camila Quiroz Viveros

<sup>[6]</sup> Alexandra Benado Vergara y Marco Antonio Ávila Lavanal.

## 7. Tribunales: incapacidad de superar su discrecionalidad y arbitrariedad

Como se ha descrito y analizado en anteriores informes anuales de DDHH, en la última década, y muy especialmente entre el 2015 y el 2019, el Poder Judicial pasó de ser una de las entidades más homo/transfóbicas del país, a una que a través de sus fallos contribuyó a sensibilizar y hacer justicia en diversos casos, llegando incluso en distintos momentos a ser mucho más empática con la causa LGBTIQA+; o si se quiere menos discriminadora, que el Ejecutivo y el Legislativo.

Sin embargo, a los graves retrocesos ocurridos en 2020, se añadió en 2021 el hecho de que el Poder Judicial nunca logró superar sus incoherencias en torno a los derechos de las parejas del mismo sexo y de las familias homoparentales, dando lugar a fallos contradictorios en torno a situaciones similares, lo cual solo reflejó alta discrecionalidad y arbitrariedad en la aplicación y administración de la justicia.

Por un lado, el Poder Judicial nunca dictó un fallo que reconociera a la prohibición del matrimonio a personas del mismo sexo como una desigualdad contraria a derechos garantizados en la Constitución o en tratados internacionales. Ello, muy a diferencia de lo ocurrido en otros países donde a través de sentencias pro matrimonio igualitario el Poder Judicial fue clave para hacer efectiva la universalidad de los derechos humano y la igualdad ante ley, al margen de la orientación sexual o identidad de género de las personas. Más aún, en torno al matrimonio igualitario el Poder Judicial chileno se negó sistemáticamente a aplicar controles de convencionalidad.

Algo similar ocurrió con el reconocimiento de la doble maternidad o doble paternidad, pues si bien en algunos casos hubo fallos favorables, en otros no y solo porque algunos jueces/as consideraban ilegal tales composiciones familiares. La discrecionalidad de tipo homofóbico, que daña la dignidad de familias homoparentales, se expresó en 2021 en sentencias del Juzgado de Familia y de la Cuarta Sala de la Corte de Apelaciones de Valparaíso.

Al aprobarse el matrimonio igualitario, se cerró un ciclo en la lucha por la igualdad en Chile. Y lamentablemente al término de ese proceso el Poder Judicial chileno pasará a la historia porque nunca aportó alguna sentencia a favor del matrimonio igualitario, porque desconoció que la prohibición de ese derecho fuera discriminatoria y por su alta discrecionalidad con la filiación y adopción homoparental. Negaciones de derechos humanos básicos que pudo contribuir a evitar y no lo hizo, habiendo sido su obligación hacerlo.

# 8. Sandra Pavez: la persistente homofobia del Estado de Chile

El mismo año que la diversidad sexual y de género cerraba un capítulo de tres décadas de lucha por la igualdad; lo cual coincidió con el trabajo de la Convención Constitucional y la elección de un nuevo Presidente que llegó en marzo del 2022 a La Moneda junto a corrientes políticas que nunca antes habían accedido al Poder Ejecutivo; el Estado de Chile persistió en discriminar a la profesora Sandra Pavez, impedida de hacer clases en nuestro país desde el 2007 solo por ser lesbiana.

La profunda transformación sociocultural o política que atraviesa Chile, con un estallido social de por medio y con la ley de matrimonio igualitario aprobada, no bastaron para que el Estado reconociera el profundo daño causado a una docente. Por el contrario negó el abuso en la Corte Interamericana de DDHH (Corte IDH), la cual en 2021 abordó el caso en una histórica audiencia de juicio.

Al cierre de este informe, Pavez seguía a la espera de un fallo de la Corte IDH que llegará tarde, pues ya no podrá ejercer. En 2021 ella jubiló, sin haber podido nunca más desde el 2007 ingresar a un aula porque la Corte Suprema, en alianza con la Iglesia Católica, le negó tal derecho solo por ser lesbiana.

La histórica audiencia del caso que en 2021 tuvo lugar en el Corte IDH, derivó en un funesto hecho inédito: todas las iglesias del país, y por primera vez en su historia, se unieron para incidir en el sistema interamericano de DDHH presentando un Amicus Curiae que defendía su ilegítima facultad de decidir quienes pueden o no hacer clases de religión, incluso en establecimientos educacionales laicos. Y para ello, contaron con el apoyo del Estado de Chile, toda vez que jamás ha reconocido que discriminó a la docente.

Estado e iglesias unidos contra los derechos LGBTIQA+ al 2021 debería ser algo del pasado. Sin embargo sigue siendo el presente.

# 9.50 hitos, la mayoría positivos

En el transcurso del 2021 se registraron 50 hitos, 43 de los cuales fueron favorables a los derechos LGBTIQA+ y 7 adversos.

A los ya expuestos en el presente balance general, se suman en el terreno de las políticas públicas la primera publicación del Sename que abordó la diversidad sexual y de género en niñas, niños y adolescentes (NNA); una circular de la Superintendencia de Educación que garantiza la autonomía de estudiantes trans a partir de los 14 años y el lanzamiento de los resultados del primer estudio estatal que indagó exclusivamente sobre la realidad LGBTIQA+ en Chile, así como el surgimiento de Oficinas de la Diversidad y la no Discriminación en los municipios de Concepción, Catemu y Lampa.

En el lado contrario, el municipio de Valparaíso, dañó la memoria de las víctimas fatales LGBTIQA+ al cuadrarse públicamente con la versión de los responsables del incendio de la discoteca Divine, quienes inventaron que el sinestro se había originado por un atentado homofóbico solo para evadir su responsabilidad en los hechos.

Mientras en el terreno político destacó una reunión de la presidenta de la Convención Constitucional, Elisa Loncón, con el Movimiento LGBTIQA+ y en el campo cultural resaltó que la Feria Chilena del Libro suspendiera las ventas del clásico "Las mil y una noches" hasta que se eliminara una homofóbica publicidad del texto, las organizaciones de la diversidad sexual y de género conmemoraron 30 años de lucha sistemática impulsando actividades inéditas y/o de alto impacto.

Así es como se desarrolló el "Primer Concurso para Promover los Derechos Humanos de los/as Migrantes LGBTIQA+ en Chile" y fueron lanzados un archivo histórico sobre la realidad LGBTIQA+ en Chile, que abarca desde 1875 hasta el 2011, y los resultados del primer estudio que midió y conoció las opiniones y percepciones de las parejas del mismo sexo y de las familias homoparentales frente al matrimonio igualitario.

En tanto, Cristóbal Paz, se convirtió en el primer niñe no binarie en dar públicamente su testimonio, tras transformarse en activista de la diversidad sexual y de género, mientras la XXI Marcha del Orgullo, la primera tras la pandemia, se perfiló como la más masiva desarrollada en Chile al conglomerar a más de 150 mil personas. A la par, por primera vez el desfile incluyó una columna de migrantes LGBTIQA+.

Finalmente, en el campo internacional, la CIDH, algunos Comité de la ONU y el Consejo de Europa llamaron a no usar las religiones para discriminar a las personas LGBTIQA+; en el contexto de las Naciones Unidas se creó el Grupo de Estados Amigos del Mandato del Experto Independiente sobre Orientación Sexual e Identidad de Género (OSIG); la OEA aprobó una nueva resolución sobre "Promoción y protección de los Derechos Humanos", incluyendo un título sobre personas LGBTIQA; el Tribunal de Justicia de la Unión Europea (TJUE) reconoció los derechos de los/as hijos/as de pareja del mismo sexo en todo el bloque, incluso en aquellos países donde no hay matrimonio igualitario; y el Banco Mundial lanzó su primer estudio sobre los DDHH de las personas LGBTIQA+.

# II.- ENCUESTAS E INFORMES SOBRE DIVERSIDAD SEXUAL Y GÉNERO

La diversificación caracterizó a las encuestas y estudios sobre la realidad LGBTIQA+ en Chile, ascendiendo a 24<sup>7</sup> las investigaciones cuyos resultados fueron conocidos en el transcurso del 2021.

La variedad se apreció tanto en las autorías como en los contenidos de las investigaciones.

En el primer caso, se registraron 4 estudios coordinados desde órganos estatales y 8 de los movimientos LGBTIQA+, a los cuales se añaden los desarrollados por consultoras, empresas, organismos de derechos humanos y casas de estudios.

Si bien en 8 de las investigaciones el tema más consultado se relacionó con el matrimonio igualitario, en esos y otros estudios también se abordó la realidad sociocultural de las parejas del mismo sexo y de las familias homoparentales, la situación laboral y educacional de las personas LGBTIQA+, los efectos de la pandemia en la lucha contra la discriminación, los derechos de la identidad de género y las violaciones a los derechos humanos, entre otros.

A nivel estatal, destacó el primer estudio sobre la violencia y delitos contra las personas LGBTIQA+, la segunda encuesta nacional sobre discriminación, un sondeo sobre el matrimonio igualitario gestado desde el Congreso Nacional y una encuesta que reflejó preocupantes índices de homo/transfobia en el Ministerio público.

El Movimiento LGBTIQA+, por su lado, realizó el primer estudio que midió y conoció las opiniones y percepciones de las parejas del mismo sexo y de las familias homoparentales frente al matrimonio igualitario, así como sondeos sobre la infancia y adolescencia trans, los derechos laborales y el impacto del Covid-19

Otras investigaciones permitieron conocer la situación de los derechos humanos LGBIQA+ en comparación con otros países, figurando Chile en un contexto de gran apertura, así como las visiones de la juventud frente a variados derechos y análisis respecto a las deudas y desafíos para la igualdad. Con la aprobación del matrimonio igualitario, que marca el cierre de un ciclo en la lucha por la no discriminación, resulta necesario que las futuras encuestas o investigaciones continúen midiendo y analizando la visión ciudadana sobre los derechos de la diversidad sexual y de género de una manera más específica y no solo general, pues ello permitirá conocer que tan profunda van siendo las transformaciones. Esto debe ir de la mano de sondeos que se apliquen a la propia población LGBTIQA+, pues ya no basta con saber que tanto otros/as apoyan o no sus derechos. Es preciso en primer lugar saber ahora como las personas LGBTIQA+ interpretan y experimentan las transformaciones, de manera de ir sabiendo si efectivamente se va mejorando su calidad de vida.

En un mundo donde la inmediatez, lo mediático o lo ampliamente polémico llama la atención de los/as investigadores/as, el desafío entonces para los siguientes estudios será ahondar en aspectos más fundamentales y de largo plazo, que vayan poco a poco visibilizando otras injusticias y abusos que han estado silenciadas como lo es, por ejemplo, la discriminación interseccional que afecta a las personas LGBTIQA+.

Solo con nuevos enfoques podrá conocerse la situación sociocultural de las personas LGBTIQA+ en Chile, en particular al tener en cuenta que se trata de una realidad en permanente y acelerado cambio.

<sup>[7]</sup> En 2020 se conoció de veintiún estudios; en 2019 de dieciocho; en 2018 de veinte y siete; en 2017 de veinte; en 2016, diecinueve; en 2015, trece; en 2014, diecisiete; en 2013, veinte; en 2012, diecinueve; en 2011, veintiuno; en 2010, catorce; en 2009, ocho; en 2008, nueve; en 2007, siete; en 2006, seis; en 2005, cuatro; en 2004, diez y en 2003, tres.

## 1.– Primer estudio estatal sobre la realidad LGBTIQA+ en Chile

El 27 de abril fueron lanzados los resultados del primer estudio estatal que ha indagado exclusivamente sobre la realidad LGBTIQA+ en Chile, así como en la discriminación, violencia o delitos que afectan a este grupo humano.

Se trata del sondeo más grande y representativo sobre la población LGBTIQA+ emprendido por el Estado, en alianza con la sociedad civil, pues fueron encuestadas 3.271 personas.

El "Estudio exploratorio de discriminación y violencia hacia las personas LGBTIQA+" se aplicó entre el 14 de octubre y 15 de diciembre del 2020.

El instrumento fue diseñado por la Subsecretaría de Prevención del Delito, liderada por Katherine Martorell, y el Movilh, además de contarse con el apoyo de la Organización Trans de Rancagua e Iguales.

Los resultados son preocupantes, pues reflejan de manera clara y contundente el drama y la vulnerabilidad de las personas LGBTIQA+ en Chile y la necesidad de implementar con urgencia medidas contra la discriminación.

Del total de personas encuestadas, el 57,5% tiene entre 18 y 30 años; el 23,1%, entre 15 y 17 años; el 11,4%, entre 31 y 40 años y el 7,9%, más de 41 años.

El 41.9% de los encuestados es hombre; el 58%, mujer y el 0,1%, intersex. En cuanto a la orientación sexual, el 31,5% se declaró gay; el 30,4%, bisexual; el 18,2%, lesbiana; el 11% heterosexual y el 9%, bisexual.

La identidad de género del 57,6% es cisgénero; seguido por "otros" (17,7%); no binarios (17,4%) y trans (7,3%).

#### Discriminación a personas LGBTIQA+

En torno a la percepción de la discriminación, el 71,8% cree que en Chile los derechos de las personas LGBTIQA+ se respetan "poco"; el 25%, "algo" y el 3,1%, "mucho", cifras explicadas por los graves episodios de homo/transfobia vividos a nivel individual.

En efecto, el 89.3% ha sufrido discriminación al menos una vez en su vida y el 64,4% experimentó lo mismo en el último año. Al considerar exclusivamente a las personas trans, las cifras son de 94,1% y 85,5%, en forma respectiva.

Alolargo de su vida, el 76.9% fue discriminado/a con insultos; seguido por gritos y hostigamientos (64,5%);

imposiciones para cambiar de apariencia (48.7%); falta de respeto a la identidad de género (28.8%); sanciones por expresar la orientación sexual o la identidad de género (22,9%); expulsión o negación de entrada a algún lugar (18.5%); obligación para someterse a pruebas o test de VIH o ITS (7,3%); negación o obstáculos para registrar la identidad de género (4,5%); negación de entrega de retrovirales (1,2%) y dificultades para ejercer el derecho a voto (0.9%). Además, y al considerar exclusivamente a las personas trans, el 61,9% fue ridiculizada al llamarlas en voz alta por su nombre legal, mientras al 9,2% le negaron la entrega de reemplazo hormonal.

El último año, en tanto, la discriminación se expresó en insultos (49,1%); gritos u hostigamientos (35%); obligación para cambiar de apariencia (26,2%); falta de respeto a la identidad de género (18,4%); sanciones por la expresión de la identidad de género o la orientación sexual (7,8%); expulsión o prohibición de entrada a algún lugar (6,6%); obligación para someterse a pruebas de VIH o ITS (2,9%); negación o dificultad para el registro de la identidad (2,4%); negación para la entrega de retrovirales (0,7%); obstáculos para ejercer el derecho a voto (0,4%). En el mismo período, al 45,2% de las personas trans las ridiculizaron llamándolas en voz alta por su nombre legal y al 5,9% le negaron la entrega de reemplazo hormonal.

Las diferentes formas de discriminación ocurrieron en calles y parques (53,4%); en el hogar (44,7%); en redes sociales (41,2%); en espacios educativos (38%); en casa de familiares (29,8%); en el transporte público (21,7%); en el barrio (19,1%); en espacios religiosos o lugares de culto (18,7%); en espacios comerciales (18,4%); en instituciones públicas (12,6%); en el lugar de trabajo (12,3%); en carabineros (10,3%); en el servicio público de salud (8,5%); en un club, discoteca o bar (7.6%); en protestas o manifestaciones (6,5%); en servicios o empresas privadas (5,6%); en servicios privados de salud (5,3%); al arrendar o comprar un producto o servicio (5,3%); en un servicio privado de transporte (4,2%); en gimnasios o centros deportivos (2,5%); en un evento LGBTIQA+ (1,9%); en club, pub o discotecas para LGBTIQA+ (1,8%); en instituciones financieras (1,7%); en la PDI (1,4%) y en instituciones penitenciarias (0,6%).

Los principales responsables de la discriminación en el último año fueron desconocidos (57.9%); familia nuclear (44,1%); familia extendida (30.6%); compañeros de estudios (25.7%); miembros de comunidades religiosas (25,7%); directores, docentes, auxiliares (23%); amigos o conocidos (19.6%); funcionarios de carabineros (11,7%); grupos anti-LGBTIQA+ (11,2%); funcionarios públicos (11%), compañeros de trabajo (8.9%), personal de salud (8.7%), jefes/as (8.2%); pareja o ex pareja (7.2%); familiares de (ex) pareja (5,9%); funcionario privado (5,5%); clientes o pacientes (4.4%), personas LGBTIQA+ (3.9%), miembros de las Fuerzas Armadas (3,8%) y funcionarios de la PDI (1,7%).

En concordancia, el 36% cree que donde más las personas LGBTIQA+ enfrentan discriminación es en los espacios públicos (calles o parques), seguidos por la familia nuclear (madre, padre, hermanos) con el 15.6%; el ámbito educacional (14,8%); lugares religiosos o de culto (9.8%); en la familia extendida (abuelos, tíos sobrinos) con el 8.6%; en el campo laboral (7,8%); en instituciones de seguridad pública (3,9%); en servicios de salud pública (2,3%); en el barrio (0,4%); en medios de transporte (0,4%) y en comercio o servicios privados (0.4%).

Tras los episodios de la discriminación el 75% sintió miedo, ansiedad o angustia, seguido por autorepresión para expresarse libremente (70,5%); problemas para concentrarse, recordar detalles o tomar decisiones (32,5%); ideas suicidas o intento de suicidio (31,8%); problemas para dormir (30,7%); dejar de vestirse o maquillarse de la manera como gusta (30,1%); aislamiento del resto de la sociedad (29%); dejar de salir (29%); dejar de ver a familiares o amigos (27.3%) y dejar de participar en actividades que gustan (27.1%).

Pese a todo, apenas el 4,3% reportó o denunció la discriminación. El 31,5% no denunció porque consideró que lo ocurrido no era "lo suficientemente grave"; el 22.9% porque estima que la policía no hubiera hecho nada; el 11% porque no cree que sirva de algo; el 9.3% porque desconocía cómo o donde denunciar; el 9,1% para mantener en reserva su orientación sexual o identidad de género; el 5,1% por miedo a más discriminación; el 4,1% porque no pudo identificar a los agresores, el 3.7% porque le daba vergüenza; y el 3,2% por miedo a represalias.

#### Victimización en personas LGBTIQA+

El 62,3% ha sufrido de delitos al menos una vez en su vida y el 49,3% en el ultimo año. Al considerar exclusivamente a la población no binaria, las cifras son de 73.9% y 54,9%, en forma respectiva, mientras en el caso de las personas trans el 61,9% fue víctima de delitos al menos una vez en su vida y el 62,8% en el último año.

A lo largo de su vida el 38,2% fue víctima de delitos cibernéticos, como hostigamientos en redes sociales, seguido por amenazas físicas (33,7%); amenazas sexuales (19,9%); ataques físicos (19,6%); ataque sexual (18,5%); asalto con violencia, amenaza o intimidación (16,3%); terapias o violaciones correctivas (8,8%), daños a la vivienda (2,6%) y daños a vehículo (2%).

En tanto, en el último año el 22,2% sufrió delitos cibernéticos; el 10,9% recibió amenazas físicas y el 5,5%, amenazas sexuales; el 4,2% fue asaltado con violencia

o intimidación; el 4% fue atacado físicamente; el 3,6% fue atacado sexualmente; el 2% fue víctima de terapias o violaciones correctivas; al 1,2% le dañaron su vivienda y al 0,8% su automóvil.

En el último año los delitos ocurrieron en espacios públicos (30,6%), seguido por redes sociales (17.2%); en el hogar (12,5%); en el barrio (12,5%); en el transporte público (12,4%); en recintos educativos (10%); en espacios comerciales (7%); en hogar de familiares (6,3%); en carabineros (5,7%); en espacios religiosos o de culto (5,1%); en clubes, discotecas o bares (4,7%); en instituciones públicas (3,3%); en servicios públicos de salud (2,8%); en el trabajo (2,7%); en una protesta o manifestación (2,5%); en un servicio privado de salud (1,6%); en servicios de transporte privado (1,6%); en clubes, discoteca o bares para LGBTIQA+ (1,3%); en servicios o empresas privadas (1,2%); en la PDI (1,1%); en gimnasios o centros deportivos (1%); en un evento LGBTIQA+ (0.8%); al arrendar o comprar un producto o servicio (0.8%) y en instituciones penitenciarias (0,5%) y financieras (0,4%).

Los responsables de estos abusos fueron desconocidos (75%), seguidos por amigos o conocidos (18,5%); grupos anti-LGBTIQA+ (17.3%); compañeros/ as de estudio (17.2%); miembros de comunidades religiosas (11.5%), familia nuclear (10,2%); (ex) pareja (6,9%); familia extendida (6,8%), carabineros (6,8%); personas LGBTIQ+ (6%); familiares de (ex) pareja (4,2%); compañeros de trabajo (3,3%); funcionarios/as públicos (3,3%); directores, docentes o auxiliares (2,8%); miembros de las Fuerzas Armadas (2,7%); personal de salud (2,4%); funcionarios de la PDI (1,3%); funcionarios privados (1,3%); clientes o pacientes (1,2%) y jefes/as (1,2%).

Los/as encuestados/as reportaron además consecuencias psicológicas, físicas o sexuales debido a los delitos que sufrieron.

En el primer caso, el 78.1% sintió angustia, miedo o ansiedad; el 53,4% reprimió la expresión de su identidad en algunos lugares; el 43% tuvo problemas para dormir; el 37,4% dejó de salir y el 36.9% se aisló del resto de la sociedad.

En el segundo caso, al 20.6% le quedaron marcas visibles como moretones, rasguños o hematomas; al 11,7%, cicatrices; al 11% "otras lesiones" y el 4% torceduras, fracturas o dislocación.

Por último, el 33,9% quedó con problemas sexuales, como dificultades para sentir placer o realizar el acto sexual; seguido por "heridas en los genitales" (8%); contagio de una ITS (6%) e infecciones del tracto urinario de manera frecuente (4%).

Con todo, solo el 9,2% reportó o denunció los delitos de los cuales fue víctima.

El 28.6% no denunció porque le daba vergüenza; el 16,9% porque no sabía qué podía hacerlo o dónde; el 8,7% porque "la policía o los tribunales no hubieran hecho nada"; el 7,7% porque "me daba miedo ser discriminado/a"; el 7.1% porque "no pude identificar a mis agresores"; el 6,4% porque "no creo que denunciar sirva de algo"; el 5.2% para mantener en reserva su orientación sexual o identidad de género y el 4.7% por "miedo a represalias".

#### Apertura y visibilidad LGBTIQA+

Finalmente, la encuesta arrojó que el 71.5% acepta su orientación sexual o identidad de género, cifra que se eleva al 80,5% en el caso de los gays, seguido por lesbianas (76,5%); otros (69,2%), pansexuales (65,5%), no binarios (63,3%), trans (63%) y bisexuales (61,7%).

Sin embargo, solo el 31,8% se siente libre de expresar su orientación sexual o identidad de género, cifra que es del 36,3% en el caso de los gays; seguidos por trans (33,9%), lesbianas (33,7%); pansexuales (28.9%), no binarios (27,9%) y bisexuales (20,8%).

Con todo, el 58.6% se declara "algo" satisfecho con su vida; el 30% "mucho" y el 11,4% "poco o nada".

#### 2.– Las parejas del mismo sexo y las familias homoparentales frente al matrimonio igualitario

El debate sobre el matrimonio igualitario fue decisivo en 2021, pues finalmente logró aprobarse y transformarse en ley.

Si bien cada año diversas encuestas indagaron sobre el rechazo o la adhesión ciudadana al matrimonio igualitario, ningún estudio ahondó en la opiniones o percepciones de las propias parejas del mismo sexo frente a esa ley.

¿Cuántas parejas se casarán?, ¿por qué?, ¿qué discriminaciones han sufrido por la prohibición del matrimonio igualitario?, ¿cuáles creen que son los fines del matrimonio?, ¿qué opinan de la unión civil y del matrimonio igualitario?, ¿los convivientes civiles anularán la unión civil para casarse?, ¿cuántos lo anularán?, ¿cuántas parejas tienen hijos/as? o ¿cuántas viven bajo un mismo techo? eran preguntas sin respuesta, hasta el 2021.

El 29 de noviembre, una semana antes de la aprobación de la ley, el Movilh lanzó los resultados de la encuesta "Las parejas del mismo sexo frente al matrimonio igualitario" en compañía de la presidenta del Senado, Ximena Rincón y del Director del Observatorio de Participación Ciudadana y No Discriminación del Ministerio Secretaría General de Gobierno, Camilo Cayuqueo.

Aplicada entre el 18 de octubre y el 26 de noviembre del 2021 a 1.878 personas de todas las regiones del país; la encuesta arrojó que para la mayoría de las parejas del mismo sexo el matrimonio igualitario es un derecho deseado y de suma relevancia, mientras que su prohibición les ha provocado graves daños, en especial a sus hijos/as.

En cuanto a su sexo, orientación sexual e identidad de género, el 62% de los encuestados/as se declaró mujer; el 34,8%, hombre y el 3,2% "no binario". Además el 46% señaló ser lesbiana; el 32,9%, gay; el 13,3%, bisexual; el 6%, pansexual; el 1,5% heterosexual y trans y el 0.3%, asexual.

Del total el 97,9% es cisgénero y el 2,1% trans.

El 40,2% de los/as encuestados/as tiene entre 30 y 39 años, seguido por 20 y 25 años (25,1%); 20 y 24 años (16,7%); 40 y 49 años (9.6%); 15 y 19 años (6,3%); 50 y 59 años (1,7%) y más de 60 años (0.4%).

El 92,4% es de nacionalidad chilena; el 5,4%, venezolana; el 0.7%, colombiana; el 0.5%, argentina; el 0.2%, brasileña; el 0.2%, boliviana y el 0.6%, "otras".

El 54.8% vive en la Región Metropolitana; el 10,5% en Valparaíso; el 6.1% en Biobío; el 4.6% de O'Higgins; el 4,2% en Los Lagos; el 4,1% en La Araucanía; el 3,1% en Antofagasta; el 3,1% en Coquimbo; el 2,5% en Maule; el 1,8% en Los Ríos; el 1,1% en Tarapacá; el 1,1% en Magallanes; el 1% de Ñuble; el 0,8% en Atacama; el 0,8 en Arica y el 0,4% en Aysén.

#### • Parejas e hijos/as:

En relación a su situación de pareja, el 45% convive; el 38,2%, pololea y el 16,8%, es conviviente civil.

El 83,5% no tiene hijos/as y el 16.5% sí. De estos, el 11,2% de los hijos/as viven con una pareja del mismo sexo; el 2.7% "con otras personas" y el 1.4% solo con una madre o un padre biológico/a y el 1.2% "solo con la otra pareja del mismo sexo"

El 32,1% de las parejas no tiene hijos/as, ni tampoco ha planeado tenerlos. El 16.5% sí los/as tiene.

En tanto, el 45,3% de las parejas ha planeado tener nuevamente o por primera vez hijos/as mediante fertilización asistida; el 40,5% por adopción y el 4,6% a través de coito heterosexual.

#### • Matrimonio y unión civil:

El 82.8% tiene proyectado unirse en matrimonio un vez que entre en vigencia la ley y el 13.4%, no. En tanto, solo el 3.8% prefiere la unión civil.

Más aún del total de convivientes civiles, el 91,8% señala que anulará el vínculo para unirse en matrimonio versus el 8,2% que permanecerá con el Acuerdo de Unión Civil (AUC).

El 82% dijo que conoce las diferencias entre el matrimonio igualitario y la unión civil, el 11% sostiene que "no" y el 7% "no sabe".

Además el 86.8% considera que si "tuviera que elegir una vía para regular su relación de pareja" optaría por el matrimonio; ubicándose mucho más abajo la unión civil (6.7%). El 1.4% indica "otro" y el 5.1% "no sabe".

#### • Valoración y fines del matrimonio:

El 90,5% de las personas señala que el matrimonio igualitario tiene "mucha importancia" para el/ella y su pareja; el 7,6%, "poca importancia" y el 1.9% "ninguna importancia".

Además, el 95,9% cree que el matrimonio igualitario tiene "mucha importancia para las parejas del

mismo sexo en Chile", el 3.6%, "poca importancia" y el 0,5%, "ninguna".

En concordancia, para el 81.3% de las parejas la aprobación del matrimonio igualitario es un "hecho histórico"; para el 17.7% "relevante" y para el 1% "irrelevante".

Para el 76.9% el fin del matrimonio es "dar estabilidad a los hijos/as en caso de tenerlos"; para el 75,3% "ayudarse mutuamente como pareja"; para el 46,8% "vivir juntos/as para toda la vida"; para el 41% "criar hijos/as" y para el 38,7% "vivir juntos/as por el tiempo que dure", mientras el 0.9% "no sabe" y un 41,7% señaló "otros".

Como resultado, el 82,9% no aceptaría una ley de matrimonio que no contemple la adopción y/o filiación homoparental; el 9.8%, sí y un 7.3% "no sabe".

El 97,8% estima que "la ley de matrimonio igualitario debería garantizar la filiación" a las parejas lésbicas o gays que se sometan a técnicas de reproducción humana asistida, el 1.3% considera que solo debería contemplarse para parejas lesbianas y el 0.9% para ninguna pareja.

#### • Matrimonio v/s discriminación:

Solo el 15.5% señala que no ha experimentado ningún tipo de discriminación debido a la prohibición del matrimonio igualitario versus un 84,5% que ha vivido diversos problemas

En efecto, el 61,1% ha sufrido como efecto de la prohibición del matrimonio igualitario la "imposibilidad ser reconocido como familia en organismos públicos o privados", seguido por la "discriminación sociocultural" (54,6%), el "nulo acceso a prestaciones o servicios sociales" (45.9%), la "imposibilidad de regular bienes" (45.1%), la "negación de cargas familiares "(40.6%), la "dificultad para trámites en el campo de la salud o la educación" (37.7%), la "imposibilidad de que nuestro hijo/a sea representado/a o ayudado/a por cualquiera de nosotros" (23.9%) y la "negación de derechos laborales (21%).

El 19.7% dice que ha tenido "otros problemas de discriminación" y solo el 15,5% "ninguno".

La principal razón por lo cual se debe luchar por el matrimonio igualitario es para el 89.5% la necesidad de "hacer efectiva la igualdad legal y derribar la discriminación", seguida por "el reconocimiento social y estatal de las familias homoparentales" (87,6%) y "para entregar estabilidad a los/as hijos/as (72,1%). El 10,8 señala "otros" y el 0.5% "no sabe".

Con todo, para el 86,5% el principal efecto que tendrá la aprobación del matrimonio igualitario será "la

mejoría en la calidad de vida de las parejas del mismo sexo y sus hijos", "el término de la desigualdad legal basada en la orientación sexual" (84.1%) y la "merma en los índices de discriminación contra las personas LGBTIQA+" (72%). El 9,6% señala "otros" y el 0.8%, "ninguno".

# • Evaluaciones sociopolíticas y matrimonio:

Para el 91.9% la aprobación del matrimonio igualitario se demoró de "manera injustificada" y para el 2,7% de forma justificada, mientras para el 5.4% avanzó "de acuerdo a los tiempos".

Frente a la consulta "¿qué opinión te merece que la ex presidenta Michelle Bachelet elaborará el proyecto de ley de matrimonio igualitario y lo enviara al Congreso Nacional?", el 61% responde "muy bien"; el 22.4% "bien", el 14,6% "ni bien, ni mal", el 1,2% "muy mal" y el 0,8% "mal".

En tanto, al 57,2% califica de "muy bien" que el presidente Sebastián Piñera diera suma urgencia a la tramitación del matrimonio igualitario; el 24.8%, bien; el 14.7%, "ni bien, ni mal", el 1,7% "mal" y el 1.6% "muy mal".

Para el 57.5% todos los poderes del Estado fueron responsables de que Chile no contará con matrimonio igualitario y para el 25.6% solo el Congreso Nacional seguido por el gobierno (10.8%), "los tribunales de justicia" (0.7%), no sé (5%) y , ninguno 0.4%.

El 51,9% piensa que la principal corriente ideológica responsable de que Chile aún no cuente con matrimonio igualitario es la derecha (51,9%), seguida por "todas" (40%); no sé (5.9%), ninguna (1.1%), la izquierda (0.9%) y el centro (0.2%).

En tanto, el 62,7% califica a "todas las religiones" como las responsables de que Chile aún no cuente con matrimonio igualitario, seguida por solo la Católica (21,9%), solo la evangélica (12,1%), "no sé" (1,8%) y "ninguna" (1.5%).

# 3.– Segunda encuesta estatal sobre discriminación

En 2013 el Estado, a través del Gobierno, realizó su primera consulta nacional para conocer los niveles de discriminación existentes en Chile, formulando una encuesta con la asesoría técnica y el trabajo conjunto con el Movilh<sup>8</sup>.

La misma encuesta aplicó por segunda vez el Ministerio Secretaría General de Gobierno entre diciembre del 2019 y enero del 2020, siendo los resultados conocidos en abril del 2021.

El segundo sondeo contó con la participación de 67.309 personas, 56.881 de las cuales contestaron de forma presencial y 10.428 de manera online.

Al compararse la segunda encuesta con la primera se aprecia un importante descenso de la discriminación según las percepciones y vivencias de los/s encuestados/ as.

Mientras en 2013 el 52% de las personas señaló haberse sentido marginada en forma arbitraria y 31% reconoció haber excluido a otros/as, en el segundo sondeo las cifras son del 48% y del 18% en forma respectiva.

Esto implica, que menos personas se sienten discriminadas y mucho menos excluyen a otros/as en relación a siete años atrás. Aunque también este último podría interpretarse con que menos personas están dispuestas a reconocer que han discriminado a otras.

El estudio es muy significativo porque es impulsado por el Gobierno, por lo que sus resultados son oficiales, y porque permite conocer las diferencias entre sentirse marginado y haber incurrido en discriminación.

#### Discriminados/as

El 48% de las personas se han sentido discriminadas arbitrariamente en Chile, cifra que se eleva al 50% en el caso de las mujeres y baja al 45% cuando responden solo hombres

En algunas regiones se superó el promedio nacional de personas que dicen haber sido discriminadas. Se trata de Tarapacá (50%), Región Metropolitana (52%), Ñuble (53%), Biobío (51%).

Del total, el 9% se sintió discriminado/a por su orientación sexual y el 7% por su expresión o identidad de género, mientras en 2013 las cifras eran del 13% y del 4% en forma respectiva.

<sup>[8]</sup> Más antecedentes en el XII Informe Anual de Derechos Humanos de la Diversidad Sexual y de Género publicado en movilh.cl

Otras categorías por las cuales las personas reportan haber sido discriminadas son su apariencia personal (42%), ideología u opinión política, (22%), situación socioeconómica (21%), edad (17%), oficio u ocupación (16%), lugar de residencia (14%), sexo (13%), religión o creencia (11%), nacionalidad (10%), raza o etnia (8%), parentesco o afinidad (7%), estado civil (7%), sindicalización/participación en gremios (6%), enfermedad (6%), situación de discapacidad (5%) e idioma (2%).

Las personas se sintieron discriminadas al ser "ignoradas, omitidas o excluidas (55%), o mediante burlas reiteradas (34%), insultos verbales (32%), vulneración de derechos (25%), insultos gestuales (18%), "de otro modo" (15%), agresión física sin secuelas (5%) y agresión física con secuelas (4%).

Los/as responsables fueron "compañero/a de trabajo o estudio (39%), desconocido/a (38%), conocidos/as o amigos/as (22%), una institución pública (22%), la jefatura (18%), una institución privada (15%), el núcleo familiar (13%), otro (12%), una persona o grupo político (11%), una persona o grupo religioso (10%) y organizaciones sin fines de lucro (3%).

La discriminación ocurrió en el trabajo o al buscar (40%), en la calle, plazas o parques (30%), en establecimientos educacionales (27%), en instituciones públicas (25%), en el hogar o casa de amistades (16%), en supermercados, grandes tiendas o centros comerciales (14%), en lugares de esparcimiento o entretención (13%), en instituciones financieras (13%), otros (12%), en instituciones previsionales o de salud previsional (11%), en lugares de tránsito (9%) y en almacenes o negocios de barrio (9%).

#### • Discriminando

El 18% de las personas reconoció además haber discriminado al menos una vez en su vida, cifra que es del 20% en los hombres y de 16% en las mujeres.

El 12% de las personas que han discriminado dijeron hacerlo por la orientación sexual y el 9% por identidad o expresión de género, cifras que en 2013 eran del 22% y el 6%.

Con toda la forma de discriminación más mencionada fue la basada en la apariencia física, con el 52%, seguida por la ideología u opinión política (29%), nacionalidad (19%), religión o creencia (14%), raza o etnia (10%), edad (10%), situación socioeconómica (9%), parentesco o afinidad (9%), lugar de residencia (9%), oficio o ocupación (6%), sindicalización o participación en gremios (6%), sexo (5%), situación de discapacidad (4%), enfermedad (4%), idioma (4%) y estado civil (4%). La forma más recurrente de discriminación que a juicio de los encuestados/as se da en Chile es "ignorando, excluyendo u omitiendo" (59%), seguida por "de otro modo" (20%), burlas reiteradas (19%), insultos verbales (11%), insulto gestual (6%), vulnerando derechos (2%), agresión física con secuelas (2%), agresión física sin secuelas (2%).

Finalmente los lugares donde se discrimina son, según los/as encuestados/as, las calles plazas o parques (41%), otros (16%), establecimientos educacionales (16%), en el trabajo o al buscar (15%), en el hogar o casa de amistades (15%), en lugares de esparcimiento o entretención (13%), en supermercados, grandes tiendas o centros comerciales (10%), en lugares de tránsito (8%), en almacenes o negocios de barrio (7%), en instituciones públicas (6%), en instituciones financieras (3%) y en instituciones previsionales o de salud (2%).

# 4.– Reconocimiento de la identidad y matrimonio igualitario

Chile es el segundo país latinoamericano con más apoyo ciudadano al matrimonio igualitario y una de las naciones donde las personas más reconocen ser LGBTIQA+, según los resultados de una encuesta de Ipsos dada a conocer el 11 de junio.

La "Encuesta Global Orgullo LGBT+ 2021" fue aplicada en 27 países<sup>9</sup>.

De acuerdo al sondeo, los porcentajes a favor del matrimonio igualitario, la adopción homoparental y de reconocimiento de la orientación sexual, el género o la identidad de género son superiores al promedio regional y en todos los casos se ubica en los primeros lugares de los países encuestados.

El 65% de los/as chilenos/as apoya el matrimonio igualitario; porcentaje mayor al promedio de los 27 países donde aplicó la encuesta, el cual asciende al 53%. La cifra solo es superada por Argentina, donde al respaldo llega al 73%

A la par, solo el 17% de los/as encuestados/as en Chile estima que las personas del mismo sexo debería contraer la unión civil, pero sin derecho a casarse, y aún así apenas el 8% se declara abiertamente contrario al matrimonio igualitario

En torno a la adopción homoparental, el 67% es favorable en Chile, el 28% contrario y el 6% se declara indeciso. El apoyo en la región es encabezado por Argentina (73%) y Brasil (69%).

El promedio de los 27 países arroja un 61% de apoyo a la adopción homoparental, un 31% de rechazo y un 8% de indefinición, siendo Rusia (23%) y Malasia (24%) las naciones más conservadoras y homofóbicas

En un ángulo similar, el 67% de los/as chilenos/ as estima que las parejas del mismo sexo son tan capaces como otras para criar niños, mientras el promedio del total de países encuestados es de 62%.

Extremadamente relevante resultó además que el 11% en Chile se declare "no heterosexual" en la Encuesta de Ipsos.

El porcentaje refleja un nivel de reconocimiento de las orientaciones sexuales que es superior al promedio del 9% de los países encuestados. Se trata de una importante visibilidad de las personas LGBTIQ+, pues similar tendencia se aprecia en torno a las identidades de género.

Del 11% no heterosexual, en Chile el 3% se calificó como lesbiana, gay o homosexual, el 6% como bisexual, el 1% como pansexual u omnisexual, el 1% asexual y 1% "otro". En este campo, la India (17%) y Brasil (15%) tuvieron los mayores porcentajes de reconocimiento.

En relación al género y a las identidades de género, el 4% se declaró no binario; cifra similar a la de Alemania (4%); y el 2% trans, mientras otro 2% guarda reserva. En Alemania y Suecia el 3% reconoce ser trans, la cifras má alta del total de países encuestados.

Finalmente, un 64% de los/as chilenos/as dice conocer a alguien que se declara gay, lesbiana u homosexual; el 33% a una persona bisexual, el 13% a una persona trans y el 13% a una persona no binaria.

Las cifras dan cuenta de una profunda revolución sociocultural a favor de la igualdad en Chile, un país que sistemáticamente desde la década de los 90 es cada vez menos prejuicioso, menos apegado a corrientes ideológicas anti-LGBTIQA+ y por cierto más respetuoso de su diversidad.

<sup>[9]</sup> Lamentablemente los datos disponibles al cierre de este informe no permitían conocer el número de personas encuestadas en cada país, la fecha de aplicación del sondeo o su margen de error o nivel de confianza.

## 5.- Tercera encuesta sobre el impacto del covid-19 en las personas LGBTIQA+

"La Tercera Encuesta Personas LGBTIQA+ frente al Covid-19 en Chile", desarrollada por el Movilh, arrojó que desde el inicio de la pandemia la discriminación contra las personas LGBTIQA+ aumentó en sus casas o barrios, además de reportarse un incremento de los abusos del entre la primera y la segunda ola de la pandemia

La primer encuesta sobre el impacto del Covid-19 fue aplicada en abril del 2020, la segunda julio del 2020<sup>10</sup> y, la tercera, entre el el 7 de abril y el 18 de mayo del 2021, contando con la participación de 721 personas LGBTIQA+ de todas las regiones del país.

#### Cuarentena y contagios

En torno a este tema, se apreció un aumento de 25.9 puntos porcentuales de las personas en cuarentena en relación a la encuesta del julio del 2020 y de 46,1% puntos más en comparación a abril del 2020, mientras que los/as LGBTIQA+ que se contagiaron en el plazo de un año se duplicaron.

En efecto al momento de aplicar la tercera encuesta el 97,1% se encontraba en cuarentena total (85,1%) o parcial (12%) y el 2,9% sin confinamiento. En la primera encuesta (abril 2020) el 51.1% estaba bajo alguna cuarentena y en la segunda (julio 2020), el 71.2% vivía en confinamiento.

Del total en confinamiento, el 9,5% estaba en cuarentena por haber tenido contacto estrecho con personas eventualmente contagiadas y el resto por las medidas impuestas a la ciudadanía en general.

Para el 99,7% su vida cambió "totalmente" (48,8%), mucho (43,4%) o poco (7.5%) tras la aparición del Covid-19 en Chile, mientras solo para el 0.3% no hubo ninguna transformación, cifras similares a las encuestas del julio y abril del 2020.

Sin embargo, el 11,6% dijo a mayo del 2021 haberse contagiado del Covid-19; mientras el 3,1% tenía sospechas. En julio del 2020 la cifra era de 5.5% y 6.7%, en forma respectiva, mientras en abril del 2020 nadie reportó haber adquirido el virus y un 4.3% pensaba que podía tenerlo.

#### • Discriminación

El 44% estima que el Covid-19 tiene consecuencias o efectos negativos más graves en las personas LGBTIQ+ que en las cisgénero-heterosexuales; mientras que el el 24,9% no lo sabe.

De esa forma, la percepción de un mayor impacto negativo en la población LGBTIQA+ aumentó 7.5% puntos porcentuales en relación a julio del 2020 y 14.4% puntos porcentuales más que en abril del 2020.

El 51,7% cree que entre los efectos del Coronavirus podría encontrarse un incremento de la discriminación a las personas LGBTIQA+, mientras en julio del 2020 un 51,4% pensaba ello y en abril del 2020 un 44,3% coincidía con esa apreciación.

En consecuencia la percepción de discriminación aumentó un 15,1 puntos porcentuales y 19.4 puntos porcentuales, en relación a julio y abril del 2020, en forma respectiva. En efecto, a mayo del 2021 el 28,6% fue discriminado/a en razón de su orientación sexual o identidad de género desde la aparición del primer caso de Covid-19 en Chile, en circunstancias que en junio del 2020 la cifra era del 13,5% y en abril del mismo año de 9,2%.

El 8% de quienes fueron discriminados sufrió agresiones físicas; el 70,2% verbales y el 66,7% psicológicas, cifras que en junio del 2020 eran de 7,4%; 51,1% y 41,5%, en forma respectiva.

Entre quienes sufrieron discriminación, el 81.8% señaló que "han aumentado los conflictos familiares o de convivencia a raíz de mi orientación sexual o identidad de género ahora que paso más tiempo en mi casa", cifra que en julio del 2020 era de 47% y en abril del mismo año de 38%, lo cual implicó un incremento de 38.4 puntos porcentuales y de 43,8 puntos porcentuales más, en forma respectiva.

Los problemas con familiares se explicitaron en violencia psicológica (56.9%) y verbal (43.1%).

Sin embargo, solo el 8,7% denunció la discriminación y el 91,3% no lo hizo, porcentajes que en junio del 2020 eran de 9% y 91%, en forma respectiva.

El 60,8% dijo que no denunció la discriminación porque "las medidas implementadas para enfrentar el coronavirus (como la cuarentena, el toque de queda u otras) obstaculizaron o impidieron buscar ayuda", mientras para el 39.2% las razones fueron otras.

En comparación con la primera ola, para el 31.6% de quienes han sufrido discriminación, los conflictos por su orientación sexual o identidad de género aumentaron en su casa, para el 48,2% eran los mismos y para el 20,2% disminuyeron.

<sup>[10]</sup> Todos los antecedentes sobre ambas encuestas en el XIX Informe Anual de los Derechos Humanos de la Diversidad Sexual y de Género, publicado en movilh.cl

Finalmente, 49,8% dijo conocer gente que "la está pasando mal en su casa porque sus familiares o vecinos no aceptan su orientación sexual o identidad de género", cifra que era de 45% en la medición previa.

#### • Pandemia y derechos

El 72,2% cree que el Estado debiese implementar medidas especiales que vayan en ayuda de la población trans afectada por el Covid-19, el 24,1% considera sque no y el 3,1% no lo sabe.

Para las mujeres lesbianas o bisexuales, el 43,2% estima que se necesitan medidas especiales; el 47,3% no lo cree y 9,5%, no. Al consultarse sobre hombres gays o bisexuales las cifras son del 41,7%; 47,1% y 11,2% en forma respectiva.

Solo el 5,4% cree que el Estado está haciendo lo necesario para ayudar a las personas viviendo con VIH en el contexto del Covid-19; el 51,7% sostiene que no y el 42,9% no lo sabe.

Muy en sintonía, el 96 % considera que "el Estado debiese implementar medidas para garantizar a las personas con VIH el acceso a sus medicamentos por varios meses y de una sola vez para que no se expongan al salir de sus casas". El 2,1% no lo sabe y el 1,9% cree que no.

El 80,7% consideró que el "avance de los derechos LGBTIQA+ en materia legislativa y de políticas públicas al menos durante el año 2021" se verá afectado a raíz de la pandemia; el 10.6% no lo sabe y el 8.7% cree que no.

En otro ángulo, el 27.4% participó voluntariamente en iniciativas que contribuyeran a prevenir el coronavirus, el 48.3% no, pero estaba dispuesto a hacerlo y el 24,3% no lo hará.

Además, el 80,3% "está de acuerdo con la suspensión durante todo el año 2021 de cualquier evento masivo pro derechos LGBTIQA+ (marchas, festivales, tocatas, picnic, etc) mientras el contacto social siga siendo un riesgo", cifra que en junio del 2020 era del 93,7%.

Pese a ello, el 58.7% dijo que el Covid-19 ha tenido un impacto negativo en el respeto a los derechos LGBTIQA+ en Chile, el 27% no lo sabe y el 14,3% cree que no.

Finalmente, el 56.2% estimó que los más afectados por el Covid-19 son las personas en situación de calle; seguidos por trabajadores/as sexuales (43,2); migrantes (42,5%); las personas con capacidades diversas (42,3%); la población LGBTIQA+ (34,4%); las mujeres (30.3%); la población originaria (22,6%) y todos/as (51,9%).

#### • Ficha técnica

El 0,6% de los encuestados/as tiene entre 60 y 69 años; el 1,9% entre 50 y 59 años; el 2,3% tiene entre 11 y 14 años; el 6,4% entre 40 y 49 años; el 16,2% entre 25 y 29 años; el 22,6% entre 15 y 19 años; el 24,5% entre 30 y 39 años y el 25,5% entre 20 y 24 años.

En cuanto al sexo, el 46,3% se identifica como hombre; el 44,6% como mujer y el 9,1% como "no binario".

En relación a la orientación sexual, el 38,8% señala ser gay; el 25,9%, lesbiana; el 20,2%, bisexual; el 9,5%, pansexual; el 4,1% hetero y trans; y el 1,5%, asexual. En tanto, el 12,4% es trans y el 87,6% cisgénero.

El 94,5% es de nacionalidad chilena; el 3,5%, venezolana; el 0,6%, peruana; el 0.4%, colombiana y el 1% otras.

El 51% habita en la Región Metropolitana; seguida por Valparaíso (12,9%); Biobío (7,5%); Maule (3.9%); Araucanía (3.9%); Coquimbo (3,5%), O'Higgins (3.3%); Los Ríos (1,5%); Antofagasta (2,7%), Tarapacá (2,3%); Los Lagos (2,1%); Atacama (1,7%), Magallanes (1,3%); Arica (1%), Aysén (0,8%) y Ñuble (0.6%).

## 6.– Jóvenes: Discriminación V/S empatía

La 13 Encuesta sobre Participación, Jóvenes y Medios de Consumo, que desarrolla cada año la Universidad Diego Portales, evidenció la alta discriminación que pesa sobre las personas LGBTIQA+ en redes sociales, pero al mismo tiempo reflejó compromisos ciudadanos para derribar y prevenir la homo/transfobia.

El estudio del Centro de Investigación en Comunicación, Literatura y Observación Social (CICLOS) de la UDP y la empresa Feedback Comunicaciones fue aplicado desde e1 1 de octubre hasta el 3 de noviembre a 1005 jóvenes entre 18 y 29 años de las regiones de Valparaíso, Biobío y Metropolitana. Su margen de error es del +/- 3% y su nivel confianza del 95%

Frente a la consulta ¿"cuáles son las ofensas más frecuentes que ves en redes sociales"? la mayor mención se le llevó la orientación sexual, con el 24%, cifra que se eleva al 26% al considerar solo las respuestas de las mujeres y baja al 22% en el caso de los hombres.

El porcentaje asciende al 30% cuando solo se contemplan las respuestas de jóvenes de los niveles socioeconómicos DE y C2, mientras que llega al 21% en el ABC1 y al 17% en el C3.

En segundo lugar, los/as jóvenes reportaron ver ofensas por visiones políticas (20%); seguida por el género (18%),<sup>11</sup> la apariencia física (10%); la clase social (9%), la raza o la etnia (7%), la nacionalidad (6%) y la religión (3%).

Los resultados se condicen con las denuncias sobre acosos de odio que reciben cotidianamente los movimientos LGBTIQA+ y que se expresan en ofensas o ataques por redes sociales que dañan la dignidad solo por la orientación sexual o la identidad de género de las personas.

Con todo, los/as jóvenes expresan en términos transversales sensibilización y empatía con la realidad LGBTIQA+, pues el 18% participó en los últimos 12 meses de "alguna actividad destinada a promover los derechos de las diversidades sexuales". El número se eleva el 21% en el nivel socioeconómico DE y al 21% en el ABC1 y baja al 15% en el C3 y al 12% en el C2.

## 7.– LGBTIQA+, entre la violencia y el derecho a la vivienda

La Corporación Sur y OTD efectuaron un novedoso estudio que da luces sobre los impactos que tienen los entornos públicos y privados hostiles en la calidad de vida de las personas LGBTIQA+.

Denominado "Primer estudio sobre el derecho a la vivienda y a un entorno adecuado para disidencias sexuales y de género", la investigación explicita que las discriminaciones o exclusiones son diversas y se agudizan cuando se combinan.

El análisis se basó en entrevistas online aplicadas a 28 personas LGBTQIA+ y en una encuesta que entre el 23 diciembre del 2020 y el 15 de febrero del 2021 contestaron 735 personas mayores de 15 años de 139 comunas del país

Del total de encuestados/as o entrevistados/as el 38,6% arrienda la vivienda donde reside; el 25,7% habita en una casa propia o en proceso de pago, el 24,4% es allegado/a; el 10,1% reside en una casa cedida por familiares y el 1.1% vive en una propiedad heredada.

Además, el 52% se declara conforme (31%) o muy conforme (21%) con su vivienda; el 33% "ni conforme, ni inconforme" y solo el 15% inconforme (11%) o muy inconforme (4%)

Con todo, el el 93,4% considera que el sueño de la casa propia sigue siendo un problema en Chile y el 58.6% estima que la actuación del Estado "para facilitar el acceso a la vivienda para disidencias sexuales y de género" es "muy mala", mientras el 25.6% la califica de "mala".

Si bien el estudio no permite llegar a aseveraciones o conclusiones que vinculen exclusivamente a la orientación sexual o la identidad de género con mayores o menores obstáculos para vivir en una vivienda digna y de calidad, la investigación si es clara respecto a que las personas LGBTIQA+ son particularmente vulnerables cuando sufren otras exclusiones como las basadas en su raza, etnia, posición socio-económica o nivel educacional.

En tal sentido existe una relación entre las personas trans; históricamente impedidas de acceder de manera igualitaria a fuentes laborales o educacionales; y la pobreza que a muchas afecta debido a la discriminación sociocultural, siendo las mujeres adultas las más afectadas y quienes viven en condiciones más precarias.

<sup>[11]</sup> En el caso de género, el porcentaje asciende al 23% al considerar solo el nivel socioeconómico C3; al 16% en el DE; al 15% en el C2 y al 14% en el ABC1. Tanto en hombres, como en mujeres la cifra es del 18%.

"La adquisición de la vivienda hace especialmente visible la exclusión de las personas travesti/trans, la falta de acceso a la vivienda, el capital como regulador de posibilidades para acceder a un lugar donde vivir (ya sea arrendar o comprar), lo que se suma al círculo vicioso de discriminación travesti/trans (sin identidad regulada no hay trabajo, sin trabajo no hay dinero, sin dinero no hay ahorro, sin ahorro no hay casa), y genera un abismo infranqueable para muchas identidades que salen de la norma. De esta forma, el marco normativo de la identidad de género aportó seguridades, pero no dio solución al déficit habitacional que sufren las personas travesti/trans, que, aun aprobada la Ley, deben vivir en condiciones poco dignas", señala el estudio (Página 75).

El cruce de vulnerabilidades, también se aplica a las personas con discapacidad, las cuales corresponden al 6% del total de LGBTIQA+ encuestados/as o entrevistados/as. De este grupo humano, el 36,4% vive con "una dificultad psiquiátrica"; seguido por la "dificultad mental-intelectual" (22.7%), la "dificultad física y de movilidad" (20.5%), la "ceguera o dificultad para ver aún usando anteojos" (18,2%), los/as "sin discapacidad de larga duración" (9.1%); la "sordera o dificultad auditiva aún usando audífonos" (9,1%) y la "mudez o dificultad de habla" (6.8%), todas realidades que limitan o boicotean el acceso igualitario a variados derechos, como el de la vivienda.

El estudio finalmente resalta por diferenciar la violencia que las personas LGBTIQA+ sufren en sus casas o en espacios públicos, aún cuando ello no en todos los casos se aclara cuando tales abusos se relacionan o no con la discriminación por orientación sexual o identidad de género.

Del total de encuestados/as, el 30,4% ha experimentado algún tipo de violencia en el lugar donde vive, cifra que sube al 45, 5% en los espacios públicos.

Al interior de las viviendas, del total de quienes reportan violencia el 68,1% sufrió "maltrato verbal" y el 65,1%, psicológico. A la par, el 24,2% señala que no reconocen su identidad de género; el 22,7%, experimentó "tratamientos correctivos de la orientación sexual"; el 22,7%, "manipulación económica"; el 21.2%, "restricciones de libertad", el 19.6% maltrato físico" y el 4.5%, "otro tipo de maltrato".

Los responsables de la violencia doméstica fueron "familiares directos", como madre, padre, hermanos/ as o hijos/as (61.9%); "otra persona sin parentesco que no habita la vivienda", (40.3%), la "familia extendida", como abuelo/a, tío/a (22,4%), "otras personas cercanas a mi familia" (13.4%), la pareja (6%) y los/s amigos/as (4%).

En tanto, de quienes vivieron violencia en las calles, el 81.1% sufrió maltrato verbal, seguido por el psicológico (34,7%), "el acoso o la violencia física" (28.2%), "el acoso o violencia sexual" (20.7%), las amenazas (16,1%), la discriminación en el acceso a servicios (15.2%), los obstáculos para el uso del espacio público (13.,9), la discriminación en acceso al transporte (7.7%) o el "vandalismo a mi vivienda" (6.8%).

En el 71,8% de las ocasiones el responsable de la violencia en las calles fue una persona desconocida: el el 27,5%, vecinos/as y en el 22,2%, las Fuerzas Armadas o de Orden; seguido por la "persona que trabaja en el sector" (14,4%), funcionarios/as del Estado (6.3%), parientes (4.6%) y funcionarios/as municipales (2%).

# 8.– Prácticas sexuales bajo pandemia

Una encuesta aplicada a 410 personas LGBTIQA+ de la Región Metropolitana permitió aproximarse a la realidad de sus prácticas sexuales bajo la pandemia. Denominado "Sexualidad en pandemia: comunidad gay, trans y trabajadores sexuales en el contexto del Covid-19", el sondeo fue aplicado entre el 2 y el 29 de diciembre por el Mums el Núcleo de Investigación en Género y Sociedad Julieta Kirkwood de la Facultad de Ciencias Sociales de la Universidad de Chile.

La edad promedio de los/as encuestados/as es de 30 años. El 92.7% son personas cisgéneros y el 3.9% trans; el 85.4%, hombres; el 3.4%, mujeres y el 2% no binarie. Además, el 82% se declara homosexual; el 7.6%, bisexual; el 6,8% pansexual/demisexual/queer, el 2,2%, heterosexual y el 0.7% asexual/grisexual.

Del total, el 5.6% ejerce el comercio sexual.

Si bien los datos disponibles no precisan cuáles de sus resultados son representativos solo de cisgéneros homo/bisexuales, solo de trans o solo de trabajadores/ as sexuales, entre otros/as, sus aproximaciones son interesantes.

Como consecuencia de "la crisis social y sanitaria provocada por el COVID", el 59.3% disminuyó su actividad sexual, el 20% la mantuvo igual, el 7.1% la aumentó y el 13,7% no las experimentó.

El 62,2% nunca evadió la cuarentena para tener sexo, el 24.9% lo hizo "alguna vez"; el 10,7%, varias veces; el 1,5%, siempre y el 0.7% "casi siempre"El 36.8% solo estuvo con una pareja sexual durante la pandemia; seguido por quienes tuvieron de 2 a 3 parejas (22%), sin parejas (17,8%), más de 7 parejas (12.2%), de 4 a 5 parejas (9.5%) y de 6 a 7 parejas (1,7%).

El 39,3% acordó al menos uno de sus encuentros sexuales mediante aplicaciones para citas.

En su última relación sexual, el 49.5% no usó condón y el 34.9% utilizó drogas durante el sexo.

El 8,8% experimentó una vez "sesiones de sexo en grupo" bajo los efectos de las drogas; el 5.1%, dos veces y el 1% "al menos una vez por mes".

Con todo, durante la pandemia el 57,1% nunca usó drogas; el 21,5%, "casualmente", el 11% una o dos veces; el 6.6%, regularmente; el 2%, "casi todas las veces" y el 2%, "siempre".

En el terreno de la salud, el 43% nunca se aplicó el test de VIH bajo la pandemia; el 41%, una vez; el 9,7%, dos veces y el 6.2%, más de dos veces. Además solo el 6.7% usó la PrEP bajo la pandemiaEl 17% declara vivir con VIH, de los/as cuales el 94,2% pudo acceder a su Tratamiento Antirretroviral (TARV) de forma permanente bajo la pandemia, mientras el 89.3% no tuvo problemas parra retirar sus medicamentos.

Solo un 10,4% dice que necesitó los servicios de salud sexual bajo la pandemia y no pudo acceder a los mismos, mientras el 14,4% señala haber recibido la orientación oportuna. El 75,1% no los necesitó.

Finalmente, el 10,2% sí tuvo alguna ITS bajo la pandemia, mientras un preocupante 12.7% desconoce su diagnóstico al respecto.

## 9.- Situación laboral y de respeto a las personas LGBTIQA+

Bumerang, el holding de Laborum.com, aplicó una encuesta a personas LGBTIQA+ y heterosexuales para medir los niveles de violencia laboral que las afectan en Argentina, Perú, Ecuador y Chile, mientras que otro grupo de organizaciones midió exclusivamente en Chile algunos percepciones sobre apertura sociocultural.

En términos generales la investigación de Laborum.com arrojó que los abusos laborales contra las personas trans se dan con mayor frecuencia al compararse con cisgéneros, mientras que Chile presenta altos índices de atropellos laborales, superiores en algunas ocasiones al promedio regional.

Denominado "¿Cuáles son las experiencias de violencia que más se repiten para la comunidad LGBTIQA+ en el ámbito laboral?", el estudio reporta que el 59% ha vivido una situación de violencia en Chile, cifra que se eleva al 70% al considerar solo a la población trans y no binaria. Los promedios regionales son del 59% y 55%, en forma respectiva.

Además, el 30% ha recibido amenazas en la región, en circunstancias que solo en Chile el 48% vivió experiencias de ese tipo, subiendo la cifra al 50% cuando se refiere exclusivamente a personas trans y no binarias.

El 7% recibió comentarios inadecuados sobre su identidad de género y el 6% en relación a su orientación sexual, cifras que son del 6% y 5% en forma respectiva al considerar los promedios de los cuatro países encuestados.

A nivel regional el 67% sufrió hostigamiento psicológico, en Chile el 68% vivió lo mismo.

Tanto en el plano regional como de país el 4% ha sufrido agresiones físicas, pero la cifra se eleva el 14% cuando se considera solo a trans y no binaries que viven en Chile.

A la par, en Chile el 6% del total de encuestados/ as informa que fue "hostigado/a laboralmente por no acceder a un intercambio sexual o sentimental"; el 17% tuvo "acercamientos físicos inapropiados", el 39% ha "recibido comentarios inadecuados acerca de su cuerpo y/o vestimenta", el 14% sufrió ciber acoso, el 52% "ha sufrido una disminución drástica o sobrecarga de tareas, cambios de funciones constantes y/o de objetivos laborales", al 25% le "han asignado tareas o roles que inferiorizan o están fuera de sus responsabilidades", al 66% le "han denigrado o ignorado sus opiniones profesionales y laborales", al 33% lo/a han "excluido de reuniones de trabajo o sociales" y al 4% le han "solicitado favores sexuales a cambio de beneficios/ promociones laborales o como forma de amenaza para no perder el trabajo".

A nivel regional las respectivas cifras son del 7%; 16%; 27%; 12%, 53%, 30%, 63%, 29% y 5%.

Si bien los resultados del estudio se dieron a conocer el 28 de julio del 2021, los datos disponibles al cierre de este informe no aclaraban cuando fue desarrollado el sondeo , ni tampoco el número de personas a las cuales se aplicó la encuesta o el margen de error o nivel de confianza de la investigación.

Tampoco se precisa cuántas del total de personas encuestadas son LGBTIQA+, ni se aclara en la mayoría de las consultas si los diversos abusos laborales reportados se debieron o se relacionaron a la orientación sexual, identidad de género o expresión de género o se vinculan con situaciones de otro tipo.

Un segundo estudio, denominado "¿De qué hablamos cuando hablamos de diversidad?", fue desarrollado por Criteria, MetLife y Pride Connection entre el 28 de octubre y el 1 de noviembre, cuando aplicaron una encuesta a 820 personas entre 18 y 60 años, además de efectuar grupos focales.

De acuerdo a esta investigación, el 52% cree que Chile es un país "algo diverso", el 33%, "muy diverso", el 14% "con poca diversidad" y un 1% con "nada de diversidad".

En relación a la consulta "¿qué palabras, ideas, conceptos o características se te vienen a la mente si menciono LGBTI?", el 23 señaló "diversidad"; el 21%, lesbianas; el 16%, gays; el 12%, homosexualidad; el 10%, transgénero; el 9%, libertad; el 7%, bisexualidad; el 7%, igualdad; el 6%, respeto; el 5%, aceptación; el 4%, diferencia; el 4%, personas; el 4%, minorías; el 3%, identidad; el 3%, discriminación y el 3%, inclusión.

Además, el 67% está de acuerdo con que las empresas deberían estar obligadas por ley a "asegurar que lesbianas, homosexuales, bisexuales o transexuales tengan espacios donde se sientan comodos/as". El 22%, no está de acuerdo ni en desacuerdo y el 11% en desacuerdo.

Finalmente el 66% dice que tiene amigos/as lesbianas, homosexuales, bisexuales o trans y el 85% a conocidos/as LGBTI, mientras el 13% seña que no le gustaría tener como vecinos a "homosexuales" y el 12% a "transgeneros". La investigación, cuyo margen de error y nivel de confianza no estaba disponible al cierre del presente informe, no innovó en consultas nuevas al menos en relación a lo LGBTIQA+, pues replicó las formuladas por sondeos antiguos y, en consecuencia, sus preguntas estuvieron alejadas del contexto actual, al ser en su mayoría típicas preguntas de la década de los 90.

### 10.– Ministerio público cruzado por homo/transfobia

Graves y preocupantes resultados arrojó una encuesta de la Asociación Nacional de Fiscales (ANF) aplicada a funcionarios/as del Ministerio Público entre el 29 de enero y el 19 de febrero y dada a conocer en exclusivo por Radio Biobío el 30 de julio.

El sondeo fue contestado por 380 funcionarios/ as, de los cuales el 66,9% son hombres y el 33,1%, mujeres, con un tasa de logro del 54,5%.

Frente a la consulta ¿usted considera que hay un trato discriminatorio a las personas involucradas en las investigaciones? del Ministerio Público, el 19,7% reportó que se discrimina a personas de escasos recursos económicos, el 10% a grupos LGBTIQA+; el 9,7% a los pueblos originarios; el 9% por género, el 5.3% a las personas con discapacidad y el 3.7% a infantes.

Los datos son alarmantes, pues una institución como el Ministerio Público debería registrar discriminación cero. Primero porque la discriminación es ilegal y daña a las personas; segundo porque los prejuicios y las odiosidades distorsionan las investigaciones judiciales y obstaculizan alcanzar justicia y, tercero, porque se re-victimiza a las víctimas.

Doblemente preocupante es la situación de las personas que sufren discriminación interseccional, como lo puede ser una mujer lesbiana de escasos recursos económicos, un niño/a trans o un gay con discapacidad.

La encuesta vino además a decir que en los deficientes resultados de la Ley Zamudio no estarían incidiendo solo los vacíos de la norma, sino también el actuar de algunos/as fiscales frente a la discriminación.

En diversas ocasiones el Movilh ha reportado al Ministerio Público de tratos deficientes y sesgados en investigaciones que involucran a personas LGBTIQA+. Entre estos se encuentran descartar móviles discriminatorios antes de investigar, rehusarse a pedir la agravante de la Ley Zamudio porque así les resulta más fácil y rápido cerrar un caso y desconocimiento sobre la forma como opera la discriminación en el marco de la ocurrencia de delitos.

### 11.– Diversidad familiar

Su segunda encuesta sobre diversidad familiar aplicó la Fundación Iguales entre el 5 y el 26 de abril a 189 personas, de las cuales el 74,4% se identificó como lesbiana; el 9.9% como bisexual, el 7% como gay, el 5.8% como heterosexual, el 2.9% como pansexual, el 92,4% como cisgénero; el 2.4%, como trans, el 4.7% como no binarie y el 0,6% en "otra".

Denominada "Somos Familia", el 91% de las personas señaló en la encuesta tener una pareja y, de éstas, el 90,7% vive con ella. El 51,7% convive con su pareja sin vínculo legal; el 34.9% tiene AUC, el 7% matrimonio y el 4.1% solo pololea.

Del total de personas, el 73,5% tiene un/a hijo/a; el 21.2% dos hijos/as y el 5.3%, tres hijos/as.

El 47,4% declara que el/a hijo/a es de el/ella y de su pareja; el 35,7% "solamente mío" y el 16,9% "solo de mi pareja". Sin embargo, solo el 10,4% tiene asegurado los derechos filiativos de su hijo/a con su pareja actual, que no es la madre, ni el padre biológico.

El 49% tuvo sus hijo/as mediante coito; el 23.7% por inseminación artificial., el 7.6% por Método Ropa, el 6% por fertilización in vitro convencional, el 4,8% por adopción, el 1.6% por "fertilización mediante inyección intracitoplasmática de esperma", el 0,8% por vientre subrogado y el 6,4% por "otra (inseminación casera, cuidadores, paternidad voluntaria, violencia sexual)".

### Discriminación y problemas

El 9,1% de quienes tuvieron hijo/as por coito señala tener "problemas con la custodia", mientras el 5,5% de quienes los crían tras fertilización asistida o adopción señalan que "al comenzar el proceso para tener un/a hijo/a ocultamos nuestra orientación sexual por miedo a que nos negaran el derecho".

Además, el 13,2% dice que no cuenta con ninguna red de apoyo para la crianza o el cuidado de sus hijos/a, mientras el 86,8% tiene uno o más respaldos.

En relación a las experiencias de discriminación, las más recurrentes han ocurrido en el acceso a beneficios sociales y en el Registro Civil, seguida por familiares, en el lugar de trabajo en los servicios de salud y urgencia, en el barrio y en los establecimientos educacionales.

El 69,7% nunca experimentó discriminación en el colegio de su hijo/a; el 14,6%, casi nunca; el 11,8% "algunas veces" y el 3.9% % frecuentemente. El 59,9% señala que su familia homoparental nunca ha sido discriminada en el barrio; el 16,6% casi nunca; el 20,9% algunas veces; el 1,1% frecuentemente y el 1,6% muy frecuentemente.

En los servicios de salud y urgencia, el 58,7% nunca fue discriminado/a; el 14.3%, casi nunca; el 22,2%, "algunas veces"; el 2,6% frecuentemente y el 2,1% muy frecuentemente.

En su lugar de trabajo, el 58,7% nunca fue discriminado/a; el 15.9%, casi nunca; el 21.2%. algunas veces; el 2,1, frecuentemente y el 2,1% muy frecuentemente.

Por parte de su familia o la de su pareja, el 54,8% nunca fue discriminado/a, el 11,7%, casi nunca; el 22,3%, "algunas veces", el 5,3% frecuentemente y el 5.9%, muy frecuentemente.

En el Registro Civil el 46,6% nunca fue discriminado/a; el 13,3, casi nunca; el 13,3, algunas veces, el 9% frecuentemente y el 18.1% muy frecuentemente.

En el acceso a beneficios sociales, el 35,7% nunca sufrió discriminación; el 8,1%, casi nunca; el 15,1%, algunas veces; el 17,3%, frecuentemente y el 23,8% muy frecuentemente.

Además, el 30,5% dice que otros/as niños/as le hacen preguntas incómodas a sus hijos/as por su composición familiar, mientras el 7,5% acusa que los/ as molestan.

Por todo, el 50,3% dice que el no reconocimiento de los derechos filiativos los/as afecta "mucho"; el 15,9%, "bastante"; el 14,3%, regular; el 8,5%, poco y el 11,1%, nada

Finalmente, el 51,9% desearía tener más hijos/ as mediante técnicas de reproducción asistida, seguida por la adopción (23,3%), el coito (3.2%) y otros (1,6%). El 20.1% no planea tener más hijos.

### 12.– Adolescentes trans, educación y discriminación multisectorial

En abril del 2021 la Fundación Todo Mejora dio a conocer los resultados de un sondeo online aplicado a 370 adolecentes trans (13 a 17 años) entre el 10 septiembre del 2019 y el 12 de enero del 2020.

En tanto, en junio del 2021 la misma entidad lanzó los resultados de una encuesta aplicada a 20 docentes en octubre del 2018 con el fin de conocer sus niveles de cercanía con las temáticas LGBTIQA+.

Los resultados de ambas investigaciones salieron a la luz tardíamente y, en consecuencia, muchos datos podrían no ser representativos del momento actual. Sin embargo, los antecedentes develados van dando cuenta de transformaciones culturales aún en curso.

### Adolescencia trans

La denominada "Encuesta sobre derecho sexuales y reproductivos en adolescencia trans", evidenció el profundo drama que niños, niñas y adolescentes (NNA) viven diariamente en entornos que no comprenden o rechazan su identidad de género, a un punto que en muchos casos son sus propios terapeutas quienes vulneran su derechos más básicos.

La situación se agudiza cuando los/as NNNA se sienten presionados/as a cambiar su cuerpo y carecen de las redes de apoyo o información necesaria para comprender sin prejuicios los procesos que están viviendo.

El 44% no tiene con quien hablar sobre su proceso de transición y si bien el 64% ha estado alguna vez en tratamiento con un profesional de la salud mental ello no es garantía de mejorías en la calidad de vida.

Lo anterior, porque en muchos casos el/la psicoterapeuta no ofrece un espacio respetuoso con la identidad de género (39%), no entiende el contexto cultural de discriminación (38%), intenta interpretar a la identidad de género como una enfermedad o la causa de problemas (42%), no usa un lenguaje inclusivo, ni respeta el nombre social (43%), no ayuda a enfrentar prejuicios (36%), no respeta decisiones (39%) y no ayuda a enfrentar problemas o asumir desafíos (40%).

Como consecuencia de la discriminación e incomprensión, el 24% de los/as NNA siente rechazo hacia si mismo/a o hacia otras personas trans, el 84% siente incomodidad al mostrar su cuerpo, el 80% rechaza su cuerpo y el 61% se declara "incómodo/a en la posibilidad de tener relaciones sexuales por mi identidad".

En efecto, el 49% nunca he tenido prácticas sexuales, siendo la principal razón "la incomodidad con mi cuerpo" (63%), seguido por la falta de oportunidad (44%) o de deseo (34%). De quienes sí han experimentado prácticas sexuales el 41% no usó ningún método anticonceptivo en su última relación, lo cual trae de la mano más vulnerabilidad.

El sondeo también reveló que solo el 10% ha usado alguna vez hormonas debido a su identidad de género. De estos/as, el 76% lo hizo a través de un/médico/a, de una organización trans (11%), de un desconocido (8%), de un amigo/a o familiar (5%), de internet (5%) y de hierbas o suplementos (3%).

En tanto, del 90% que no ha usado hormonas las razones son que "no está en sus planes" (27%), el nulo apoyo familiar (27%), la carencia de dinero (11%), la indecisión (9%) y el desconocer como conseguirlas (5%).

El 28% se ha sentido presionado/as por terceras personas para llevar a cabo cambios corporales como parte de su proceso de transición. Las presiones provienen de amigos/as (42%), madre (35%), padre (28%), profesional de la salud mental (13%), pareja (9%), médicos/as (9%) y otros/as (46%)

Finamente, el 74% ha recibido "información sobre sexualidad" desde páginas web o internet, seguido por la escuela (59%), amigos/as (52%), madre (38%), películas y tv (32%), revistas o libros (29%), profesionales de la salud (29%), pareja (18%), padre (13%) y hermanos/as (10%).

Con todo, solo el 37% declara haber recibido "educación sexual formal" en su escuela. De estos/as, el 41% estima que si bien "los contenidos no tienen que ver con mi vivencia personal, sí son de utilidad práctica para mí".

### • Docencia y LGBTIQA+

"Primer levantamiento de actitudes de profesores en torno a la diversidad por orientación sexual, identidad y expresión de género (OSIEG) en Chile" se denominó el segundo estudio desarrollado por Todo Mejora.

La investigación se basó en 20 entrevistas formuladas a practicantes de pedagogía, profesores/as con un o dos años de ejercicio y docentes con 6 o más años de ejercicio de las ciudades de Santiago, Valparaíso y Talca.

Entre otros, el estudio constató "la percepción de un cambio importante de las normas sociales en relación con la diversidad por OSIEG. Los/as entrevistados/as, en distintos momentos, dan cuenta de cómo en Chile "las cosas han cambiado" y la diversidad sexo genérica ahora dejó de ser un tabú" (página 21).

Con todo, "dentro de las escuelas todavía subsisten formas de violencia simbólica asociadas sobre todo al posicionamiento de estudiantes LGBTI o quienes que siendo heterosexuales cisgénero no se ajustan a las pautas tradicionales de expresión de género", añade la investigación (página 23).

A la par, el estudio constató un cambio generacional; donde los adultos son más discriminadores que los jóvenes; una compresión reducida sobre la manera como opera la discriminación; pues se ha experimentando como algo individual o casuístico y no como parte de un sistema; falta de transparencia o debate sobre la presencia de profesores/ as gays y lesbianas, "conocimiento disímil de la Sigla LGBTI y ausencia de contenidos sobre orientación sexual o identidad de género en la educación sexual.

### 13.– Derechos trans y matrimonio igualitario

En el transcurso del año la empresa Cadem consultó en cuatro ocasiones sobre la adhesión ciudadana a los derechos de las personas LGBTIQA+, en particular respecto al apoyo al matrimonio, la adopción y los derechos trans, mientras la Encuesta Bicentenario de la Universidad Católica preguntó una vez en el año sobre algunas de estas temáticas.

Los sondeos de Cadem fueron aplicados en abril<sup>12</sup>, junio<sup>13</sup>, agosto<sup>14</sup> y noviembre<sup>15</sup>.

En agosto, el 75% se declaraba a favor y el 24% en contra del matrimonio, mientras en abril y junio del mismo año la adhesión era de 74%, solo un punto menos, aunque mucho mayor a la primera vez cuando Cadem consultó sobre la materia en 2014<sup>16</sup>.

Frente a la afirmación "las parejas homosexuales tienen derecho a adoptar hijos/as", en agosto el 63% se declaró de acuerdo y el 36% contrario, mientras en junio la adhesión era de 65% y en abril del 63%, ambas superiores a los sondeos previos<sup>17</sup>.

Además, el 69% apoyaba y el 29% rechazaba en agosto "que una persona mayor de edad pueda cambiar su identidad de género por una sola vez". En junio el respaldo era de 68% y en abril de 73%<sup>18</sup>.

[16] Según Cadem, en diciembre del 2020 el 74% apoyaba el matrimonio igualitario; en agosto del 2019, el 66%; en mayo del 2018, el 65%; en abril del 2018, el 64%; en marzo del 2018, el 66%; en febrero del 2018, el 58%; en julio del 2017, el 61%; en enero del 2017, el 54%; en agosto el 2016, el 56%; en mayo del 2019, el 59%; en enero del 2016, el 61%; en septiembre del 2015, el 60%; en noviembre del 2014, el 55%; en junio del 2014, el 55%; en

[17] Según Cadem, el 61% apoyaba la adopción en diciembre del 2020; el 54% en agosto del 2019; el 52% en mayo del 2018; el 49% en abril del 2018; el 44% en marzo del 2018; el 42% en febrero del 2018; el 43% en julio del 2017; el 45% en enero del 2017; el 41% en agosto del 2016; el 42% en mayo del 2016; el 41% en enero del 2016; el 44% en septiembre del 2015; el 44% en noviembre del 2014; el 38% en junio del 2014; y el 37% en febrero del 2014.

[18]El respaldo a este derecho era de 67% en diciembre del 2020; de 62% en agosto del 2019 y de 67% en marzo del 2018.

<sup>[12]</sup> Aplicada a 701 personas mayores de 18 años entre el 21 y 22 de abril. El margen de error es del +/-3.7% y el nivel de confianza del 95%.

<sup>[13]</sup> Aplicada a 702 personas mayores de 18 años el 2 y 3 de junio. El margen de error es del +-/-3.7% y el nivel de confianza del 95%.

<sup>[14]</sup> Aplicada entre el 11 y 13 de agosto a 704 personas mayores de 18 años de todas las regiones. Su margen de error es del +/-3,7% y su nivel de confianza del 95%.

<sup>[15]</sup> Aplicada entre el 24 y el 26 de noviembre a mil personas mayores de 18 años. Su margen de error es del +/-3,1% y su nivel de confianza del 95%.

Además, el 53% apoyó y el 46% rechazó en agosto "que menores de edad, pero con autorización de sus padres, puedan cambiar su identidad de género" En junio el respaldo era de 58% y en abril de 60%<sup>19</sup>.

En noviembre<sup>20</sup>, y más vinculado al proceso electoral, Cadem consultó "¿Qué candidato representa mejor lo que usted piensa sobre temas valóricos: matrimonio igualitario, aborto?". El 25% mencionó a José Antonio Kast y el 61% a Gabriel Boric.

Se resalta, por último, que en la encuesta de junio del 2021, Cadem aportó resultados desagregados por sexo, edad, posición socioeconómica, ubicación geográfica y corriente ideológica.

En efecto, en relación al matrimonio igualitario, el apoyo es de 71% en los hombres y de 76% en las mujeres; de 85% en quienes tienen entre 18 y 34 años; de 73% entre los 35 y 54 años y de 62% en los mayores de 55 años; de 82% en el socioeconómico alto; de 67% en el medio y de 68% en bajo; de 76% en Santiago y de 72% en regiones; de 65% en la Derecha; de 67% en el Centro, de 90% en la Izquierda y de 68% el mundo independiente. En tono a la adopción homoparental, la adhesión es del 59% en los hombres y 71% en las mujeres; de 78% en quienes tienen entre 18 y 34 años; de 66% entre los 35 y 54 años; de 55% en mayores de 55 años; de 72% en el sector socioeconómico Alto; de 58% en el Medio y de 61% en el Bajo; de 66% en Santiago y de 64% en regiones; de 58% en la Derecha, de 57% en el Centro, de 82% en la Izquierda y de 56% en el mundo independiente.

Por último, Encuesta Bicentenario 2021 de la Universidad Católica fue aplicada entre 5 de septiembre y el 23 de noviembre a 2.002 personas, con un margen de error de +/-2,2 y un novel de confianza del 95%.

Frente a la afirmación "las parejas homosexuales deberían tener derecho a adoptar niños" un 56% se mostró a favor; cifra que era de 48% en 2019; de 38% en 2017 y de 32% en 2015.

En relación al matrimonio igualitario un 66% se declaró favorable. En 2019 un 61%; en 2017 un 51%; en 2015 un 50%; en 2013, un 37% y en 2011 un 28%.

### 14.– Congreso Nacional consulta sobre el matrimonio igualitario

ElCongreso Nacional consultó sobre el matrimonio igualitario a 5.120 personas que respondieron a través de su plataforma Congreso Virtual.cl.

El 75,5% aprobó el matrimonio igualitario, el 24,2% lo rechazó y el 0,3% se abstuvo.

La encuesta, aplicada entre el 7 de junio y el 24 de junio de 2021, también abordó diversos contenidos del entonces proyecto de ley, manifestándose una contundente mayoría a favor de la plena igualdad para las parejas del mismo y las familias homoparentales.

Así es como el 78% respaldó que el proyecto elimine "la discriminación estructural que sufren familias formadas por parejas homosexuales", mientras el 21% estuvo en contra y el 1% se abstuvo.

Muy en concordancia, el 77,2% es favorable a "ampliar el concepto de matrimonio civil para incluir las uniones entre dos personas del mismo sexo", en circunstancia que un 22,7% rechaza esta idea y el 0,1% se abstuvo.

De igual manera, el 76,4% apoyó que las parejas del mismo sexo "puedan cumplir el rol de progenitores" (un 22,4% rechazó esta idea y un 1,2% se abstuvo) y el 72.9% se mostró a favor de "eliminar la procreación como uno de los objetivos principales de un matrimonio" (un 24,8% es contrario y un 2,3% se abstuvo).

<sup>[19]</sup> En diciembre del 2020 el respaldo era de 58%, en agosto del 2019 de 53% y en marzo del 2018 de 37%.

<sup>[20]</sup> Aplicada entre el 24 y el 26 de noviembre a mil personas mayores de 18 años. Su margen de error es del +/-3,1% y su nivel de confianza del 95%.

### 15.– Discriminación en el trabajo

Leves índices de discriminación, pero aún así altos niveles de incertidumbre laboral arrojó una encuesta aplicada por el Mums a 607 personas mayores de 16 años.

El "Estudio de la Situación Sociolaboral de la Población LGBTIQA + en Chile 2020" fue Patrocinado por la Oficina para el ConoSur de América Latina de la Organización Internacional del Trabajo (OIT).

La encuesta se aplicó entre noviembre y diciembre del 2020 y sus resultados fueron lanzados en junio del 2021. Su margen de error es de 3.98% y su nivel de confianza de 95%

Un 19,9% señala que ha sido discriminado/a en su trabajo por su orientación sexual o identidad de género y el 80,1% lo descarta.

Si bien del total de discriminados/as solo un 26,7% reportó lo ocurrido, tal cifra es muy superior al promedio arrojado por otros estudios que ubica entre el 8 y el 10% el nivel de denuncias por homo/transfobia.

Entre las razones para no denunciar se cuentan el cambio de empleo (30.1%), la opción de mantener en privado la orientación sexual o la identidad de género (28.7%), el temor al despido (13,2%) y los costos económicos (12,5%). Además, el 15.4% resolvió el problema luego de hablar con el empleador.

Tras la denuncia, el 26,5% dice que el problema "se resolvió parcialmente", el 23.5% que "aún no se resuelve", el 14,7% que "se resolvió favorablemente", el 14,7% que "hubo despido sin solución", el 11,8% que "hubo despido pero se resolvió favorablemente", y el 8.8% que llegó "a un acuerdo entre las partes".

Aunque menos del 20% ha experimentado la discriminación en el trabajo, el 35.3% señala que "como persona LGBTIQA+ constantemente siento incertidumbre laboral". El 42,7% está "poco de acuerdo" con esa afirmación y el 22.1% "nada de acuerdo".

El 36,6% señala que tiene bastante o total conocimiento "sobre las normas legales a las que puede apelar en caso de ver afectados sus derechos a consecuencia de su identidad sexo-genérica u orientación sexual". El 30.3% está "más o menos" de acuerdo con esa afirmación, el 20,1% "poco" y el 13%, nada.

Si bien apenas un 2,6% considera que los sindicatos deben abordar las problemáticas de las

personas LGBTIQA+ el 99,1% estima que debiese existir una institución que fiscalice el respeto y la protección del derecho a la no discriminación. Para el 60,3% tal institución debería ser una nueva, creada especialmente para ello, mientras para el 27.5% el tema debería quedar a cargo de la Inspección del Trabajo, para el 10,3% del Instituto Nacional de Derechos Humanos (INDH) y para el 2.1% de "otra".

Finalmente, los/as encuestados/as explicitaron bajos prejuicios sobre su propia orientación sexual o identidad de género.

Así es como el 89.5% no está "nada de acuerdo" con que "las personas LGBTIQA+ deberíamos cambiar y adaptarnos a la sociedad para no sufrir discriminación". A la par, 65,4% no está "nada de acuerdo" con la idea de que "trabajar por cuenta propia o formar una empresa es la mejor forma de acabar con la discriminación laboral de las personas LGBTIQA+".

### 16.– Informes de DDHH

Tres destacados informes anuales de derechos humanos elaborados por entidades distintas se refirieron a los derechos LGBTIQA+, poniendo el acento en los casos de discriminación, en los avances y desafíos para la igualdad y en la elección de lesbianas y gays como convencionales constituyentes.

Se trata de los informes de la Universidad Diego Portales, del Departamento de Estados de Estados Unidos y de Amnistía Internacional.

Lamentablemente el informe 2021 del Instituto Nacional de Derechos Humanos (INDH) no abordó la realidad de las personas LGBTIQA+.

### • UDP: Convención, Pandemia y DDHH LGBTIQA+

El XIX Informe Anual Sobre Derechos Humanos en Chile, del Centro de DDHH de la Universidad Diego Portales (UDP), se refirió la realidad LGBTIQA+.

A diferencia de otros años, el informe no dedicó algún capítulo o título específico a la diversidad sexual y de género, abordando la temática de una forma más transversal y poniendo el acento en tres aspectos: la Convención Constitucional, el Covid-19 y la ausencia de estadísticas sobre violaciones a DDHH en Dictadura.

La UDP rescató que candidatos/as LGBTIQA+ a la Convención Constitucional resultarán electos, aún cuando advirtió que ninguna persona trans corriera dicha suerte, enfatizando la necesidad de mayores trasformaciones.

"En relación a personas LGBTIQ+, la elección de constituyentes fue una ocasión importante para que un mayor número de ciudadanos/as se postularan autodefiniéndose como pertenecientes a ese colectivo, (...) siendo elegidas ocho personas, lo que representaría un 5,2% de los 155 convencionales. Es pertinente destacar que no hubo una representante trans elegida", dijo (páginas 478 y 479).

Para el Informe "la participación de candidates abiertamente representativos/as de la diversidad sexual y de género, y su visibilización, significó un paso importante para el pleno ejercicio de los derechos de las personas LGBTIQ+. Sin embargo, el porcentaje ínfimo que representaron –alrededor de un 1,5% de los candidatos a la Convención–, en particular las personas trans, da cuenta de que son necesarias más medidas" (página 479). "Respecto a los colectivos históricamente discriminados –como personas con discapacidad y colectivos LGBTIQ+– las características del régimen de participación actual, a pesar de haberse dado pasos positivos, tanto normativos como de práctica política, no son aún suficientes como para asegurar una efectiva participación y representación, y eliminar las discriminaciones estructurales todavía existentes", concluyó (página 486).

En torno al Covid-19, la UDP consideró de especial relevancia la implementación de medidas focalizadas para paliar sus efectos en sectores históricamente desaventajados.

En concreto propuso "incorporar la perspectiva de género a partir de un enfoque interseccional en todas las respuestas de los Estados para contener la pandemia, incluyendo la seguridad alimentaria, teniendo en cuenta los distintos contextos y condiciones que potencializan la vulnerabilidad a la que las mujeres están expuestas, como la precariedad económica, la edad, la condición de migrante o desplazada, la condición de discapacidad, la privación de libertad, el origen étnico-racial, la orientación sexual, identidad y/o expresión de género, entre otras". (página 415).

Finalmente, la UDP lamentó la "casi nula respuesta y visibilización de las violaciones a los DDHH en contra de personas LGBTIQ+ en dictadura" (Página 48).

Aunque en el caso "de las personas que fueron violentadas en dictadura en razón de su orientación sexual y de género diversa, la documentación es todavía más escasa, cabe destacar un estudio publicado por el Museo de la Memoria y los Derechos Humanos en el que se señala que, si bien no hubo una política de represión dirigida específicamente hacia la población LGBTIQ+, el modelo de sociedad patriarcal que reforzó e impulsó la dictadura no solo vetó las expresiones diversas, sino que también se tradujo en violaciones y ataques directos a las personas homosexuales o transexuales", finalizó (Página 50).

### • Departamento de Estado de EEUU: violaciones a DDHH y avances

El Informe por País sobre Prácticas de Derechos Humanos que elabora cada año el Departamento de Estado de Estados Unidos volvió a llamar la atención por los casos de discriminación contra las personas LGBTIQA+ en Chile, al tiempo que constató avances.

Lanzado el 30 de marzo del 2021, el Informe señaló que en Chile "continuó la violencia hacia personas

lesbianas, gais, bisexuales, transgénero e intersexuales (LGBTI)", al mismo tiempo que se registraron positivos cambios desde el punto de vista jurídico y legislativo, así como en el plano de las políticas públicas.

Como ejemplo de los casos de discriminación, reportó que en agosto del 2020 el Movilh, "denunció que un vecino había agredido físicamente a una pareja gay en Valparaíso", mientras que en noviembre del 2019 dicha organización y el INDH protestaron por "el trato propinado a Alberto Faúndez, a quien la policía había arrestado en octubre de 2019 por sospecha de robo. Una vez en la comisaría, al enterarse la policía de que era gay, lo golpeó, lo obligó a desnudarse en frente a otros detenidos y lo sometió a insultos homofóbicos".

Además, en marzo del 2020 se conoció que en 2019 hubo "1.103 denuncias de violencia o discriminación por orientación sexual o identidad de género, el número más alto en la historia del informe anual y un aumento del 58% con respecto a 2018. Entre los casos figuraban cinco muertes y 32 denuncias de abuso policial, la mayoría de las cuales se habían producido en el contexto de las protestas sociales de 2019".

Los actos de discriminación más comunes denunciados "fueron agresiones verbales y discriminación en los servicios públicos, como en las operaciones policiales, la educación pública y los servicios de salud", añadió.

En tanto, en agosto del 2020, se "publicó una encuesta donde se mostraba que la mayoría de los padres y madres LGBTIQA+ había sufrido discriminación en los servicios públicos, figurando el Registro Civil como la institución en que se producía con mayor frecuencia la discriminación, seguida por las dependencias de servicios sociales, escuelas y centros de atención médica".

En cuanto a las leyes que sancionan la discriminación por orientación sexual o identidad de género, el Estado "generalmente las hizo cumplir de manera efectiva", al tiempo que surgieron nuevas normas como la referente a la identidad de Género, añadió Estados Unidos.

"En diciembre de 2019, entró en vigor una ley que concede a las personas trans de 14 años en adelante el derecho a que se cambien los marcadores de género en las cédulas de identidad que emite el gobierno y en los diplomas universitarios a fin de que reflejen su identidad de género", especificó.

En el plano jurídico, hubo fallos que reconocieron la doble maternidad o paternidad, mientras que el 13 de noviembre del 2020, "el gobierno aceptó habilitar una Unidad Interinstitucional para abordar la problemática de la violencia contra las personas LGBTI, mejorar la asistencia a víctimas, capacitar a los empleados públicos y a la policía y crear campañas en contra de la discriminación", añadió.

Lo anterior en un contexto donde "las autoridades del orden se mostraron renuentes a aplicar todo el peso de la Ley contra la Discriminación, así como acusar a los agresores de víctimas LGBTI de delitos motivados por el odio, lo cual elevaría las sanciones penales", finalizó el Informe.

### Amnistía Internacional: reforma a ley Zamudio

Por su lado, en su informe de Derechos Humanos 2020/21, lanzado en marzo del 2021, Amnistía Internacional se limitó a constatar que "al finalizar el año estaban pendientes de debate en el Congreso unos cambios en la legislación contra la discriminación para ampliar su ámbito de aplicación e incluir medidas de prevención, así como la reparación a las víctimas".

"En junio, una decisión judicial reconoció legalmente por primera vez a dos mujeres como madres de un niño y ordenó al Registro Civil que las inscribiera como familia, cosa que este organismo se había negado a hacer. El niño, de dos años, fue inscrito como hijo de dos madres en julio, apuntó en la página 9 del capitulo sobre Chile<sup>21</sup>.

<sup>[21]</sup> https://www.es.amnesty.org/en-que-estamos/paises/pais/ show/chile/



# **II**.

## Casos y denuncias por homofobia y transfobia

XX. Informe Anual de Derechos Humanos de la Diversidad Sexual y de Género en Chile

HECHOS 2021

### I.- INTRODUCCIÓN

Por primera vez desde el 2013 las denuncias y casos por discriminación relacionados con la orientación sexual, identidad o expresión de género disminuyeron, aunque nuevamente hubo víctimas fatales.

Tres personas perdieron la vida y los abusos son cada vez más violentos, a un punto que las agresiones físicas ocurren tanto en las calles, como en las propias casas, lugares de trabajo o al interior de instituciones que ofrecen servicios o productos.

Con todo el descenso del 12% de las denuncias y casos homo/transfóbicos en 2021 es una buena señal, en tanto en parte obedece a una menor coordinación o capacidad de influencia de grupos anti-derechos, cuyos discursos o acciones de odio son rechazados de manera expresa por la mayoría de la población, además de ser ilegales en virtud de las distintas leyes que han ido aprobándose y que protegen a las persona en razón de su orientación sexual, identidad o expresión de género.

El contexto sociocultural de apertura, de rechazo a las injusticias o desigualdades, indudablemente se potenció tras el estallido social del 2019, mientras en 2021 la aprobación del matrimonio igualitario vino a terminar con un abuso histórico que legalizaba la homo/transfobia y servía de argumento o escudo a los grupos de odio.

Sin ese elemento, quienes hostilizaban a las parejas del mismo sexo, y más grave aún a sus hijos/as, carecen ahora de la "legitimidad" estatal que les proporcionaba la prohibición del matrimonio igualitario al enviar la señal de que existían familias, parejas y personas de primera y segunda categoría solo en virtud de su orientación sexual o identidad de género.

En 9 de las 11 categorías de discriminación analizadas por este informe hubo un descenso de las denuncia o casos por homo/transfobia, al igual que en 11 de las 16 regiones del país.

Si bien es esperable nuevas bajas en los años venideros; en particular al tener en consideración que la casi totalidad de los debates públicos sobre la igualdad para las personas LGBTIQA+ que más polémicas o reacciones de odio generaban quedaron en el pasado al darse luz verde a la aprobación de leyes o políticas públicas pro-igualdad; lo ocurrido en 2021 llama a estar siempre alertas y, muy particularmente, a no olvidar que en términos geográficos la apertura e inclusión de las personas LGBTIQA+ sigue siendo muy desigual en Chile.

Alertas, por cuanto si bien hubo una merma de los atropellos más graves, como los asesinatos o agresiones físicas; estos son cada vez más violentos, mientras que las personas o grupos anti-derechos si bien van en descenso, están pendientes de usar cualquier coyuntura que pueda ser favorable a sus fines para denigrar, agredir u obstaculizar el acceso a derechos solo en virtud de la orientación sexual o identidad de género de las personas.

Tal situación derivó, por ejemplo, en que en 2021 incrementaran considerablemente los discursos de odio, toda vez que la inmoralidad de los sectores homo/ transfóbicos llegó al extremo de usar el lamentable y triste crimen de un niño para la canalización de su odio, insultando y amenazando a personas y activistas LGBTIQA+ solo porque los asesinos del menor eran homosexuales.

Si bien esta arremetida no tuvo eco, ni credibilidad en la opinión púbica, se transformó en una de las cruzadas de odio que más casos por discriminación homo/transfóbica ha provocado en el país. Situaciones similares podrían repetirse en el futuro y, dependiendo del contexto, las consecuencias serían más graves o de largo plazo para la calidad de vida de las personas.

Finalmente, no debe perderse de vista que si bien las regiones Metropolitana y de Valparaíso, y en menor medida, las del Biobío, Los Lagos y Coquimbo son las que más casos por discriminación reportan, ello en ningún caso implica que en otras localidades no existan abusos. Todo lo contrario, se denuncia menos porque la discriminación está más naturalizada y existen más temor a reportar atropellos, pues a diferencia de las regiones más urbanizadas o con más población, asumirse abiertamente LGBTIQA+ sigue siendo una dificultad mayúscula, en algunos casos hasta comparable con lo que ocurría en el Gran Santiago en las décadas de los 90 o 2000.

Resulta así necesario seguir descentralizando la apertura y, por cierto, avanzar en medidas contra la discriminación interseccional, pues los/as LGBTIQA+ que más homo/tranfobia sufren, son aquellos/as que al mismo tiempo enfrentan otro tipo de desigualdades, por ejemplo en razón de su zona de residencia, raza, etnia, posición socioeconómica, edad, nacionalidad o alguna situación de discapacidad o enfermedad, entre otras vulnerabilidades.

### II. – METODOLOGÍA Y CONCEPTOS

Los casos y denuncias por discriminación incluidos en este informe son investigados, descritos y contabilizados.

### 1.- La investigación sobre las denuncias y episodios eventualmente discriminatorios contempla los siguientes pasos:

a) Contacto directo: implica retroalimentación o diálogos con víctimas, victimarios/as y/o sus cercanos a través de reuniones presenciales, enlaces telefónicos o por internet, entrevistas cara a cara, revisión de pruebas de cualquier tipo y/o expedientes judiciales.

Aquellas denuncias enviadas al movimiento de la diversidad sexual y de género por correo electrónico o redes sociales se excluyen de este informe cuando no cumplen al menos de uno de estos elementos: diálogo o intercambio de información con víctimas, victimarios/ as, sus representantes, sus defensores, sus cercanos u otros movimientos LGBTIQA+ u organismos de derechos humanos y/o revisión de expedientes judiciales o de reportes en fiscalías, policías, centros médicos u otros instituciones públicas o privadas.

b) Recopilación de antecedentes con policías, fiscalías, tribunales u otras fuentes vinculadas al caso, en especial cuando es imposible acercarse o conocer la identidad de victimarios/as o víctimas o cuando la única información disponible es aportada por los medios de comunicación o las redes sociales.

Las denuncias, delitos u abusos publicados por la prensa y/o recibidos por el movimiento LGBTIQA+ serán excluidos de este informe si tras los análisis se concluye que no tienen relación con actos homofóbicos o transfóbicos.

Cuando las fuentes involucradas no entregan antecedentes para aclarar los casos, o por cualquier otra razón fue imposible conocer los alcances de un hecho, la denuncia quedará en análisis, pudiendo ser incorporada con esa salvedad en la presente investigación o en informes futuros si es que posteriormente se relacionan con discriminación basada en la orientación sexual, identidad o expresión de género.

c) Respecto a las "declaraciones" y "movilizaciones o campañas" homofóbicas o transfóbicas difundidas por los medios de comunicación o redes sociales, el movimiento LGBTIQA+ notifica al responsable (grupo o persona) mediante misivas, comunicados públicos, entrevistas, manifestaciones o protestas virtuales o presenciales. Si no hay desmentido, el hecho se considera real y se añade a este informe.

d) Conclusión: si finalizados los pasos previos se concluye que un hecho es homofóbico o transfóbico, o si refleja alguna conducta discriminatoria, es incorporado en el presente informe.

### 2.- Definición y clasificación del abuso: para concluir si un acto es o no discriminatorio se tienen a la vista las siguientes conceptualizaciones:

- Homofobia: Conductas, opiniones o pensamientos contrarias a una persona o grupo sólo en razón de una real o supuesta conducta u orientación sexual lésbica, gay, bisexual, pansexual o asexual.
- Transfobia: Conductas, opiniones o pensamientos contrarias a una persona o grupo sólo en razón de una real o supuesta identidad o expresión de género trans, intersex, no binaria o queer.
- Conducta homofóbica o transfóbica: Opiniones, acciones o pensamientos que afectan en forma negativa el conocimiento o la integridad de alguien identificado/a como lesbiana, gay, bisexual, trans, intersexual, no binario, queer o asexual.

Una conducta no significa necesariamente ser homofóbico/a o transfóbico/a. Estos comportamientos pueden ser paralelos a actitudes favorables a diversidad sexual y de género o, incluso, ser revertidos o paliados a través del ofrecimiento de disculpas a las personas LGBTIQA+ o mediante la implementación de medidas antidiscriminatorias.

Con todo, si una conducta discriminatoria se repite a lo largo del tiempo, pasará a considerarse como homofóbica o transfóbica.

c) Utilitarismo de la homosexualidad o transexualidad: Si bien esta conducta puede dañar a las personas LGBTIQA+, no es posible considerarla sinónimo de homofobia o transfobia.

El "utilitarismo" consiste en el uso y abuso que determinadas personas, instituciones o grupos hacen de la orientación homo-bisexual, de las conductas homobisexuales o de las identidades o expresiones de de género diversas para conseguir por vías regulares o ilícitas determinados fines que vayan en su propio beneficio, o de los grupos que representa.

Estas acciones pueden dañar, en forma directa o indirecta, a una persona o a la población LGBTIQA+ como conjunto.

Cuando quien ejecuta tal acción es una persona LGBTIQA+ se está en presencia de "utilitarismo horizontal de la homosexualidad o la transexualidad".

Si la acción se canaliza por los medios de comunicación, se habla de "utilitarismo mediático de la homosexualidad o la transexualidad", sea o no horizontal.

## 3.- Descripción: Cada denuncia o caso de discriminación es descrito en una ficha expuesta en el segundo capítulo y que se divide en cuatro secciones a saber:

a.– Fecha de la discriminación. Si no hay claridad sobre ello, se menciona el día cuando se denunció el abuso ante cualquier instancia pública o privada.

Generalmente cada informe contiene hechos ocurridos en fechas correspondientes al año cuando se redacta.

Es posible, sin embargo, que algunos hechos homofóbicos o transfóbicos sean conocidos uno, dos o más años después de que ocurrieron. En esos casos, y exceptuando los crímenes de odio, el episodio será sumado al año cuando se tomó conocimiento del mismo.

Los crímenes de odio conocidos en años posteriores, serán relatados en el año cuando se supo de ello y sumados en la tabla cronológica en el año de su ocurrencia. En otras palabras, a diferencia de otros casos de discriminación, los crímenes de odio no se sumarán como un nuevo caso del año cuando se supo del mismo, sino como un hecho antiguo.

b.– Relato: corresponde a la descripción del suceso, así como a la identificación de la(s) víctima(s) y de lo(s) victimario/as(s) y del lugar donde ocurrió el acto discriminatorio.

Los nombres de las víctimas y/o victimarios/as y cualquier otro antecedente se mantendrán en reserva si así es solicitado por quienes padecieron la discriminación y/o si es que la visibilidad de algún aspecto puede afectar su seguridad o estabilidad. Es por esta razón que algunos relatos son más detallados y precisos que otros.

En algunos casos es imposible dar con la identidad de los victimarios, por ejemplo cuando se trata de agresiones perpetradas por civiles en los espacios públicos o de amenazas en redes sociales. Aún así el hecho será sumado al balance final si es que existen convicciones sobre la veracidad de la denuncia o de lo ocurrido.

c.- Respuestas: son las acciones cursadas por cualquier organización LGBTIQA+ de Chile para aclarar, revertir o paliar los efectos de un caso de discriminación.

Se entienden como "respuestas" las acciones que:

- Involucran un contacto directo con la víctima, sus familiares y/o cercanos con el objeto de brindar asesoría legal, social, humana o psicológica.
- Chequean los datos con los eventuales responsables de la discriminación, en todos los casos cuando ello sea posible o pertinente.
- Denuncian los abusos ante instancias públicas o privadas que podrían contribuir a hacer justicia.
- Generan campañas, movilizaciones de repudio o denuncias públicas.

En tanto, se excluyen y no se consideran como "respuestas" aquellas acciones que:

- Se limitan a la emisión de una declaración o comunicado que solo llega a ser conocido por sus emisores o círculos más cercanos.
- Dejan al margen cualquier contacto con las víctimas, los/as victimarios/as, sus cercanos o sus defensores/as teniendo posibilidades ciertas de poder ubicarlos/as para recopilar más antecedentes, llegar a conclusiones y contribuir a hacer justicia.

d.-Clasificación del hecho como "homofóbico", "transfóbico", "conducta homofóbica" o "conducta transfóbica".

#### 4.- Conteo de casos y denuncias:

El número total de denuncias y casos de discriminación resulta de la sumatoria de los episodios agrupados en 11 categorías a saber:

- 1. Asesinatos.
- Agresiones físicas, verbales o psicológicas perpetradas por civiles que no son vecinos/ as, amigos/as o familiares de la víctima, que suelen ocurrir en espacios públicos no institucionalizados y/o son imposibles de incorporar en otra categorías.
- 3. Atropellos policiales y/o detenciones arbitrarias.
- 4. Discriminación laboral.
- 5. Discriminación educacional.

- Movilizaciones homofóbicas o transfóbicas, concerniente a hechos o campañas con perduración en el tiempo y que tienen algún nivel de coordinación y uno o más objetivos claramente establecidos.
- 7. Discriminación o intento de exclusión institucional, correspondiente a los atropellos que buscan impedir u obstaculizar; a través de leyes, normativas, reglas, prácticas o políticas; el acceso a derechos que debiese garantizar el Estado y que no están contemplados en las otras categorías.
- Discriminación o intento de exclusión en espacios públicos y privados, referente al rechazo para las libertades de expresión y movilización de las personas LGBTIQA+ o las parejas del mismo sexo o a obstáculos para el acceso igualitario a servicios o productos.
- 9. Discriminación comunitaria, que se origina o desarrolla en el grupo familiar, vecinal o de amistad.
- **10.** Declaraciones homofóbicas o transfóbicas con motivaciones discriminatorias.
- Discriminación en los medios, la cultura o el espectáculo.

En algunas ocasiones, los límites entre una y otra categoría pueden ser difusos. Cuando ello ocurre, el caso será ubicado en la categoría de discriminación predominante.

Las discriminaciones institucionales, comunitarias, educacionales laborales o en espacios públicos o privados en muchas ocasiones vienen de la mano de agresiones verbales o físicas. Por tanto, se debe tener presente que las agresiones físicas o verbales pueden ser muchas más que las relatadas en la primera categoría descrita.

Generalmente un atropello con un mismo objetivo puede derivar en dos o más casos de discriminación si sus responsables o las víctimas son más de una persona. O también, si la víctima sufre en manos de una misma persona diversos episodios de discriminación.

Por último, el balance y conteo final de cada año incluye:

- Comparaciones con años anteriores
- Identificación del número de personas e instituciones responsables de los atropellos.
- Cuantificación de los casos o denuncias que afectaron en forma separada a lesbianas, gays, bisexuales, trans; binarios o no

binarios, y de aquellos que dañaron a la población LGBTIQA+ como conjunto.

- Cuantificación de las respuestas y/o ayudas brindadas a las víctimas por las diversas agrupaciones LGBTIQA+.
- Identificación de los casos por zona geográfica. En el caso de las declaraciones o movilizaciones homofóbicas o transfóbicas difundidas por medios de comunicación de alcance nacional, el episodio no será sumado a una localidad o comuna específica. Sólo se hablará de "hechos con alcance nacional". Lo mismo ocurrirá con las declaraciones o movilizaciones en redes sociales, si es que se desconoce la localidad desde donde surgieron.
- Un ránking de la homofobia y transfobia, el cual identifica a los principales o más influyentes responsables de los abusos. Se excluye a quienes explicitaron solo "conductas homofóbicas o transfóbicas" o "utilitarismo de la homosexualidad y la transexualidad" y que, en tal sentido, no pueden ser calificados/as como "homofóbicos/as" o "transfóbicos/as".

Si un/a victimario/a tiene poco poder o impacto se incluirá en el Ranking sólo a la institución de la cual es parte, por cierto, si es que la misma también fue responsable del atropello.

**5.-Casos especiales:** Correspondiente a sucesos de particular impacto en el debate nacional y/o que requieren de análisis más profundos o específico dada su complejidad.

Generalmente en estos hechos es posible identificar fácilmente diversas categorías de discriminación (laboral, educacional, etc), dando un mismo caso origen a dos o más episodios de exclusión.

### III. - HOMOFOBIA Y TRANSFOBIA EN CIFRAS

### 1. Casos y denuncias por discriminación

Tras un alza sostenida de los casos y denuncias por discriminación desde el 2013; la cual fue acelerada y alarmante a partir del 2018; los episodios homo/ transfóbicos experimentaron por primera vez en 2021 un descenso en comparación al año precedente.

En 2021 se conoció de 1.114 denuncias o casos, una baja del 12% en relación al año previo y que corresponde al 16,8% del total de 6.620 atropellos a los derechos humanos de las personas LGBTIQA+ ocurridos en los últimos 20 años.

Las 1.114 denuncias o casos de discriminación conocidos en 2021 se dividen en 3 asesinatos, 78 agresiones físicas o verbales perpetradas por civiles lejanos o desconocidos por las víctimas, 12 atropellos policiales, 106 casos de homo/transfobia laboral y 12 educacional, 391 episodios de marginación o intentos de exclusión institucional, 12 campañas contra las personas LGBTIQA+, 55 hechos de negación de derechos en espacios públicos o privados, 135 abusos comunitarios (familia, amigos/as, vecinos/as), 1 segregación en el ámbito de la cultura, espectáculo o medios de comunicación y 309 discursos o declaraciones de odio.

Si bien el 2021 es el segundo año con más casos de discriminación conocidos desde el inicio de los Informes Anuales de los Derechos Humanos de la Diversidad Sexual y de Género, siendo solo superado por el 2020, el resultado podría dar cuenta de una tendencia a la baja, aunque siempre con el riesgo latente de nuevas alzas.

De las 11 categorías de discriminación analizadas en este informe 9 bajaron, entre esas las que habitualmente más daño provocan a las víctimas, mientras solo 2 subieron: las declaraciones de odio y las exclusiones institucionales.

Las campañas o movilizaciones de odio bajaron un 80%, seguidas por la discriminación educacional (-63%), los asesinatos (-50%), la homo/transfobia comunitaria (familias, barrios, -46,6%), las agresiones físicas o verbales (-40,9%), los abusos policiales (-25%), la negación de derechos para el acceso a servicios o productos en espacios públicos o privados (-14%) y los atropellos laborales (-3.6%).

Diversos procesos o coyunturas explican en parte estas mermas, así como las razones porque la baja no fue mayor a la conocida.

Por un lado, la merma de las restricciones sanitarias, debido a un mayor manejo de los efectos del Covid-19, mejoró los ánimos en términos generales, al liberarse a las personas de cuarentenas obligatorias.

Las cuarentenas, en su etapa más dura, tuvieron un alto impacto psicológico que en relación a los derechos LGBTIQA+ era caldo de cultivo para expresiones más violentas y recurrentes de la homo/transfobia.

En segundo lugar, la suma urgencia otorgada a la tramitación del matrimonio igualitario, una señal cierta de una pronta aprobación de la ley, fue desde el segundo semestre en adelante un poderoso mensaje respecto a que las discriminaciones antes validadas por algunos sectores; con la excusa, consciente o no, de que la desigualdad legal a las parejas del mismo validaba su actuar; perdió de raíz su legitimidad práctica y simbólica. No en vano, la mayoría de las declaraciones y discursos de odio ocurrieron en el primer semestre.

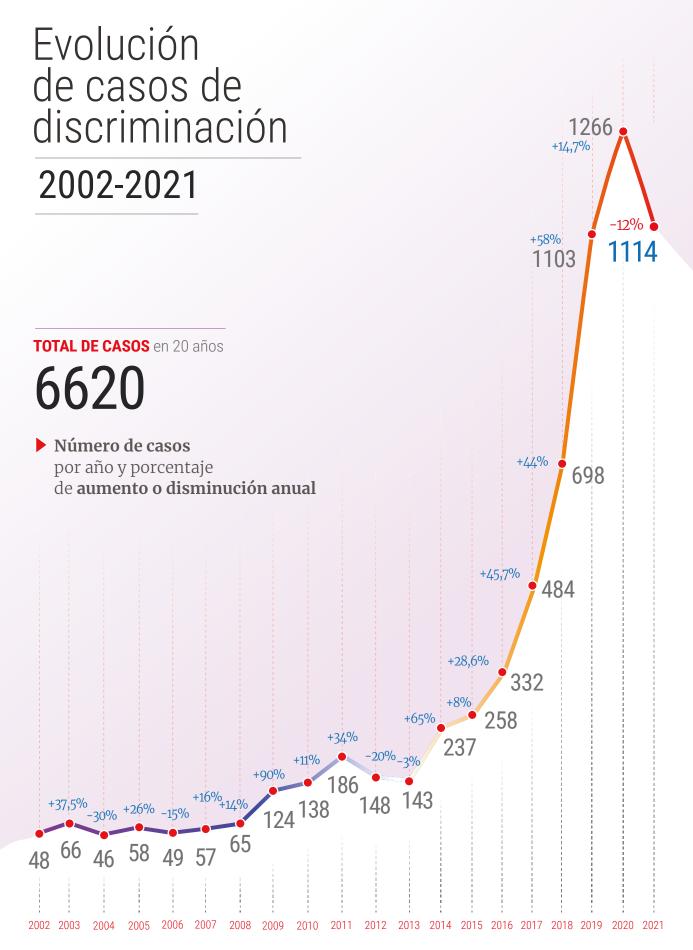
Más relevante y significativo aún es el hecho de que efectivamente la mayoría de la población en Chile ya no tolera, ni acepta la discriminación contra las personas LGBTIQA+, por tanto los sectores promotores del odio no encuentran eco ciudadano, ni tampoco legal, al avanzarse en paralelo en diversas leyes o políticas públicas protectoras de la orientación sexual o la identidad de género.

Si bien este cierto, este cambio cultural viene experimentándose desde 1991 en adelante, a sus 30 años coincide con el cierre de un ciclo sociopolítico y económico que está experimentando el país en todos sus niveles y rincones, potenciando el principio antidiscriminatorio.

Los episodios homo/transfóbicos podrían ir también a la baja en el futuro al considerar que el aumento del 3.1% de la "discriminación institucional" se explica, paradojalmente, por un aspecto positivo: el Congreso debatió en paralelo demandas históricas de la

### Número anual de casos y porcentaje del total de abusos en 19 años:

2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Total
48	66	46	58	49	57	65	124	138	186	148	143	237	258	332	484	698	1103	1266	1114	6620
0,87%	1,19%	0,83%	1,05%	0,88%	1,03%	1,18%	2,25%	2,50%	3,37%	2,68%	2,59%	4,30%	4,68%	6,02%	8,79%	12,6%	20,03%	22,9%	16,82%	100%



# Evolución de casos por categoría

### 2002 - 2021

Categoría / año	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20	21	Total
Asesinatos	5	0	2	0	3	4	0	0	1	3	3	4	5	3	4	2	3	5	6	3	56
Agresiones física perpetradas por civiles	8	8	2	9	9	4	3	5	5	13	20	13	29	45	40	56	58	73	132	78	610
Atropellos policiales	5	4	1	0	3	2	0	6	2	5	6	6	3	0	3	1	16	32	16	12	123
Discriminación laboral	2	2	3	1	1	10	9	3	9	13	9	10	12	16	32	38	28	72	110	106	486
Discriminación educacional	1	0	4	5	4	3	4	4	6	6	10	5	17	18	13	20	37	39	33	12	241
Movilizaciones homofóbicas y transfobicas	5	1	5	6	3	7	9	30	22	46	25	19	43	48	37	77	102	31	60	12	588
Discriminación / exclusión institucional	6	21	5	7	3	9	16	9	4	18	19	15	26	33	79	38	271	583	379	391	1932
Marginación de espacios públicos y privados	1	6	6	6	5	7	4	2	35	9	9	10	11	19	19	11	17	31	64	55	327
Discriminación comunitaria	0	4	2	3	6	2	8	4	11	11	12	17	9	31	56	72	72	167	253	135	875
Declaraciones homo o transfóbicas	9	15	8	19	12	9	9	58	42	57	33	42	80	43	48	166	92	69	209	309	1329
Discriminación en medios	6	5	8	2	1	0	3	3	1	5	2	2	2	2	1	3	2	1	4	1	54
Total de casos por año	48	66	46	58	49	57	65	124	138	186	148	143	237	258	332	484	698	1103	1266	1114	6620

### Cantidad de casos por responsable de los atropellos

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2018	2019	2020	2021
Instituciones	14	16	22	16	24	29	28	76	104	155	47	50	60	46	58	49	58	58	55	62	48
Personas	17	43	29	34	39	37	54	81	155	104	155	106	152	177	301	304	404	404	561	832	767

población LGBTIQA+, frente a los cuales congresistas anti-derechos votaron en contra, pero perdieron. Todo en un contexto donde las corrientes políticas-electorales adversas a la diversidad sexual y de género fueron además derrotadas en dos puntos clave: las elecciones presidenciales y de convencionales constituyentes.

El saldo, sin embargo, no es alegre, ni nunca lo será, menos cuando hay muertes y personas vulneradas en sus derechos más básicos. Ni menos al no estar garantizado totalmente que la discriminación seguirá decayendo. Cualquier coyuntura puede derivar en retrocesos y todo hecho puede ser usado por los sectores ant-derechos para recomponer su fuerza e influencia homo/transfóbica.

El ejemplo más cruel, claro y peligroso del 2021 lo constituyen las declaraciones de odio que aumentaron un 47,8% solo y exclusivamente porque personas y grupos anti-derechos se movilizaron en distintos espacios luego del asesinato del niño Emilio Jara, de 12 años, responsabilizando a las personas y activistas LGBTIQA+ del crimen solo porque sus verdugos eran homosexuales. Sin ir más lejos, el 48,2% del total de las declaraciones de odio se relacionaron con este hecho.

De no haber utilizado los grupos y personas antiderechos de manera inmoral y violenta el asesinato de un niño para canalizar su homo/transfobia, los casos por discriminación hubiesen bajado un 23,7 en 2021 y no 12%, como efectivamente ocurrió.

Ello explicita lo necesario qué es seguir avanzando y perfeccionando en mejores condiciones estatales y sociales para todas las personas, en tanto los peligros siempre acechan y sus impactos son altamente nocivos.

### 2. Responsables de los atropellos

Un total de 48 instituciones y 767 personas fueron responsables de los 1.114 casos de discriminación por orientación sexual, identidad o expresión de género conocidos en 2021.

En términos generales, el perfil de las entidades responsables sigue siendo el mismo del año precedente: organizaciones religiosas, partidos o colectividades políticas de ultra-derecha o muy influenciadas por religiones, así como Carabineros, Gendarmería y la Armada que han persistido en vulnerar derechos humanos, a igual que algunos tribunales.

La diferencia está dada en el campo laboral, pues cada vez más empleadores son denunciados por vulnerar derechos de las personas LGBTIQA+, en particular en el campo de las grandes empresas o de los servicios públicos y principalmente privados de la Salud. El número de casos es superior al de las personas responsables de los abusos, en tanto, muchas de éstas protagonizaron dos o más atropellos contra una o más integrantes del colectivo LGBTIQA+, además de pertenecer buena parte de los victimarios/as a las instituciones homo/transfóbicas del 2021.

El perfil de las personas responsables, es similar al de las instituciones, aunque se añade el hecho de que en muchos casos los victimarios pueden ser familiares, vecinos/as o conocidos/as de las víctimas.

Del total de casos, en 17 no se pudo dar con ningún tipo de contacto o identidad de los responsables, pues actuaron en la vía pública y luego se dieron a la fuga.

### 3. Ubicación geográfica

La Región de Valparaíso volvió a concentrar la mayor cantidad de denuncias y casos por discriminación acumulandoel 36,4% del total nacional, seguida por la Metropolitana (17,5%), Biobío (2.7%), Coquimbo, (2,1%), Maule (1,8%), Los Lagos (1.3%), Antofagasta (1.1%), Atacama (1%), Bernardo O'Higgins (0.9%), Araucanía (0.9%), Tarapacá (0.8%), Ñuble (0,5%), Magallanes (0.5%), Los Ríos (0.4%), Arica y Parinacota (0.4%) y Aysén (0.1%).

En tanto, los episodios de discriminación que ocurrieron en redes sociales y/o medios de comunicación de alcance nacional acumularon el 31,6% del total.

El alto porcentaje en Valparaíso se explica, en buena medida, porque en dicha región se ubica el Congreso Nacional, donde los/as parlamentarios/as anti-derechos expresan su discriminación a la población LGBTIQA+ a través de votos, indicaciones o presentación de proyectos de ley. Si ese factor no estuviese presente, la región de Valparaíso concentraría el 5,2% de casos a nivel nacional, siendo superada solo por la Región Metropolitana.

El Gran Santiago, en tal sentido, acumula la mayor cantidad de atropellos dirigidos contra LGBTIQA+ en términos individuales, a diferencia de lo que ocurre en Valparaíso donde la mayoría de los abusos afectan a la población de la diversidad sexual y de género como colectivo, en tanto el rechazo a leyes pro-igualdad discriminan a todo este grupo humano y no a una persona individual.

Pese a ello fue en Valparaíso y Biobío; la tercera región con más casos; donde ocurrieron los abusos más violentos, pues en ambas localidades personas fueron asesinadas en razón de su orientación sexual o identidad de género, mientras que en Los Lagos hubo un tercer crimen con componentes homofóbicos.

Como se ha explicado en informes previos, el hecho de que las regiones Metropolitana, Biobío y Valparaíso

ocupen cotidianamente los tres primeros lugares en cuanto a número de abusos, se debe en parte a que su población es mayor a la de otras zonas. Pero también al hecho a que, al ser la apertura cultural más extendida en esas localidades, más personas están dispuestas a denunciar.

Lo interior implica que en otras regiones se reportan pocos casos por el mayor miedo a los eventuales efectos negativos de visibilizar la orientación sexual o la identidad de género y no a la escasa o nula existencia de la discriminación.

Del total 16 regiones, en 11 bajaron las denuncias o casos por discriminación en relación al año precedente y, en 5, subieron, lo cual de una u otra manera es concordante con la merma a nivel nacional.

La región donde más bajaron las denuncias o casos fue Aysén, con un -66%; seguida por Los Ríos (-50%), Araucanía (-44%), Metropolitana (-35,6%), Antofagasta (-33%), Magallanes (-33%), Ñuble (-25%), O'Higgins (-23%) Biobío (-21%), Valparaíso (-7,9%) y Los Lagos (-6,2%).

En tanto en Arica y Parinacota los atropellos o reportes subieron un 300% en relación al año precedente, seguidos por Tarapacá (+80%), Atacama (+37,5%) Coquimbo (+9,5%) y Maule (+5,2%).

Llama la atención que la gran mayoría de las regiones con aumentos de casos o denuncias son del norte de Chile. Esto indicaría, de una u otra manera, que en el norte existe menos temor de la población LGBTIQA+ para denunciar, aún cuando los reportes, pese al aumento, siguen siendo bajos.

En el centro, en cambio, estaría ocurriendo un descenso real de los casos de discriminación, pues la apertura y nivel de debate en esas zonas generan mayor empoderamiento de las personas LGBTIQA+ y alto niveles de resistencia o intolerancia de la población en general frente a la homo/transfobia, lo cual deja poco margen de acción a quienes persisten en segregar.

En el Sur preocupa especialmente la Araucanía, pues es una de las regiones más hostiles y reacias a debatir en los espacios públicos o privados sobre la diversidad sexual de género, por tanto el descenso de casos por discriminación más que una buena noticia, refleja un alto temor de las personas LGBTIQA+ para denunciar y hacer respetar sus derechos. Hace unos seis años atrás lo mismo ocurría en Maule, pero esta región lentamente ha ido ampliando su debate sobre la diversidad, lo que anima a las personas a denunciar.

Por último, en lo referente a episodios de discriminación en medios de comunicación de alcance

nacional y en las redes sociales, se registró un aumento del 4.5% en relación al año precedente. Es más, es probable que estas cifras sigan al alza, dado el protagonismo en ascenso de las redes sociales para la comunicación humana.

## Casos por región 2007 - 2021

Zona			Núme	ero de	casos j	por año	o y por	centaj	es regi	ionale	s del to	otal na	cional		
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
I. Región de Tarapacá	0	0	0	5	4	1	0	3	3	6	3	3	4	5	9
	0%	0%	0%	3,7%	2,2%	2,2%	0%	1,3%	1,2%	1,8%	0,6%	0,42%	0,36%	0,39%	0.8%
Alto Hospicio	0	0	0	0	0	0	0	0	0	2	0	1	0	2	3
Iquique	0	0	0	5	4	1	0	3	3	4	3	2	2	3	6
San Andrés de Pica	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0
II. Región de Antofagasta	0	1	1	2	5	2	3	5	11	10	11	13	16	18	12
	0%	1%	1%	2%	5%	5%	2,1%	2,1%	4,3%	3%	2,3	1,86%	1,45%	1,42%	1,1%
Antofagasta	0	0	0	2	2	1	3	1	9	8	6	10	9	13	8
Calama	0	1	1	0	2	0	0	4	2	0	5	1	4	5	4
Sierra Gorda	0	0	0	0	0	0	0	0	0	1	0	0	1	0	0
Tocopilla	0	0	0	0	1	1	0	0	0	1	0	0	2	0	0
Sin antecedente de Comuna	-	-	-	-	-	-	-	-	-	-	-	2	0	0	0
III. Región de Atacama	0	0	0	0	0	0	4	0	5	2	2	2	7	8	11
	0%	0%	0%	0%	0%	0%	2,8%	0%	1,9%	0,6%	0,4%	0,28%	0,63%	0,63%	1%
Vallenar	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0
Chañaral	0	0	0	0	0	0	2	0	0	0	0	0	0	2	4
Copiapó	0	0	0	0	0	0	0	0	5	2	2	1	7	6	7
Sin antecedente de Comuna	-	-	-	-	-	-	-	-	-	-	-	1	0	0	0
IV. Región de Coquimbo	1	0	0	1	1	2	0	1	1	6	22	16	18	21	23
	1,8%	0%	0%	0,7%	0,5%	0,5%	0%	0,2%	04%	1,8%	4,6%	2,29%	1,63%	1,65%	2,1%
Combarbalá	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0
Coquimbo	0	0	0	0	1	1	0	0	1	2	8	1	9	9	15
Illapel	0	0	0	0	0	0	0	1	0	0	0	0	0	4	1
La Serena	1	0	0	1	0	2	0	0	0	3	13	13	6	5	7
Los Vilos	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0
Ovalle	0	0	0	0	0	0	0	0	0	1	0	0	1	1	0
Salamanca	-	-	-	-	-	-	-	-	-	-	-	-	-	2	0
Sin antecedente de Comuna	-	-	-	-	-	-	-	-	-	-	-	2	0	0	0

Zona			Núme	ero de	casos p	por año	o y por	centaj	es regi	ionales	s del to	otal na	cional		
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
V. Región de Valparaíso	7	11	26	7	26	18	21	48	57	91	68	280	619	441	406
	12,3%	17%	21%	5,1%	14%	14%	14,7%	20,2%	22,1%	27,4%	14%	40,11%	56,1%	34,83%	36,4%
Algarrobo	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0
Cartagena	0	0	0	0	1	0	1	2	0	0	0	1	0	0	2
Casablanca	0	1	0	0	0	0	0	1	0	1	0	0	1	0	0
Concón	-	-	-	-	-	-	-	-	-	-	-	-	-	1	2
El Quisco	0	0	1	0	0	0	0	0	0	0	2	0	1	1	0
El Tabo	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0
Isla de Pascua	-	-	-	-	-	-	-	-	-	-	-	-	-	1	0
La Calera	0	0	0	0	0	0	0	2	0	0	1	0	0	4	0
Las Cruces	0	0	0	0	0	0	0	0	0	4	0	0	0	0	0
Limache	0	0	0	0	0	0	0	0	0	2	1	0	0	0	0
LlayLlay	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
Los Andes	0	0	0	0	0	0	0	0	1	0	0	0	2	0	1
Olmué	0	0	0	0	0	1	0	0	0	0	0	0	0	3	0
Punta de Tralca	0	0	0	0	0	0	1	2	0	0	0	0	0	0	0
Quillota	0	0	0	0	0	0	0	1	0	0	0	0	0	0	3
Quilpué	0	1	0	0	0	0	0	0	0	1	2	0	7	20	6
Quinteros	0	0	0	0	0	0	0	0	0	0	0	0	2	2	0
Reñaca	0	0	0	0	0	0	0	0	0	0	2	0	3	0	1
San Antonio	1	0	0	0	0	0	0	0	1	1	0	2	10	1	4
San Felipe	0	0	0	0	0	0	0	0	0	0	1	1	2	3	1
Valparaíso	2	8	24	6	18	16	17	39	53	76	52	270	577	386	378
Villa Alemana	0	0	0	0	1	0	0	0	0	1	1	0	3	10	0
Viña del Mar	4	1	1	1	6	1	1	1	2	5	6	4	9	8	8
Sin antecedente de Comuna	-	-	-	-	-	-	-	-	-	-	-	2	0	0	0
V. Región de Valparaíso descontan- do 348 votaciones o indicaciones homo/transfóbicas ocurridas en el Congreso Nacional	-	-	-	-	-	-	-	-	-	-	-	-	-	118 18,2%	58 5,2%
Región Metropolitana	43	47	79	93	118	84	56	70	91	107	149	149	229	303	195
	75,4%	72%	64%	67,4%	63%	63%	39,2%	30%	35,3%	32,2%	31%	21,34%	18,2%	23,93%	17,5%
Buín	0	0	1	0	0	0	2	0	0	0	1	0	2	0	3
Cerrillos	0	1	0	0	0	0	0	0	0	1	0	0	2	3	3
Cerro Navia	0	0	1	0	1	3	0	0	0	1	2	3	3	8	0
Colina	0	0	0	0	1	0	0	1	3	2	3	2	2	3	9
Conchalí	1	0	0	0	1	0	0	0	0	0	1	1	1	1	1
Curacaví	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0
El Bosque	0	0	0	0	0	0	0	0	2	0	0	5	5	0	4

Zona			Núme	ero de	casos j	por año	o y por	centaj	es reg	ionale	s del to	otal na	cional		
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
El Monte	0	0	0	0	0	0	0	0	0	0	4	0	1	5	1
Estación Central	0	1	0	3	2	1	2	2	2	7	4	1	1	27	5
Huechuraba	0	0	1	1	2	1	1	0	0	1	0	0	1	5	4
Independencia	0	1	0	3	2	1	2	2	2	1	1	3	2	6	6
La Cisterna	0	2	0	4	0	1	1	1	0	1	0	0	4	2	4
Lampa	0	0	0	0	0	0	0	2	0	0	1	2	1	9	0
Las Condes	0	1	2	2	3	1	2	5	0	5	9	9	6	10	13
La Florida	0	3	1	1	2	0	2	3	1	0	3	3	8	5	5
La Granja	0	0	0	1	0	0	1	1	4	1	2	3	4	0	0
La Pintana	2	0	0	0	0	0	0	1	1	0	1	1	0	5	7
La Reina	0	0	0	0	0	0	3	0	0	0	1	1	0	4	3
Lo Espejo	3	0	0	0	1	0	0	0	1	0	0	2	2	1	0
Lo Prado	0	0	0	0	0	0	0	0	3	2	0	0	1	0	3
Macul	0	2	0	1	2	0	0	0	0	3	4	0	4	13	0
Maipú	2	1	0	0	1	2	2	5	0	7	2	5	11	9	6
Melipilla	0	1	0	0	0	0	0	0	0	1	0	0	0	1	1
Ñuñoa	1	0	0	0	0	0	1	1	1	4	3	0	4	8	4
Paine	0	0	0	0	0	0	0	0	0	1	0	3	0	0	0
Padre Hurtado	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0
Pedro Aguirre Cerda	0	0	0	0	0	0	1	0	0	0	0	0	3	3	1
Peñaflor	0	0	0	1	0	0	1	0	0	1	0	0	1	0	0
Peñalolén	0	0	0	1	0	0	2	0	3	2	3	1	2	8	0
Pirque	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1
Providencia	2	1	2	8	11	14	3	7	10	8	7	4	12	12	8
Pudahuel	0	0	0	1	0	0	1	0	5	0	0	2	4	8	6
Puente Alto	1	0	0	3	0	0	2	2	0	1	7	8	4	6	7
Quilicura	0	0	1	0	0	1	0	0	4	1	5	1	1	4	10
Quinta Normal	0	0	1	1	0	0	0	0	0	2	1	4	9	0	2
Recoleta	1	2	0	2	0	4	3	1	2	3	7	9	6	2	0
Renca	0	0	0	0	1	1	0	1	1	0	2	6	4	9	2
San Bernardo	1	1	1	3	4	2	4	0	1	1	5	6	3	8	8
San Joaquín	0	0	0	0	0	0	0	0	1	3	2	0	3	1	0
San José de Maipo	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0
San Miguel	1	0	2	0	1	1	2	1	0	4	6	0	5	3	2
San Ramón	0	0	0	0	0	0	0	0	0	1	2	2	0	2	2
Santiago	2	30	63	59	86	52	18	36	45	34	58	55	98	97	58
Talagante	4	0	0	0	0	0	1	0	0	0	0	0	2	3	0

Zona			Núme	ero de (	casos p	oor año	o y por	centaj	es regi	ionales	s del to	otal na	cional		
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Til Til	-	-	-	-	-	-	-	-	-	-	-	-	-	1	0
Vitacura	0	0	2	1	0	0	0	0	0	1	2	1	5	11	5
Sin antecedente de Comuna	0	0	0	0	0	0	0	2	0	0	0	5	0	0	0
VI. Región del Libertador	4	1	2	4	3	7	2	1	4	2	8	7	11	13	10
Bernardo O`Higgins	1,8%	1,6%	1,7%	2,9%	1,6%	4,7%	1,4%	0,4%	1,6%	0,6%	1,7%	1%	1%	1,02%	0,9%
Graneros	1	0	0	0	0	3	0	0	0	0	0	0	0	0	0
Las Cabras	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0
Mostazal	1	0	0	0	1	0	1	1	0	0	1	0	1	0	1
Navidad	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0
Palmilla	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
Peumo	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
Pichidehua	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0
Pichilemu	0	0	0	0	0	0	0	0	2	1	1	0	0	0	0
Rancagua	0	1	2	4	2	4	0	0	2	1	5	3	2	8	1
Rengo	0	0	0	0	0	0	0	0	0	0	1	0	0	5	2
Requinoa	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1
San Fernando	0	0	0	0	0	0	0	0	0	0	0	2	0	0	2
San Vicente de Tagua Tagua	0	0	0	0	0	0	1	0	0	0	0	0	1	0	2
Santa Cruz	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1
VII. Región del Maule	0	0	0	1	4	4	2	3	7	10	10	14	15	19	20
	0%	0%	0%	0,7%	2,2%	3%	1,4%	1,3%	2,7%	3%	2,1%	2%	1,35%	1,5%	1,8%
Cauquenes	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0
Colbún	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0
Curicó	0	0	0	0	0	3	0	1	1	1	0	2	4	1	5
Molina	0	0	0	0	0	0	0	0	1	0	0	2	0	0	3
Licanté	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0
Linares	0	0	0	0	1	0	0	0	0	0	0	0	0	1	5
Parral	0	0	0	0	0	0	0	0	0	0	0	0	0	4	0
San Javier	0	0	0	0	1	0	0	0	0	0	0	2	2	3	0
San Rafael	0	0	0	0	0	0	0	0	0	0	0	0	0	3	0
San Clemente	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0
Talca	0	0	0	1	2	0	0	2	5	9	10	5	6	7	7
Teno	0	0	0	0	0	0	1	0	0	0	0	0	1	0	0
Sin antecedente de Comuna	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0

Zona			Núme	ero de	casos j	por año	o y por	centaj	es regi	ionale	s del to	otal na	cional		
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
VIII. Región del Bio Bío	4	1	3	4	7	9	14	15	14	26	49	29	31	38	30
	3,5%	1,6%	2,4%	5,1%	4%	6%	2,8%	6,3%	5,4%	8%	10,1%	4,15%	2,81%	3%	2,7%
Arauco	0	0	0	0	0	0	0	0	0	0	2	0	0	0	2
Cañete	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0
Chiguayante	0	0	0	0	0	0	0	0	0	0	2	0	2	2	1
Concepción	0	1	2	4	4	7	4	9	7	19	26	20	19	19	16
Contulmo	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0
Coronel	0	0	0	0	0	0	0	0	0	1	3	1	2	2	3
Curanilahue	0	0	0	0	0	0	0	0	0	1	0	1	1	0	0
Hualpén	0	0	0	0	0	0	0	0	0	0	1	0	4	0	2
Laja	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0
Lebu	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0
Los Ángeles	0	0	0	0	0	0	0	1	0	1	5	3	0	0	1
Lota	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0
Nacimiento	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0
Penco	0	0	0	0	0	0	0	0	0	1	2	0	0	2	0
Santa Bárbara	2	0	0	0	1	0	0	0	0	0	0	0	0	0	0
Santa Juana	0	0	0	0	0	2	0	0	0	0	0	0	0	0	0
San Pedro de la Paz	0	0	0	0	0	0	0	0	0	0	0	1	1	7	2
Talcahuano	0	0	0	0	0	0	0	2	5	2	3	0	2	1	3
Tucapel	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0
Yumbel	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0
Sin antecedente de Comuna	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0
IX. Región de La Araucanía	0	2	3	10	11	3	6	9	5	6	12	3	15	18	10
	0%	3,1%	2,4%	7,2%	6%	2%	4,2%	3,7%	1,9%	1,8%	2,5%	0,42%	1,35%	1,42%	0,9%
Angol	0	0	0	0	0	2	0	0	0	0	0	0	0	4	0
Carahue	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
Chol Chol	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0
Collipulli	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0
Freire	0	0	0	0	0	0	0	0	0	0	0	0	4	0	0
Gorbea	0	0	0	0	0	0	0	0	0	0	0	0	0	5	0
Loncoche	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
Nueva Imperial	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0
Pucón	-	-	-	-	-	-	-	-	-	-	-	-	-	-	4
Saavedra	0	0	0	0	0	0	0	0	0	1	0	0	1	3	0

Zona			Núme	ero de	casos j	por año	o y por	centaj	es reg	ionale	s del to	otal na	cional		
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Temuco	0	2	3	10	7	1	6	8	5	5	10	3	8	6	4
Victoria	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0
Villarrica	0	0	0	0	1	0	0	1	0	0	0	0	0	0	0
Vilcún	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2
X. Región de Los Lagos	6	0	6	5	4	8	3	8	5	7	18	11	12	16	15
	5,2%	0%	4,5%	3,7%	2,2%	5,4%	2,1%	3,3%	1,9%	2,1%	3,7%	1,57%	1,08%	1,26%	1,3%
Ancud	3	0	0	0	0	1	0	0	0	0	0	0	2	1	0
Castro	0	0	0	0	0	0	1	0	0	0	0	0	1	0	3
Futaleufú	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1
Frutillar	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0
Llanquihue	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1
Nercón	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0
Osorno	0	0	4	1	4	4	0	5	1	1	4	0	0	9	3
Puerto Montt	2	0	2	3	0	2	2	3	1	5	14	9	9	6	4
Puerto Varas	1	0	0	0	0	0	0	0	0	0	0	0	0	0	3
Purranque	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0
Puyehue	0	0	0	0	0	0	0	0	2	1	0	0	0	0	0
Río Negro	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0
Sin antecedente de Comuna	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0
XI. Región de Aysén	0	0	1	0	0	0	0	0	2	1	0	2	5	3	1
	0%	0%	0,8%	0%	0%	0%	0%	0%	0,8%	0,3%	0%	0,28%	0,45&	0,23%	0,1%
Coyhaique	0	0	1	0	0	0	0	0	2	1	0	2	5	3	1
XII. Región de Magallanes	0	2	0	2	0	1	1	4	6	4	6	7	9	9	6
	0%	3,1%	0%	1,4%	0%	0,6%	0,7%	1,7%	2,3%	1,2%	1,2%	1%	0,81%	0,71%	0,5%
Cabo de Hornos	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0
Porvenir	0	0	0	0	0	0	0	0	0	0	0	0	4	0	0
Puerto Natales	0	1	0	0	0	0	0	0	0	0	1	2	2	4	1
Punta Arenas	0	1	0	2	0	1	1	4	6	4	4	4	3	5	5
Sin antecedente de Comuna	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0
XIV. Región de los Ríos	0	0	0	1	1	4	0	2	2	8	1	9	10	8	4
	0%	0%	0%	0,7%	0,5%	3%	0%	0,8%	0,8%	2,4%	0,2%	1,28%	0,90%	0,63%	0,4%
Valdivia	0	0	0	1	1	4	0	2	2	4	1	4	8	8	4
Panguipulli	0	0	0	0	0	0	0	0	0	4	0	0	1	0	0
San José de la Mariquina	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
Sin antecedente de Comuna	0	0	0	0	0	0	0	0	0	0	0	5	0	0	0

Zona			Núme	ero de	casos j	por año	o y por	centaj	es regi	ionale	s del to	otal na	cional		
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
XV. Región de Arica	0	0	0	0	0	1	0	0	3	1	1	8	10	1	4
	0%	0%	0%	0%	0%	0,6%	0%	0%	1,2%	0,3%	0,2%	1,14%	0,90%	0,07%	0,4%
Arica	0	0	0	0	0	1	0	0	3	1	1	8	10	1	4
XV. Región de Ñuble	-	-	-	-	-	-	-	-	-	-	-	6	8	8	6
	-	-	-	-	-	-	-	-	-	-	-	0,85%	0,72%	0,63%	0,5%
Bulnes	-	-	-	-	-	-	-	-	-	-	-	0	0	2	0
Chillán	2	0	1	3	2	0	0	3	2	0	2	5	5	5	4
Cobquecura	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1
Coihueco	-	-	-	-	-	-	-	-	-	-	-	1	2	0	0
San Carlos	-	-	-	-	-	-	-	-	-	-	-	0	1	1	0
Yungay	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1
Extranjero	0	0	3	0	2	4	4	3	1	1	2	3	0	0	0
	0%	0%	4%	0%	1,1%	3%	2,8%	1,3%	0,4%	0,3%	0,4	0,42%	0%	0%	0%
Bolivia	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0
Brasil	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0
Colombia	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0
Colorado, EE.UU.	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0
España	0	0	3	0	0	0	0	2	2	0	0	0	0	0	0
Nueva York	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0
Rusia	0	0	0	0	0	0	3	0	0	0	0	0	0	0	0
Polonia	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0
Vaticano	0	0	0	0	0	4	0	1	0	1	0	0	0	0	0
Washington, EE.UU.	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0
Nacional / medios	-	-	-	-	-	-	37	65	41	44	122	136	84	337	352
Declaraciones homofóbicas o transfóbicas difundidas por medios de alcance nacional o redes sociales.	-	-	-	-	-	-	25,8%	27,4%	15,8%	13,2%	25%	19,48%	7,61%	26,61%	31,6%

### 4. Discriminación por sectores

Al hacer un balance por sector, se aprecia que los hechos y/o denuncias por discriminación disminuyeron en el caso de lesbianas, gays y trans, incrementando solo los atropellos que afectaron a la población LGBTIQA+ como conjunto y no a un sector específico.

Ello va de la mano con el descenso a nivel nacional de los casos y denuncias por discriminación y vendría a decir, al menos en 2021, que dada las condiciones socioculturales y legales cada vez resulta más difícil para los promotores del odio agredir a una persona en términos individuales, canalizándose la discriminación mayoritariamente hacia el colectivo LGBTIQA+, lo cual, de paso, diluye las responsabilidades. De ahí la relevancia de avanzar en una reforma a la antidiscriminatoria que sancione las exclusiones contra grupos y no solo contra personas.

Del total de denuncias o casos por discriminación, el 19% afectó a gays, el 13,2% a lesbianas, el 11,4% a trans y el el 56,4% a la población LGBTIQA+ como conjunto.

En torno a los gays, las denuncias o atropellos a los derechos humanos bajaron un 36,1%, mientras en relación a lesbianas el descenso fue de 19.6%. En el caso de las personas trans la merma fue de 7,9%. En cambio los abusos contra la población LGBTIQA+ como colectivo aumentaron un 2,4%.

Sector	2021	Porcentaje 2021
Conjunto diversidad sexual	628	56,4%
Lesbianas	147 (6 son no binarias)	13,2%
Gays	212	19%
Trans	127 (53 mujeres, 71 hombres y 3 no binarios)	11,4%
Total	1114	100%

En las últimas dos décadas, del total de 6.620 denuncias o casos por discriminación, el 20% afectó a gays; el 15% a trans; el 14% a lesbianas y el 51% a la población LGBTIQA+ como colectivo.

### 5. Respuestas por organización

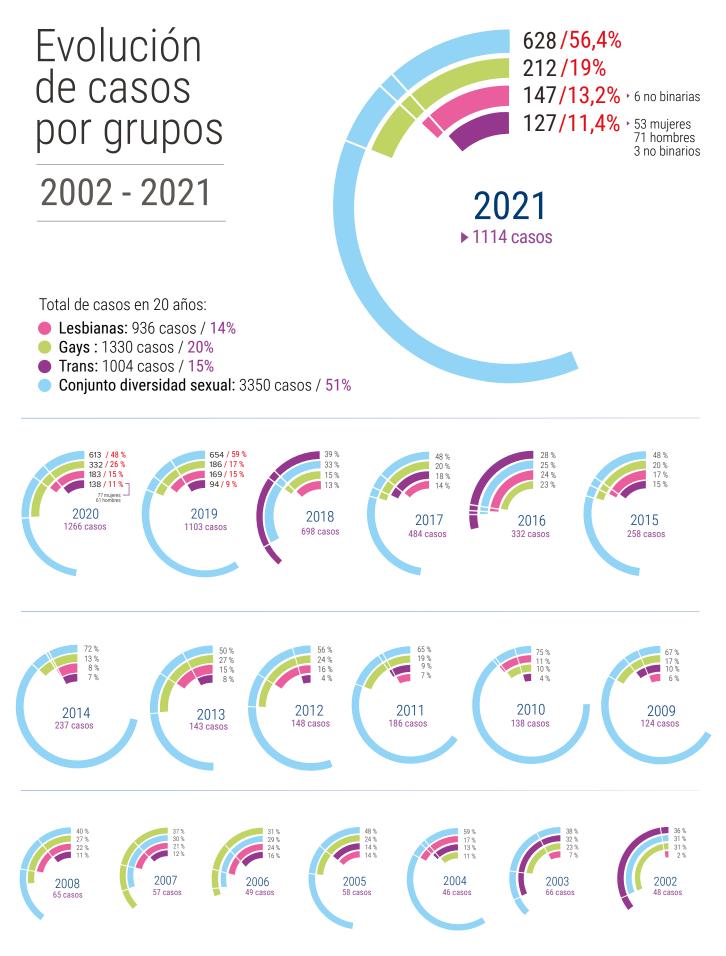
El 98% de los casos y denuncias por discriminación del 2021 recibieron alguna respuesta de parte de los movimientos LGBTIQA+, ya sea asesorando legal y psicológicamente a las víctimas, brindando ayuda humanitaria, reportando los atropellos en espacios públicos o privados, incidiendo ante las autoridades para avanzar en medidas contra las exclusiones o produciendo acciones o campañas para mermar el impacto de los abusos y sensibilizar a la ciudadanía, entre otros.

En los últimos 20 años, el 96,6% del total de las 6.620 denuncias o casos de discriminación conocidos, han recibido similares respuestas de los colectivos LGBTIQA+

El siguiente cuadro (pág 67) registra solo las respuestas de las organizaciones LGBTIQA+ a al menos un caso de homo/transfobia ocurrido en 2021, según la información proporcionada por los colectivos para este informe o los datos publicados en sus sitios web, redes sociales o medios de comunicación.

Sector	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20	21	Total 2002- 2021	Porcentaje 2002-2020
Conjunto diversidad sexual	15	25	27	28	14	17	26	83	103	121	83	72	170	123	83	234	231	654	613	628	3350	51%
Lesbianas	1	5	8	8	12	12	14	7	16	14	23	22	20	43	70	69	93	169	183	147	936	14%
Gays	15	15	5	14	15	21	18	21	14	35	36	38	30	52	75	95	101	186	332	212	1330	20%
Trans	17	21	6	8	8	7	7	13	5	16	6	11	17	40	104	86	273	94	138	127	1004	15%
Total	48	66	46	58	49	57	65	124	138	186	148	143	237	258	332	484	698	1103	1266	1114	6620	100%

### Porcentaje por sector del total en 20 años:



# Respuesta a casos por organización

### 2004 - 2021

Año	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Total
Movilh	I				1				1							I			
Nº casos	40	51	46	52	64	119	126	177	137	128	218	248	322	463	655	991	1.154	1042	4.991
%	85%	87%	93%	91%	98%	99%	91,3%	95%	92%	90%	91%	96%	96%	95%	93%	89,8%	91,1%	93,5%	92,5%
Fundac	ión =I	guales	6																
N⁰ casos	-	-	-	-	-	-	-	10	11	9	17	15	21	25	43	32	29	28	240
%	-	-	-	-	-	-	-	5,3%	7%	6%	7,17%	5,81%	6%	6%	6,2%	2,9%	2,3%	2,5%	4%
Mums																			
Nº casos	2	2	3	4	2	5	5	5	11	6	2	5	3	9	0	0	12	10	86
%	4%	3%	6%	7%	3%	4%	3,6%	2,6%	7%	4%	08%	1.9%	0,9%	1,9%	0,9%	0%	0.9%	0.9%	1,3%
Organiz	zando	Trans	Diver	sidade	es														
Nº casos	-	-	-	-	-	-	-	-	-	-	-	2	6	12	10	25	16	15	71
%	-	-	-	-	-	-	-	-	-	-	-	0,77%	1,8%	2,4,8%	1,4%	2,2%	1,2%	1,3%	1,7%
Rompie	endo e	l Silen	cio																
Nº casos	-	-	-	-	-	-	-	-	-	-	0	0	1	1	3	21	18	10	56
%	-	-	-	-	-	-	-	-	-	-	0%	0%	0,6%	0,6%	0,4%	1,9%	1,4%	0.9%	1%
Acción	Gay																		
Nº casos	0	1	4	3	2	5	2	3	2	2	5	2	2	2	0	4	6	4	49
%	0%	1%	8%	5%	3%	4%	1,4%	1,6%	1%	1%	2,1%	0,77%	0,6%	0,6%	0%	0,36%	0,4%	0,4%	0.8%
Sindica	to Am	anda J	ofré																
Nº casos	0	2	1	2	0	0	0	0	1	2	3	5	1	1	0	17	4	8	47
%	0%	3%	2%	2%	0%	0%	0%	0%	0,6%	1%	1.26%	1,9%	0,3%	0.3%	0%	1,54%	0,3%	0.7%	0,7%
Mogalt	eh																		
Nº casos	-	-	-	-	-	-	-	0	0	0	0	0	0	3	1	0	4	3	11
%	-	-	-	-	-	-	-	0%	0%	0%	0%	0%	0%	0,6%	0.1%	0%	0,3%	0,3%	0.2%
Corpora	ación	Fémin	as Div	ersas	en Aco	ción													
Nº casos	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	10	12	22
%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0.7%	1%	0.9%
Frente '	Trans																		
N⁰ casos	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	2
%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0.1%	0.1%
Todo M	ejora																		
Nº casos	-	-	-	-	-	-	-	-	-	0	0	0	0	0	0	0	0	2	2
%	-	-	-	-	-	-	-	-	-	0%	0%	0%	0%	0%	0%	0%	0%	0.1%	0.03%
Ningun	a resp	uesta																	
Nº casos	4	2	1	1	1	4	8	5	4	6	8	3	1	14	20	40	78	23	223
%	2%	3%	2%	1,7%	1,5%	3,2%	5,7%	2,6%	2,6%	4%	3,37%	1,16%	0,3%	2,8%	2,9%	3,6%	6,1%	2%	3,4%
	* El guiói	n indica c	que la org	anizaciór	n no exist	ía en ese	año												

### IV.- RELATO DE DENUNCIAS POR HOMOFOBIA Y TRANSFOBIA

### 1. Asesinatos

Un descenso de 50% experimentaron los crímenes de odio en 2021, siendo las víctimas una mujer lesbiana y dos hombres gays.

Los crímenes ocurrieron en Valparaíso, Coronel y Llanquihue.

En 2021, y en el marco del Día del Orgullo y los 30 de lucha ininterrumpida del movimiento LGBTIQA+ en Chile, se incorporó además el asesinato de Hans Pozo, ocurrido en 2006, en el listado de crímenes homo/transfóbicos.

2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Total
5	0	2	0	3	4	0	0	1	3	3	4	5	3	4	2	3	5	6	3	56

#### Hans Pozo

Fecha: 27 de marzo 2006

Hecho: El crimen del joven Hans Pozo Vergara (1985-2006) es uno de los más crueles y dramáticos ocurridos en Chile.

El Movimiento LGBTIQA+ estuvo en deuda con su memoria, pues hasta ahora no lo había incluido en el listado de crímenes de odio.

El asesinato de Pozo se hizo público al encontrarse en Puente Alto uno de sus pies el 27 de marzo del 2006, curiosamente el mismo día que murió Daniel Zamudio seis años más tarde.

Con el correr de los días aparecieron en diversas zonas de la Región Metropolitana otras parte del cuerpo mutilado de Hans.

El responsable del homicidio y del descuartizamiento fue el funcionario municipal de La Pintana, Jorge Iván Martínez Arévalo, quien para ocultar cualquier relación homosexual con el joven, llegó al extremo de decirle a su familia que se trataba de un hijo biológico que lo extorsionaba.

Sin embargo, no era su hijo. Martínez Arévalo había tenido relaciones con Pozo, un joven vulnerable socioeconómicamente, abandonado por buena parte de su familia y que ejercía el comercio sexual en la Plaza de Armas. Tras asesinar a Pozo, su verdugo se suicidó en abril del 2006.

Este asesinato cumple con todas las características de un crimen homofóbico.

El asesino intentó por distintos medios ocultar la verdadera relación que tenía con Hans por temor a que se descubrieran su orientación y/o conductas homosexuales.

Su rechazo a ser vinculado con un joven que ejercía el trabajo sexual homosexual, lo llevó sin duda a idear un crimen macabro del que pretendía salir impune.

La discriminación es tan brutal, que a la fecha ninguno de los cercanos a la víctima o al victimario reconocen o señalan que uno de ellos era gay. Y aunque no lo fueran, lo cual es irrelevante para estos efectos, lo cierto es que el crimen, y el posterior suicidio, dan cuenta de homofobia.

Guardando las proporciones, lo ocurrido a Pozo es similar al asesinato que quitó la vida en 2002 al joven basquetbolista Mauricio Ortega Julio (25). La similitud se da porque Maricio perdió la vida en manos de un policía con quien mantenía relaciones. Un policía que también pretendió con el asesinato ocultar sus conductas homosexuales en un contexto de extendida homofobia.

Mauricio estaba incluido en listado de crímenes de odio. En cambio, Hans Pozo, no, hasta ahora.

Respuesta: El Movilh incluye a Pozo en el listado de crímenes de odio

Clasificación: Homofobia

### Sebastián Abarca Guajardo

Fecha: 29 de enero

**Hecho:** Sebastián Abarca Guajardo, un joven de 27 años, fue encontrado sin vida a eso de las 13:20 horas en la Población Juan Pablo II, condominio Lomas del Parque, en el sector de Rodelillo en Valparaíso.

"Fue un crimen de odio", denunció desde un comienzo Ninoska Abarca, hermana de la víctima.

Identificado con las siglas F.A.R.D. el asesino de 19 años fue capturado en la comuna de Renca a comienzos de abril, siendo traslado a Valparaíso para su formalización.

Si bien el agresor reconoció que solía usar la plataforma Grindr para cometer delitos, en un deficiente y deplorable análisis de los hechos la fiscal a cargo del caso, Lorena Ulloa, descartó acusarlo de crimen homofóbico, teniendo solo como argumento de su apresurada medida a la versión del propio verdugo.

La persecutora pasó por alto que los delincuentes planean y ejecutan este tipo de crímenes a través de Grindr con plena conciencia de que la homofobia existe y de que sus usuarios/as son personas homosexuales, muchas de las cuales (como ocurrió con Sebatián) incluso ocultan a cercanos sus citas por vergüenza o miedo al rechazo social, todas realidades que permiten a los agresores actuar con mayor impunidad o reserva y, por tanto, de una manera focalizada. Es decir, de una forma dirigida a los/as usuarios/as homosexuales de una plataforma.

Esta situación de vulnerabilidad, pese a ser constatada, poco y nada importó a la fiscal Ulloa, quien en sus declaraciones jamás habló de la existencia de componentes homofóbicos en el crimen, reflejando con ello nula comprensión sobre la manera como opera la discriminación, así como negligencia, inoperancia y desinterés para indagar o argumentar al menos la posibilidad de un crimen de odio.

En efecto, en la audiencia de formalización del 7 de abril la fiscal relató que el encuentro entre la víctima y su verdugo se acordó mediante Grindr, la cual es "utilizada por personas homosexuales".

Basándose solo en la declaración del victimario y testigos, añadió que "la víctima, Sebastián Abarca Guajardo, se había contactado con el imputado, (de iniciales) F.A.R.D, a través de una aplicación de nombre Grindr. Llegó al lugar (acordado), ubicado en el sector de la Población Juan Pablo II, momento en que fue abordado por el imputado, quien le intimidó con un arma cortante con la intención de robarle sus pertenencias".

El imputado "confesó que por la aplicación Grindr había acordado una cita con un hombre en el sector de Las Palmas, al cual asaltó con un cuchillero carnicero. (...) Dijo que no era conocido, que venía de lejos y que era homosexual", apuntó la fiscal.

"La víctima opuso resistencia al robo, momento en el cual el imputado procedió a lesionar a la víctima, provocándole una laceración cardiaca por arma blanca, cuya gravedad le provocó la muerte, quedando tendido en el piso y huyendo el imputado", sostuvo Ulloa.

"Era común que (el imputado) usara la aplicación para asaltar personas (...), ya que siempre se jactaba de eso", puntualizó la fiscal, sin que siquiera esa constatación que ella misma hacía le indicara la presencia de delitos focalizado hacia personas con orientaciones sexuales diversas. Pese a ello, y haciendo suya la versión del asesino, añadió que "hago presente que (al imputado) le da lo mismo la orientación de sus víctimas, pero la aplicación es su preferida, porque es segura y no se revelan sus datos personales". De pasada, omitía también que no se revelan datos personales, justamente porque sus usuarios/as prefiere mantener en reserva su orientación sexual.

El Juzgado de Garantía de Valparaíso, Luis Araya, dictó el 7 de abril prisión preventiva para el agresor. Las investigaciones continuaban al cierre de este informe.

Con anterioridad, el 19 de febrero, el edil de Valparaíso, Jorge Sharp, se había reunido con la madre y la hermana de la víctima; Ninoska Abarca Guajardo y Loreto Guajardo Muñoz, en forma respectiva. "De los antecedentes que nos proporciona la familia de Sebastián y de los relatos que hemos podido escuchar por los medios de comunicación, nosotros pensamos que estamos frente a un nuevo crimen de odio en Valparaíso", dijo el alcalde. (La Estrella de Valparaíso, 20 de febrero).

#### **Respuestas:**

-El 5 de febrero, Movilh solidarizó con la familia, denunció públicamente el hecho y puso los antecedentes a disposición de la Subsecretaría de Prevención del Delito para que se brindara orientación legal y psicológica gratuita.

-El 8 de febrero, Iguales rechazó el crimen y ofreció acompañamiento a la familia.

-El 5 de abril el Mums lamentó lo ocurrido y solidarizó con la familia a través de redes sociales.

Clasificación: Homofobia

### Stefanía Constanza Breve Neira

#### Fecha: 18 de febrero

**Hecho:** Una pareja de mujeres; Stefanía Constanza Breve Neira (19) y E.C.J.M (16); fue atacada por un grupo de personas que le quitó la vida a la mayor de edad y dejó con graves lesiones a la sobreviviente, en Coronel.

Los/as agresores fueron identificados/as como J.J.A.M (16), Karla Javiera Reyes Sanzana, Cristóbal Peñailillo García y Kimberly Aracely Muñoz Ramírez, todos/as imputados/as por femicidio.

En el juicio oral del 26 de noviembre del 2021, la Fiscalía resumió que "previos insultos tales como "les vamos pegar maracas culias", las atacaron con la finalidad de darles muerte a ambas, golpeándolas con diferentes elementos, entre ellos elementos cortantes y contundentes. Específicamente, J.J.A.M., Karla Reyes Sanzana y Kimberly Muñoz Ramírez agredieron a Estefanía Breve Neira, incluso con elementos cortantes, en tanto Cristóbal Peñailillo agredió con una botella en su cabeza a E.J.M cuando esta intentó defender a su pareja, luego de lo cual y después de insultarlas de la forma señalada, se dieron a la fuga".

"Producto de la agresión Estefanía Breve Neira resultó con cinco lesiones principales cortopunzantes en mejilla derecha, en región lumbar derecha y en región lumbar izquierda, además de diversas heridas cortopunzantes en región cervical derecha, región escapular izquierda, hemiabdomen izquierdo y región lumbar izquierda, más heridas cortantes y punzantes en mejilla derecha, hemiabdomen izquierdo, escápula derecha, región lumbar derecha e izquierda, rodilla izquierda, muslo izquierdo, equimosis en brazo y antebrazo izquierdo y escoriaciones nasales, en la mama izquierda y en la mano izquierda. Todo lo cual le provocó un traumatismo torácico complicado secundario" que derivó en su muerte, añadió la fiscalía.

"A su turno E.J.M resultó con herida contusa anfructuosa en la región temporal derecha sobre la oreja, herida cortante en zona parietal izquierda y herida cortante en antebrazo izquierdo. La agresión fue motivada por la orientación sexual de las víctimas, quienes al momento de los hechos eran pareja, ya que el imputado J.J.A.M no aceptaba la relación entre ambas", apuntó la fiscalía.

Si bien tras el ataque las mujeres pudieron llegar por sus propios medios a la casa de E.C.J.M, debieron ser al instante trasladadas por personal de Samu al Hospital de San José de Coronel. Ahí la joven de 19 años falleció a las 5:10 de la madrugada del 18 de febrero en momentos cuando era llevada a un pabellón del Hospital Regional de Concepción

La Seremi de la Mujer y de la Equidad de Género, Marrissa Barro, lamentó lo ocurrido, precisando que correspondía aplicar la Ley Gabriela. En tanto, el 9 de abril el Ministerio presentó una querella criminal contra los agresores.

**Respuesta**: El 18 de febrero el Movilh denunció y repudió públicamente el crimen y solicitó la intervención inmediata de la Subsecretaría de Prevención del Delito para que se brindaran a las familias asesoría legal y psicológica gratuita a través del Servicio Nacional de la Mujer y la Equidad de Género, lo cual efectivamente ocurrió.

Clasificación: Homofobia

### Richard Barrría Triviño

#### Fecha: 31 de mayo

**Hecho:** El concejal electo por Llanquihue, Richard Barría Triviño (47), fue asesinado en su casa por un sujeto de 18 años identificado con las siglas F.J.D.S.V, quien confesó el crimen con argumentos homófobos.

Barría, un asistente social, fue encontrado el 1 de junio por sus familiares sin signos vitales al interior de su casa, ubicada en una parcela del sector Pichi Laguna, camino a Loncotoro.

El fiscal Fabián Fernández, explicó que los hechos se desarrollaron entre la noche del 30 de mayo y madrugada del 31 de mayo.

"En el contexto de una reunión entre el imputado y la víctima, don Richard Hans Barría Triviño, realizada en el domicilio de esta última, luego de haber consumido bebidas alcohólicas con motivo de un altercado entre ambos, el imputado, con el ánimo de dar muerte agredió a la víctima utilizando un cuchillo metálico", señaló Fernández. (Décima TV, 6 de junio, 2021)

El 3 de junio el homicida confesó ante la policúa el asesinato con el argumento de defensa propia frente a un supuesto acoso sexual homosexual.

"Estuvimos bebiendo alrededor de una hora, me mostró su casa y me dijo que si quería dormir me podía quedar en cualquiera de los dormitorios, pero si no quería dormir me podía quedar en el suyo. Lo que me dijo me pareció que era una insinuación sexual", contó el homicida.

Añadió que el concejal entró finalmente a su habitación para abusar de él, por lo que "llegué hasta la cocina donde tomé un cuchillo (...) pensando en defenderme con él y amenazarlo si me volvía a atacar (...) Producto de la desesperación y el miedo (...) tomé el cuchillo que llevaba, se lo mostré y luego se lo puse en el cuello en un acto de intimidación para que se calmara. Sin embargo, él continuó forcejeando, momento en que tomó mi brazo derecho, me tomó muy fuerte y reaccioné enterrándole el cuchillo en el cuello" (Red Los Lagos, 3 de junio)

La víctima quedó con más de una docena de heridas cortantes en el cuerpo propinadas por el agresor.

La fiscal regional de Los Lagos, Carmen Gloria Wittwer, añadió que víctima y victimario "al parecer se habrían conocido de antes, en algunos eventos sociales, pero desconocemos más antecedentes respecto de qué relación previa tendrían". (Radio Biobío, 2 de junio).

El 6 de junio la jueza del Juzgado de Garantía de Puerto Varas, Paulina Tapia Lorca, decretó la medida cautelar de prisión preventiva para el agresor, quien fue formalizado por homicidio simple.

La abogada de la familia, Orietta Llauca, vinculó el crimen a temas políticos. "Durante la campaña política, fuimos testigos y vimos como él recibía hostigamientos y amenazas, Llegaron al extremo de usar a su señora madre. Como familia, no hemos descartado la hipótesis del crimen político"", (Canal 13, 2 de junio).

Ninguno de los involucrados en el caso han afirmado que la víctima o el victimario fueran homosexuales. Sin embargo, los crímenes homofóbicos pesan también sobre quienes se sospecha que lo son y la defensa del homicida, en este caso, dio pistas al respecto.

En efecto, el homicida confeso propinó una docena de heridas a la víctima solo porque, según su versión, pretendió abusar de él, cuando de ser ello cierto, solo algunas lesiones bastaban para dejar inhabilitado a Barría Triviño. Se está así en presencia de una argumentación y una reacción homófoba.

**Respuesta:** El 4 de junio el Movilh repudió públicamente el asesinato y solicitó a la Fiscalía investigar la hipótesis de un crimen de odio.

Al respecto, el funcionario de la Unidad Especializada en Derechos Humanos, Violencia de Género y Delitos Sexuales, Roberto Rodríguez, señaló el 5 de enero del 2022 al Movilh que "no se ha descartado la posibilidad de abrir una línea investigativa relacionada con un crimen de odio. En el marco del Observatorio de Violencia Contra Personas LGBTI, le solicitamos la carpeta investigativa del caso con el fin de asesorar desde una perspectiva de género".

En tanto, el 27 de enero del 2022 la abogada de la misma entidad, Nadia Robledo, señaló al Movilh que "se han realizado diversas diligencias y aún existen varias otras decretadas recientemente y que están pendientes de resultado, por lo que la investigación se encuentra con plena vigencia y en desarrollo. El imputado se encuentra en prisión preventiva".

Clasificación: Homofobia

### 2. Agresiones físicas o verbales perpetradas por civiles

En 2021 hubo un total de 78 casos de agresiones físicas o verbales, un 40,9% menos que el año precedente.

El descenso podría explicarse, en parte, porque en el caso de las agresiones verbales los victimarios en vez de lanzarse contra una persona individual, prefirieron emitir discursos de odio más generales por redes sociales, quizás por preferir retarse el repudio social o sanción legal que genera la identificación de una víctima concreta.

El gran problema sigue siendo las agresiones físicas, en tanto no merman sus altas expresiones de violencia y gravedad.

Del total de casos, 43 afectaron a gays, 16 a lesbianas y 18 a trans (1 hombre, 17 mujeres) y 1 a la población LGBTIQA+ como conjunto<sup>1</sup>.

Los atropellos ocurrieron en Calama (1), Coquimbo (2), Quillota (1), Quilpué (4), Valparaíso (1), Viña del Mar (1), La Cisterna (4), Las Condes (1), La Reina (2), Independencia (1), Quilicura (2), Providencia (2), Pudahuel (2), San Bernardo (2), Santiago (6), Concepción (3), San Pedro de La Paz (2), Coronel (1) Osorno (1), Pucón (4), Puerto Natales (1) y por redes sociales (34).

2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Total
8	8	2	9	9	4	3	5	5	13	20	13	29	45	40	56	58	73	132	78	610

#### Violación y negación de derechos

Fecha: Diciembre del 2020 a julio 2021

Hecho: Una joven de 19 años denunció el 27 de julio del 2021 que en diciembre del 2020 fue violada por un sujeto que ofreció llevarla a su casa cuando la vio esperando locomoción en las cercanías del Parque O'Higgins, tras lo cual quedó embarazada y sufrió discriminación por su orientación sexual en una fundación que trabaja en adopciones.

"Insistió en llevarme. Me negué muchas veces. Me obligó a subir a su automóvil y abusó de mí. Luego me dejó tirada. A los meses me enteré que estaba embarazada. Preferí sufrir esos 9 meses y cederla en adopción. Me comunique con una Fundación. Me dijeron que tenía un plazo de 30 días para retractarme. Me retracté y decidimos seguir nuestra maternidad junto a mi pareja", dijo.

Añadió que desde esa fecha la Fundación, cuyo nombre se mantiene en reserva, le ha puesto diversos obstáculos para ver a su hija en razón de su orientación sexual.

Este relato suma dos episodios de discriminación, uno ocurrido en Santiago y otro en Las Condes.

Respuesta: El Movilh orientó a la afectada para que formalizara su denuncia.

Clasificación: Homofobia

### Apuñalamiento

Fecha: 17 de julio 2020

**Hecho:** Un sujeto, identificado como Ignacio Salas, apuñaló en el rostro a un vecino solo porque éste había defendido a sus familiares de sus insultos lesbofóbicos.

El ataque ocurrió cuando una mujer, la pareja de ésta y el hijo de ambas compartían en el patio de su vivienda, ubicada el condominio Lomas del Sol de Quilpué.

Al verlas, Salas comenzó a insultarlas por su orientación sexual. El hermano de una de las mujeres increpó al agresor, quien sacó un chuchillo de 9,5 centímetros lo atacó. Le provocó una herida de 4 cm en el rostro, contusión ocular y lesiones en mano, cabeza y hombro.

"Nos atacó a nosotras por ser lesbianas, a nuestro hijo lo amenazó y mi cuñado respondió como correspondería a cualquier familiar de él. Intentó conversar con él para ver que pasaba. Pero lo comenzó a apuñalar. Vi como se abalanzaba sobre mi cuñado y lo apuñala en la cara. Salió mucha sangre de inmediato. Me puse a gritar. Mi cuñado se desplomó", recordó Carolina Pozo, una de las víctimas (Radio Biobío, 16 de junio del 2021).

El 17 de junio del 2021, día cuando se conocieron públicamente estos hechos, el Tribunal de Juicio Oral en lo Penal de Viña del Mar condenó a Salas con seis años de presidio mayor en su grado mínimo por el delito de homicidio frustrado y con 400 días más por amenazas.

Este caso suma 4 episodios de discriminación, uno por cada una de las víctimas: la pareja de mujeres, el hijo de ambas y el hermano de una de ellas.

Respuesta: El Movilh lamentó públicamente lo ocurrido y recolectó los antecedentes para el presente informe.

Clasificación: Homofobia

# Inconsciente

Fecha: 6 de enero

Hecho: Un joven trans, Max (15), fue atacado en Osorno por un grupo de sujetos que lo dejó inconsciente en la calle.

Tras recibir golpes en el cuerpo y patadas en el cráneo, el joven fue trasladado al Hospital Base de Osorno, donde le pusieron puntos en la cabeza.

Por redes sociales la madre del joven, Alejandra Delgado, relató que "mi hijo fue brutalmente golpeado y asaltado por su condición. Le patearon su cabeza. Tiene más de 50 puntos en su cabeza. Llegó inconsciente al hospital, con fracturas en el cráneo y el cuerpo todo moreteado. ¿Hasta cuándo? Paren por favor. Casi matan a mi hijo. Lo dejaron tirado como cualquier cosa y los cobardes arrancaron".

Al joven le robaron además su celular.

#### Respuestas:

-Mogaleth y OTD repudiaron públicamente el abuso.

-Movilh instó a las autoridades regionales a implementar medidas preventivas contra los ataques de odio.

Clasificación: Transfobia

# Ataque en el domicilio

#### Fecha: 8 de enero

Hecho: Un hombre de 32 años fue atacado en su propio domicilio por dos sujetos que había contactado por Grindr.

Apenas entraron el departamento, ubicado en Santiago Centro, "comenzaron a golpearme, mientras me decían frases como "cállate maricón", "esto te pasa por desviado". Con puños, me golpearon la cara y el cuerpo mientras me maniataban de manos y pies", denunció.

Añadió que uno de los agresores "comenzó hacerme palanca en la pierna para quebrarla. "Cállate hueco culiao (sic)", me decía. Estuvieron más de dos horas dentro de mi departamento, registrando todo, mientras un auto afuera recibía lo que se robaban: tele, play station, perfumes, zapatillas y celulares, los cuales me pedían desbloquear, con la amenaza de que me iban a cortar los dedos".

En un momento, "me amenazaron con los cuchillos de mi casa, gritándome que eso me pasaba por ser un "asqueroso culiao y desviado" (Sic). Ahí pensé que me matarían. Luego se fueron, llevándose todo lo que pudieron", finalizó

Respuesta: El Movilh brindó orientación jurídica y psicológica al afectado.

Clasificación: Homofobia

# Nunca vas a tener hijos

Fecha: 17 de enero

**Hecho:** Dos hermanas denunciaron que recibieron insultos misóginos y lesbofóbicos por parte de un sujeto y su pareja al interior de un bus, en la comuna de Quilicura.

"Empezamos a escuchar que este tipo empezó a tratar de pendejo qlo (Sic) a su hije porque se estaba metiendo algo en la boca. Le pedimos de buena manera que no tratara así su hijo, pero el tipo de puso mucho más violento", señalaron por redes sociales, junto a un video que grabó algunas de las ofensas lanzadas por el sujeto.

"Nunca vai (Sic) a tener hijos lesbiana culiá. ¿Qué te creí cochina culiá?. Lesbiana culiá, cuica culiá, como a vo tu papá te paga todo. Nunca vai a tener hijos lesbiana culiá y te vení a meter con mi hijo. Nunca vai a tener hijos pelá culiá" (sic), señaló el agresor.

En medio de los insultos, el sujeto lanzó cajas de jugo a las afectadas. Tras ello, la pareja del agresor (con un niño en brazos) y el sujeto "nos pegaron, tirándonos el pelo. Luego bajaron del bus tirando piedras".

Respuesta: El Movilh repudió públicamente los hechos.

# Huecos

#### Fecha: 16 de febrero

**Hecho:** Una pareja gay, de 28 y 31 años, recibió golpes en su cuerpo y rostro en medio de insultos como "maricones de mierda" y "huecos culiaos" (Sic).

El incidente tuvo lugar en un condominio, ubicado en Coquimbo, donde la pareja había invitado a unos amigos/as para celebrar un cumpleaños.

"Llegaron tres hombres que no conocíamos, pensábamos que eran acompañantes de algún invitado. Cuando descubrimos que nadie los conocía, les pedimos que se fueran. Ahí comenzaron a golpearnos y garabatearnos por ser homosexuales. Gracias a la ayuda de unos amigos pudimos expulsarlos, pero quedamos con miedo", señaló una de las víctimas.

Respuesta: El Movilh brindó orientación social y jurídica a los afectados

Clasificación: Homofobia

#### Ataque a adolescente

Fecha: 18 de febrero

Hecho: E.C.J.M (16) resultó gravemente herida tras ser atacada por un grupo de personas en Coronel.

En el ataque la pareja de la víctima, Stefanía Constanza Breve Neira (19), fue asesinada.

Más información sobre este ataque en el punto IV.1 del presente capítulo

**Respuesta:** El Movilh denunció y repudió públicamente el ataque, gestionando que el Gobierno diera asesoría legal y gratuita a su familia.

Clasificación: Homofobia

# Agresión y amenazas

Fecha: 12 de abril

**Hecho:** Un hombre de 35 años denunció que en los años 2004 y 2005 fue discriminado en el Colegio Concepción San Pedro, de San Pedro de la Paz, por el Jefe del Grupo Scout, S.M, quien además era apoderado en el recinto.

"Mientras estaba en cuarto medio ya se sabía por todos lados que yo era gay", relató el afectado.

Añadió que el agresor fue al colegio "a amenazarme con contarles a todos que yo era homosexual. Yo ya había cumplido 18 años, por lo que me amenazó con que si yo no abandonaba el grupo o me iba pronto del colegio, me culparía de casos de pedofilia ficticios. Fue tanta la amenaza que no pude ir donde mi familia ni tampoco a carabineros".

"El 2005 entré a la universidad y ya había elegido estudiar pedagogía. Pensé que no vería más al apoderado. Mi grupo scout me invitó, por lo que accedí. Fui un solo día sábado y el apoderado me vio. Empezó a gritarle a los jefes de tropa que tenían que vetarme y evitar que yo fuera a las reuniones o a algo".

"No pude más con las amenazas que me llegaban por terceros y finalmente decidí volver a "escapar", cambiándome de carrera", dijo.

Respuesta: El Movilh explicó al afectado los alcances jurídicos de su denuncia.

# Cadenas y palos

#### Fecha: 20 de abril

Hecho: Un grupo de desconocidos agredió a tres trabajadoras sexuales trans en la comuna de la Cisterna, atacándolas con cadenas, palos, patadas y puños.

Canela Inbenjamin, una de las afectadas, relató en redes sociales que "eran las 20:40 horas. Habíamos terminado la jornada de trabajo sexual cuando cuatro individuos llegaron a atacar con golpes de cadenas, piedras, palos, puños y pie. La golpiza fue de un ensañamiento feroz y llena de discursos de odio. No hubo tiempo de reaccionar, ya que nos agredieron por separado. Fui la última en recibir el ataque. Mis gritos alertaron a los vecinos, quienes amedrentaron a los sujetos y huyeron del lugar".

Las mujeres resultaron con diferentes lesiones en sus cabezas y otras partes del cuerpo, por lo que debieron ser atendidas en un centro médico.

Respuesta: El Sindicato Amanda Jofré repudió públicamente el ataque.

Clasificación: Transfobia

# Golpiza

Fecha: 21 de abril

Hecho: Un joven de 13 años propinó golpes de pies de y puño a una adolescente dos años mayor, lanzándole insultos lesbofóbicos, en Puerto Natales.

Los hechos ocurrieron en el Parque de la Población Campo de Hielo, donde la joven estaba jugando a la pelota al momento de ser atacada frente a otros adolescentes que se limitaron a observar la agresión.

Producto de las lesiones, la joven derivada al Hospital Augusto Essmann Burgos, donde permaneció en la UTI por varias horas.

Parte de la agresión quedó registrada en un video<sup>2</sup>.

#### **Respuestas:**

-Junto con denunciar y repudiar públicamente el hecho, expresar solidaridad a la joven y a su madre, el Movilh envió todos los antecedentes del caso a la Subsecretaría de Prevención del Delito, a objeto de que se brindará a la adolescente y a su familia toda la orientación legal y psicológica necesaria.

-El Movimiento Feminista de Natales y la Coordinadora de Mujeres Autónomas de Natales protestaron el 23 de abril frente al hospital.

<sup>[2]</sup> https://www.instagram.com/p/CN-kBv1n1-A/

# Garrapata

Fecha: 21 de abril

**Hecho:** Un joven de 18 años de Concepción recibió en todas sus redes sociales insultos como "maricón", "cola", "garrapata" y "pervertido", además de ser calificado como "un mal ejemplo" para los/as niños.

La agresora es una mujer que el joven vio en algunas ocasiones en las cercanías de su casa.

Respuesta: El Movilh brindó orientación jurídica al joven

Clasificación: Homofobia

# Pérdida de visión

Fecha: 3 de mayo

**Hecho:** Dos personas que se movilizaban en automóvil dispararon con un arma de fuego tipo escopeta contra trabajadoras sexuales trans en la intersección de caletera Vespucio Sur con calle Aurora, comuna de La Cisterna.

La más afectada fue Isidora (26), quien recibió disparos en su cara y cuerpo, por lo que debió ser intervenida en el Hospital del Salvador, donde lamentablemente perdió la visión.

La Subsecretaría de Prevención del Delito, Katherine Martorell, repudió el hecho y ofreció asesoría legal y psicológica a la víctima.

El 11 de agosto la Brigada de Homicidios Metropolitana detuvo a S. Acuña, una mujer de 44 años y A. Cifuentes, a un hombre de 32 como presunto responsables de los disparos, tras lo cual quedaron en prisión preventiva.

El comisario de la PDI, Gabriel Alarcón, dijo en la ocasión que "en base a las declaraciones de testigos, se logra tomar conocimiento de estas rencillas previas que habían entre la víctima y la imputada por temas territoriales que guardan relación con el comercio sexual que, aparentemente, se ejercería en el sector". (La Cuarta, 11 de agosto).

#### **Respuesta:**

El Sindicato Amanda Jofré, el Frente Trans e Iguales repudiaron el hecho el 5 de mayo al visitar el Hospital del Salvador, donde calificaron al ataque como un crimen de odio.

Clasificación: Transfobia

#### Peinado

Fecha: 25 de mayo

**Hecho:** Un estilista de Concepción denunció que el esposo de una de sus clientas lo agredió física y verbalmente en razón de su orientación sexual y solo porque no le había agradado el peinado que le había hecho a la mujer.

"Maricón del poto y de la cabeza. Mira como dejaste a mi mujer fleto de mierda", le señaló, tras lo cual le dio un combo en la cara.

La mujer, que nunca se quejó por el peinado y, por el contrario, lo agradeció, intentó defender al estilista, tras lo cual su esposo abandonó el recinto.

Respuesta: El Movilh brindó orientación jurídica al afectado

# Amenazas

Fecha: 27 de junio

**Hecho:** El joven Francisco Aranda, quien el 2020 fue secuestrado y torturado en Estación Central, recibió amenazas de muerte de un amigo de uno de los imputados en el caso que aún investiga el Sexto Juzgado de Garantía de Santiago.

El sujeto, que pertenece a la agrupación nazi "Legión 38," envió a la víctima un mensaje desde la cuenta de Facebook identificada como "Jean Pierre Iturrieta (hannibal)".

"Tay claro sapo de la yuta y la ctm, plasta culia, que te tubiste que hacer weko; no te la pudiste creyéndote nazi. Teni a mi compañero en cana. Tay claro que la traición se paga con sangre en cualquier momento. Te voy a cazar y te vay a arrepentir el resto de tu vida" (Sic), señaló la amenaza.

Fue el 5 de junio del 2020 cuando Aranda fue secuestrado, torturado y recibió golpes de corrientes por seis neonazis en una casa okupa de Estación Central, luego de conocerse que era bisexual. Los agresores fueron identificados como Angelo Sánchez, Betzabet Soto, Rodrigo González, José Rodríguez, Priscila Romo y el menor de edad, A.I.G.S<sup>1</sup>

**Respuesta:** El Movilh denunció las amenazas el 29 de junio ante la Fiscalía y representa jurídicamente al joven por el ataque del 2020.

Clasificación: Homofobia

#### Ataque de taxista

Fecha: 14 de julio

**Hecho:** Una joven trans, L.F.G (21), sufrió un grave ataque transfóbico en Calama resultando con diversas heridas y hematomas en su cabeza y cuerpo, así como con trauma renal.

La víctima precisó que los hechos ocurrieron a eso de las 23:00 horas cuando un taxista, que logró identificar como Juan Lagos Salomón, le ofreció dinero y la hizo subir al automóvil.

El sujeto se dirigió hasta las cercanías del Aeropuerto de Calama, donde inició al ataque.

"Cuando vi que su comportamiento era extraño, le pedí que se devolviera al lugar donde me había recogido y que me dejara ahí, pero se negó. Se puso intenso, muy descontrolado. Intenté bajar del automóvil. Cuando él vio que tenía la mayor parte de mi cuerpo fuera del automóvil, arrancó y me arrastró por varios metros", señaló la joven.

Tras ser atendida por un centro médico, la joven explicó que "el lado izquierdo de mi cuerpo fue el que más se afectó durante el arrastre. Los médicos me hicieron exámenes. Entre otros, recibí golpes a mi riñón e intestino grueso. Tengo un trauma renal".

La mujer permaneció internada en el Hospital Carlos Cisternas de Calama hasta el 19 de julio.

**Respuesta:** Junto con denunciar y repudiar públicamente los hechos, el Movilh brindó orientación a la víctima y puso los antecedentes a disposición de la Subsecretaría de Prevención del Delito para que le garantizarán asistencia jurídica y psicológica gratuita.

Clasificación: Transfobia

<sup>[3]</sup> Más antecedentes de este caso en el II capítulo del XIX Informe Anual de los Derechos Humanos de la Diversidad Sexual y de Género publicado en Movilh.cl

# Ataque a bar lésbico

#### Fecha: 22 de julio

Hecho: Un ataque lesbofóbico sufrió el bar LGBTIQA+ Chueca Bar, ubicado en Rancagua 406, comuna de Providencia.

Las dueñas del recinto precisaron que "en un acto claramente premeditado y calculado", tres sujetos, aún sin identificar, pintaron de blanco la fachada del recinto con el fin de borrar pinturas con los rostros de Nicole Saavedra y Ana Cook, ambas víctimas fatales de la lesbofobia, "al igual que el mural que mostraba a una mujer afrodescendiente, una persona no binaria y una drag King".

"Estos actos hacen que cada vez nos sintamos más inseguras. Chueca es un espacio creado para las lesbianas, un lugar seguro para la disidencia y donde trabajamos puras mujeres. Claramente, esto es amedrentamiento. Una amenaza para algunas personas, que muestran su odio de esta manera, pero que en cualquier momento puede ser manifestado de otra aún peor", añadieron.

**Respuestas:** El Movilh, Iguales y Rompiendo El Silencio repudiaron públicamente lo ocurrido y solidarizaron con las afectadas.

Clasificación: Homofobia

# Agresión

Fecha: 6 de agosto

Hecho: Un grupo de personas lanzó insultos lesbofóbicos a una joven viñamarina en la Rotonda de Santa Julia.

De acuerdo a cercanos/as, la joven fue golpeada, por lo que debió ser derivada a un centro médico.

#### Respuesta:

-El 21 de agosto el Mums repudió la agresión en una concentración convocada por Redes Feministas en el Parque Italia.

-Rompiendo El Silencio repudió por redes sociales el ataque.

Clasificación: Homofobia

#### Homofobia y xenofobia

#### Fecha: 15 de agosto

**Hecho:** El médico Jaime García Biron agredió verbalmente a dos funcionarios/as de la aerolínea Avianca, incurriendo en una actitud abiertamente homo/lesbofóbica y xenofóbica.

En un video<sup>4</sup> difundido por MegaNoticias se apreció que el sujeto comenzó la agresión contra los/as trabajadores/as cuando le notificaron que no podría viajar en el vuelo 240 destino a Bogotá debido a su estado de ebriedad.

"Maricón culiao" (sic), le señaló a un trabajador con típico tono homófobo, para luego lanzarse contra una funcionaria.

"Lesbiana de mierda. Estúpida, guatona lesbiana. Eres tan penca que no tení ningún admirador. Tení pelo hasta en la raja guatona culiá. Eres una pobre huevona imbécil. Comunista culiá, por eso que Colombia y Venezuela van así. Ojalá que te dé cáncer, a tus hijos y a tu familia" (Sic), señaló, tras lo cual fue detenido por personal de la PDI.

<sup>[4]</sup> https://www.youtube.com/watch?v=vVhBtYW4Bro

Al día siguiente el médico señaló por Twitter que "pido perdón y me siento muy avergonzado. Ayer tome un rabotril por miedo a volar, me había tomado un solo trago y se produjo un apagón mental. Perdón a los trabajadores que ofendí, sin querer. Curso una depresión severa en tratamiento con compleja situación familiar y pandemia".

El 15 de septiembre, el agresor envío además un correo al Movilh.

"Me dirijo a ustedes, como máximos representantes de la comunidad LGBTIQ+ del país, institución a la que tengo en alta consideración por el trabajo que realizan (...) Quiero pedir mis más profundas disculpas por los hechos protagonizados en el aeropuerto internacional de Pudahuel. Considero relevante hacerlo porque sé que muchas personas pudieron sentirse afectadas por mi comportamiento", sostuvo.

"La inexcusable forma en que traté a una colaboradora obedeció a circunstancias derivadas de la pérdida transitoria de autocontrol en un cuadro emocional afectado por circunstancias recientes y dolorosas en mi vida. Producto de la mala combinacion de medicamentos y alcohol, aquel 15 de agosto actué fuera de conciencia y al observar los registros puedo comprender a cabalidad el daño originado. He tratado de reparar con los afectados los errores cometidos y apenas pude, pedí disculpas públicamente y expliqué lo que me había pasado", dijo.

"Con todo, sé que es difícil reparar lo suficiente, he causado dolor a los afectados y a mi familia, que han sufrido el acoso a través de redes sociales por algo de mi exclusiva responsabilidad. Son 35 años que hoy no los definen el servicio a cientos de pacientes, sino un error lamentable que marcará mi vida personal y profesional. Esta situación me ha permitido empatizar con el dolor y la discriminación que viven miles cotidianamente de parte de los que juzgan y condenan más allá de cualquier circunstancia", finalizó.

**Respuesta:** El 16 de agosto Movilh repudió públicamente la agresión e instó a Avianca a adoptar medidas para prevenir abusos en el aeropuerto.

Clasificación: Conducta homofóbica

# "Maricón"

Fecha: 24 de septiembre

**Hecho:** Una mujer trans de 42 años fue víctima de insultos transfóbicos por un sujeto que previamente había golpeado una parte de su cuerpo con su vehículo, a minutos de salir de su trabajo, en Valparaíso.

"Cuando le dije que tuviera cuidado, se bajó y comenzó a gritarme "maricón, aprende a vestirte y hablar como hombre primero". Me sentí pésimo, porque además me atropelló", señaló.

Respuesta: El Movilh brindó orientación jurídica a la afectada.

Clasificación: Transfobia

# **Prenden fuego**

#### Fecha: 12 de octubre

**Hecho:** La presidenta del Sindicato Amanda Jofré, Alejandra Soto, fue atacada por tres sujetos a las 5 A.M del 9 de octubre en momentos cuando salía de un velorio en Avenida La Paz con Antonia López de Bello, comuna de Independencia.

"Le arrojaron bencina y le prendieron fuego, mientras recibía golpes y cortes por todo su cuerpo. Si bien originalmente buscaron robarle su cartera, rápidamente los hechos se tiñeron de transfobia usando los típicos epítetos con los que somos agredidas cotidianamente: "maricón", "caballo culiao", "enfermo de mierda"", denunció el Sindicato.

"Literalmente en llamas Alejandra intentó buscar auxilio unas cuadras más allá del lugar de los hechos, pero 5 personas, todos hombres, a los que acudió no le prestaron ayuda", añadió el colectivo.

"La agresión no sólo quería 'castigarme' por mi orientación sexual, sino suprimir al diferente (...) Rociarme de combustible y prenderme fuego sólo puede ser interpretado como un intento de dar muerte de modo cruel, aprovechándose de la vulnerabilidad que sufren las personas transgénero como yo, quienes permanentemente vemos nuestros derechos humanos agredidos", señaló la querella presentada en el Tercer Juzgado de Garantía de Santiago y cuyo extracto fue difundido por la Agencia Presentes el 21 de octubre.

#### **Respuesta:**

El Sindicato Amada Jofré denunció por redes sociales el ataque y reportó el abuso al equipo jurídico de la Corporación de Defensa y Promoción de los Derechos del Pueblo (CODEPU), el cual patrocinó una querella.

Clasificación: Transfobia

# Doble agresión

Fecha: 21 de octubre

**Hecho:** Dos sujetos lanzaron ofensas a una mujer en razón de su expresión de género, a cuadras del Mall Plaza Egaña, en La Reina.

"Maricona, camina normal", "dai miedo, sucia" (Sic), fueron algunas de las ofensas que la víctima escuchó tras su espalda.

Cuando un transeúnte intervino a favor de la mujer, pidiendo a los agresores que terminaran con el acoso, se lanzaron contra el hombre y le dieron golpes de puño en su rostro.

Este caso suma dos episodios de discriminación, uno por cada víctima.

Respuesta: El Movilh brindó orientación jurídica a las dos personas afectadas

# ¿Te gusta?

#### Fecha: 13 de noviembre

**Hecho:** Repetidos golpes e insultos en razón en su orientación sexual sufrió un hombre de 40 años, D.G.R, en momentos cuando salía de una discoteca, en la comuna de Providencia.

"Cuatro sujetos se acercaron a mí para robarme. Luego de quitarme la billetera, comenzó la pesadilla. Comenzaron a gritar que era "un maricón" y un "hueco" y procedieron a darme golpes de puños y patada en diferentes partes del cuerpo. Me bajaron el pantalón, mientan decían "¿te gusta marica?" Quedé con una fractura de cadera", dijo.

**Respuesta:** El Movilh orientó al afectado en los antecedentes a recopilar para que formalizara una denuncia por agresión y discriminación.

Clasificación: Homofobia

#### "Marinconcito"

Fecha: 14 de noviembre

Hecho: Una joven trans de 17 años fue insultada en el centro de Concepción, donde paseaba junto a dos amigos.

"Un hombre me gritó "maricón culiao". No lo tomé en cuenta, pero siguió gritando. Uno de mis amigos se dio vuelta, solo mirándolo con enojo. Ahí el hombre, que era mayor, se acercó más donde nosotros/as, pasó por el lado y pateó una de mis piernas. Fue horrible, no entendía lo que pasaba", señaló.

Respuesta: El Movilh brindó orientación jurídica y psicológica a la joven.

Clasificación: Transfobia

Mira como camina

Fecha: 16 de noviembre

**Hecho:** Un joven venezolano de 28 años, F.M.R.G, fue perseguido por dos sujetos a eso de las 21:00 horas, en las cercanías de la Estación del Metro Franklin, cuando venía de su trabajo en dirección a su casa.

"Me pidieron una colaboración en dinero y como no respondí, comenzaron a seguirme. Decían "mira como camina el maricón", "matemos al maricón", "ay, el maricón". Decidí correr, al poco tiempo me alcanzaron, me patearon la espalda y, cuando estaba en el suelo, también la cabeza. Me escupieron y salieron corriendo, sin robarme nada", relató el afectado.

Respuesta: El Movilh brindó orientación jurídica y psicológica al afectado.

# Bate de béisbol

#### Fecha: 21 de noviembre

Hecho: Una joven pareja gay fue agredida en razón de su orientación sexual mientras se encontraba en su automóvil, en San Bernardo.

"Le pedí a un conductor, que iba en otro auto muy cerca, que tuviera más cuidado, pues casi nos choca. Entonces salió una mujer del vidrio del copiloto, insultándome, diciendo garabatos y malas palabras como "maricón culiao, tení una cara de hueco, se la vai chupando al weon que va al lado tuyo" (Sic), entre otras frases del mismo calibre", denunció uno de los afectados.

En ese momento, el agresor bajó del automóvil "para decirme, con un bate de béisbol en las manos, "maricón culiao" (Sic). Finalizó su frase con un golpe del bate que iba directo a mi cara. Alcancé a poner mi mano recibiendo el impacto en ella. Fue tal mi shock de no sentir la mano por un momento que no sabía qué hacer. Vi que mi pareja bajó del auto e intentó decirles que por favor subieran a su vehículo. La mujer se abalanzó dando golpes de pecho a mi pareja. Dado que estábamos frente a una sede de votaciones por las elecciones, y debido a los gritos y el llamado de ayuda de mi pareja, inmediatamente llegó carabineros al lugar"

La pareja formalizó luego su denuncia en la 14 Comisaría de San Bernardo.

Respuesta: El Movilh brindó orientación jurídica a la pareja.

Clasificación: Homofobia

### Golpiza y robo

Fecha: 9 de diciembre

Hecho: Una violenta agresión física sufrió una mujer trans de 41 años, K.D.G.H en manos de un sujeto.

El ataque la dejó cuatro días internada en el Hospital Carlos Van Buren de Valparaíso.

El ataque tuvo lugar a eso de las 9:00 A.M en el Parque Aconcagua de Quillota, donde la mujer había asistido tras concertar una cita mediante la aplicación Grindr.

La víctima fue engañada, pues solo fue citada ahí para ser atacada y robada.

En efecto, tras hablar con el sujeto que supuestamente la había citado, K.D.G.H decidió abandonar el lugar, pues el agresor pretendía a todas luces abusar de ella. Al darse vuelta, recibió un golpe de un objeto contundente en su cabeza, perdiendo al instante la conciencia.

Inicialmente K.D.G.H fue ingresada al Hospital de Quillota, pero debido a la gravedad de las lesiones fue trasladada al Hospital Carlos Van Buren, donde fue intervenida quirúrgicamente.

Debido a los golpes, la víctima resultó con fractura del hueso temporal y nariz y diversos hematomas en su cabeza y rostro. Además fue víctima de robo, pues al ser encontrada no portaba ni su billetera, ni su celular.

Los hechos fueron denunciados por la familia en la 4º Comisaría de Carabineros de Chile.

**Respuesta:** El Movilh brindó asesoría a la víctima, denunció públicamente lo ocurrido y puso todos los antecedentes a disposición de la Subsecretaría de Prevención del Delito para que brindaran asistencia jurídica y psicológica gratuita a la afectada.

Clasificación: Transfobia

# "Arma blanca"

#### Fecha: 29 de noviembre

**Hecho:** Un joven de 28 años, D.I.F.F, fue agredido físicamente eso de las 23:00 horas en Pucón por tres sujetos; mientras se encontraba abrazado con su pareja y unos amigos en una plaza ubicada en la calle Urrutia con Ansorena.

Los sujetos, aparentemente drogados y ebrios, se acercaron a la pareja y a sus amigos para pedir cigarros. "Nadie de nosotros les dio cigarro (...) Luego se pusieron al lado de nosotros, por lo que decidimos irnos. Se veían complicados. Andaban con un bidón de cinco litros de vino", dijo D.I.F.F..

"Cuando nos fuimos del lugar comenzaron a seguirnos y a gritarle "maricón" mi pareja", recordó.

Ante ello, la pareja y sus amigos comenzaron a correr.

La pareja fue alcanzada en las afueras de Yanbal, un almacén-botillería ubicado en Urrutia 424.

Los victimarios "dijeron 'ahí está el maricón' y cruzaron hacia el local. Y ahí fue cuando empezó la agresión. En ese momento lo que recuerdo es que se fueron contra mía. (...) Atiné a protegerme con mis manos", señaló al recordar la agresión con arma blanca.

La pareja logró salvarse de una agresión mayor debido a que los dependientes del local salieron con fierros para ahuyentar a los delincuentes. Tras ello, D.I.F.F fue traslado en una ambulancia a un centro médico, donde se constataron heridas en su mano izquierda y en el muslo.

Carabineros de la 9 Comisaría de Pucón detuvo a dos de los atacantes identificados con las siglas F.A.I y M.S.L.

**Respuesta:** El Movilh reportó el caso a la Subsecretaría de Prevención del Delito para que brindaran orientación jurídica y psicológica a la víctima.

Clasificación: Homofobia

# Amenaza de muerte

Fecha: 1 de diciembre

**Hecho:** Un hombre de 51 años, L.C.L.C, recibió entre octubre y noviembre del 2021 diversas ofensas en razón de su orientación y amenazas de muerte provenientes de un sujeto que en forma anónima le enviaba mensajes por correo electrónico y WhatsApp.

"Tengo tu número. Si quieres seguir con vida, ándate de este país. Tu vida terminará. No queremos más gays", señalaba uno de los mensajes que el afectado denunció el 1 de diciembre en carabineros.

Respuesta: El Movilh brindó orientación jurídica al afectado.

# Burla

#### Fecha: 7 de diciembre

Hecho: Los/as diputados/as electo/as Johannes Kaiser, y Gloria Naveillán (PR), se burlaron la identidad de género de la parlamentaria electa, Emilia Schneider (Comunes) durante el programa de YouTube "El Nacional-Libertario".

"¿Sabes cuál va a ser la gracia? Tú vas a tener que compartir baño con Emilia Schneider", dijo Kaiser, tras lo cual se rio junto a Naveillán.

"Repudio transfobia que exudan representantes de ultraderecha de Kast en este video. No porque se refieran a mí, sino porque humillan a la comunidad. Mofarse de personas trans por ir al baño es infame", reaccionó Schneider por su Twitter.

Respuestas: OTD y el Movilh, entre otras organizaciones, repudiaron públicamente lo ocurrido

Clasificación: Transfobia

# **Ataques verbales**

Fecha: 13 de diciembre

**Hecho:** Una pareja lésbica que trabajaba vendiendo alimentos en Pucón denunció ser víctima agresiones verbales en razón de su orientación sexual por parte de funcionarios municipales.

**Respuesta**: El Movilh orientó a una de de las denunciantes en los antecedentes que debía recopilar para formalizar su denuncia.

Clasificación: Homofobia

# "Pervertidos"

Fecha: 19 de diciembre

Hecho: Una joven del centro de Santiago fue insultada a través de WhatsApp por un hombre que se identificó como militante del Partido Republicano.

"Todos maricones o lesbianas son cochinos o pervertidos", le señaló.

Respuesta: El Movilh brindó orientación a la denunciante.

# Ataque con palos y pistola

#### Fecha: 28 de diciembre

**Hecho:** Un violento ataque homofóbico sufrió una joven pareja gay de nacionalidad venezolana en el Parque de Los Reyes de Santiago, donde 10 sujetos los insultaron y siguieron por su orientación sexual, para luego atacarlos físicamente.

Cuando la pareja iba de la mano por el Parque Los Reyes de Santiago, fue interceptada por los agresores que les gritaron "gays asqueroso, hijos de puta, merecen morir".

En un momento "nos gritaron que corriéramos y comencé a correr. Ahí me di cuenta que a mi novio lo habían tumbado al piso. Le aplastaron la cabeza con los pies, le dieron patadas en el cuerpo y lo arrastraron por el piso. Salí a buscar ayuda, llegué hasta las afueras del departamento donde vivo, ubicado al frente, cuando tropecé y me caí", relató uno de los afectados.

Añadió que "tras caer llegaron los hombres y me comenzaron a golpear con pies, palos y un bate de béisbol. Me apuntaron con una pistola, cargándola frente a mis ojos, amenazando que si hablaba algo nos iban a matar. Por cada palabra que decía me daban un golpe y me ofendían diciendo "gay asqueroso, maricones de mierda, hijo de puta", que merecíamos la muerte".

"Yo solo les preguntaba dónde estaba mi novio. "Tráiganme a mi novio", gritaba. Se acercaron a pegarme con una pistola en la cabeza y ahí comencé a sentir que corría sangre por mi cara. Mi cuerpo estaba lleno de sangre", relató.

Minutos después al lugar llegó la pareja y, en ese momento, los agresores exacerbaron sus ofensas. "Maricones de mierda, muéranse, merecen lo peor, no tienen derecho a vivir", les gritaron.

Al llegar más personas al lugar del incidente, los agresores finalmente arrancaron. La pareja denunció el delito en carabineros y constató lesiones en un centro médico.

El 27 de enero, y luego de que el Movilh denunciara públicamente el abuso, la subsecretaria de DDHH, Lorena Recabarren, solidarizó con las víctimas, señalando por su Twitter que "el respeto es la base de una sociedad justa y libre, seguiremos convocando y trabajando para que nunca más tengamos que ser testigos de actos de discriminación como los denunciados. El odio y la violencia la rechazamos siempre".

También por Twitter, la Subsecretaria de DDHH, redondeó que "condenamos enfáticamente el ataque en contra de una pareja homosexual, denunciado por @movilh. La coordinación con la @SubPrevDelito ha permitido que las víctimas reciban apoyo legal y psicológico. Nada justifica actos de esa naturaleza".

A su vez la alcaldesa de Santiago, Irací Hassler, expresó por la misma red social su "absoluto repudio a este ataque homofóbico y todo el apoyo a nuestros vecin@s. Trabajaremos por mayor seguridad, con enfoque preventivo y con perspectiva de género, para vivir libres de discriminación y violencia en nuestros barrios. ¡Defenderemos la diversidad siempre @movilh".

Finalmente la diputada electa Emilia Schneider calificó de "gravísimo" el "ataque de odio. Otro doloroso y triste suceso para nuestra comunidad LGBTI+, que reafirma la necesidad de avanzar en medidas preventivas y que den seguridad contra la violencia y discriminación. Confío que nuestro futuro gobierno será una oportunidad para avanzar".

Respuestas: El Movilh brindó orientación jurídica a los afectados.

# 3. Atropellos policiales y/o detenciones arbitrarias

Un 25% disminuyeron las denuncias por atropellos y/o detenciones policiales, aunque los casos fueron particularmente violentos, incluyendo ofensas verbales, torturas y abusos de poder, sin que en ninguna ocasión la institución diera a conocer resultados de alguna investigación o sancionara a los responsables.

Del total de abusos, 7 afectaron a gay, 4 a lesbianas y 1 una mujer trans, sucediendo los atropellos a los derechos humanos en Alto Hospicio (1), Chañaral (4), Chillán (2), Viña del Mar (1) y Valparaíso (4).

2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Total
5	4	1	0	3	2	0	6	2	5	6	6	3	0	3	1	16	32	16	12	123

# Falta de atención

## Fecha: 8 de febrero

**Hecho:** Funcionarios de la Segunda Comisaría de Chillán se negaron a tomar la denuncia de un joven de 25 años que había sido insultado en razón de su orientación sexual por una vecina.

Al llegar al lugar de los hechos "no me preguntaron nada, se limitaron a decir que debía disculparme por haber encarado a la vecina al decirme "amariconado"", dijo el afectado.

Añadió que en virtud de ello se dirigió a la Comisaría para poner un reclamo, pero el oficial ahí presente se negó a dar el nombre de los funcionarios que se habían negado a tomar su denuncia por homofobia.

Este relato suma dos episodios de discriminación: la negativa a tomar la denuncia por homofobia de la vecina y rechazo a recibir el reclamo contra los carabineros responsables de ello.

Respuestas: El Movilh brindó orientación jurídica al afectado.

Clasificación: Conducta homofóbica

# Detención y humillación

#### Fecha: 14 de enero

**Hecho:** Una pareja gay, de 22 y 25 años, señaló que fue insultada en razón de su orientación sexual por funcionarios de Carabineros en el marco de un control sanitario.

"Con mi pareja caminábamos a nuestra residencia en Chañaral cuando nos detuvo carabineros por no cumplir con el toque de queda. Nos realizaron un control de identidad y nos preguntan si éramos pareja a lo que respondimos que sí. Se burlaron y nos llamaron maricones", denunció uno de los afectados.

Añadió que "bruscamente nos subieron a la patrulla donde en reiteradas ocasiones nos ofendieron por ser una pareja gay. Al llegar a la comisaría nos pidieron que firmáramos una declaración de manera agresiva, a lo cual nos negamos porque nunca nos explicaron el procedimiento. Como consecuencia, nos golpearon en brazos, espalda y abdomen y continuaron denigrándonos por nuestra orientación sexual".

Luego, recordó, "nos llevaron al hospital a constatar lesiones. Durante el examen físico una señorita me preguntó "¿quién de los dos es la mujer?" a lo que respondo que ambos somos hombres, ninguno es mujer. Se puso a reír para añadir que "¿entonces a los dos se lo meten?" Nos subieron nuevamente a la patrulla donde se burlaron de nosotros y nos llamaron maricones en reiteradas ocasiones. Nuevamente en la comisaría me volvieron a dar golpes y continuaron denigrándonos por nuestra orientación sexual. Estando en el calabozo volvieron a realizar comentarios denigrantes respecto a nuestra sexualidad. Cuando nos fuimos a las 5:15 A.M los funcionarios exclamaron "se van los maracos".

Este relato suma 4 episodios de discriminación: al momento de la detención, en la comisaría, en recinto médico y en la patrulla.

**Respuestas:** El Movilh brindó orientación jurídica a los afectados y denunció los hechos ante el Departamento de DDHH de Carabineros, pero jamás hubo respuesta satisfactoria para las víctimas.

Clasificación: Homofobia

# Eres un hombre, maricón

Fecha: 6 de marzo

**Hecho:** Tras ser agredida física y verbalmente por un vecino, una mujer trans, F.R.O (48) reportó los hechos a carabineros de la Comisaría de Alto Hospicio, los cuales se apostaron en el lugar del incidente para conocer lo ocurrido.

Sin embargo, el funcionario policial a cargo, J.A, se negó a escuchar a la denunciante, la trató en todo momento como hombre, sin respetar su identidad de género, y dio credibilidad a una falsa denuncia de agresión formulada por los vecinos de la víctima, quien fue retenida todo un fin de semana.

Cuando la mujer exigió que se respetara su identidad de género, el policía la trató por el nombre asignado al nacer para añadir que "eres un hombre, maricón".

Respuestas: El Movilh brindó orientación jurídica a la afectada.

Clasificación: Transfobia

# Hueco

Fecha: 21 de marzo

**Hecho:** Un trabajador de la salud de 30 años, D.V.C, señaló que fue agredido e insultado en razón de su orientación sexual por dos funcionarios de carabineros de Viña del Mar.

El incidente ocurrió cuando fue interceptado por carabineros en el marco de procedimientos sanitarios para la prevención del Covid-19. El joven estaba haciendo ejercicios a unas dos cuadras de su casa, derivando la situación e insultos homofóbicos.

"Estaba en patines. Iba llegando a una cuadra de mi departamento cuando un carabinero se tira encima mío. Me hacen control sanitario no me dejan explicar nada y me toman detenido humillándome, gritándome, faltándome el respeto", señaló.

Uno de los funcionarios "me decía "mira hueco culiao tú crees que por ser profesional y cabro joven puedes ser irónico" (Sic). Yo nunca ironicé con nada. Él me provocaba, me basureó tanto, pero que yo jamás le respondí nada. No entendía porqué estaban colocándome esposas y metiéndome dentro del furgón policial, donde había un policía sin mascarilla".

Tras una hora y media en la Comisaría, "me liberaron. Lo más extraño es que no quedé citado a nada. No sé qué pasó. Dentro de la comisaría que solo me dijeron "tú te vas"".

Respuestas: El Movilh brindó orientación jurídica al afectado.

#### Tortura lesbofóbica

# Fecha: 5 de abril

**Hecho:** Una fotógrafa de 32 años, V.R.B, denunció a funcionarios de la Octava Comisaría de Valparaíso de agredirla física y verbalmente en razón de su orientación sexual en el marco de un irregular procedimiento policial.

La denunciante precisó que los hechos ocurrieron a eso de las 17:30 horas cuando se desplazaba en su vehículo por Valparaíso, desde su lugar de trabajo a casa. En ese momento tuvo una discusión con un sujeto vestido de civil (y que luego dijo ser carabinero), quien viajaba en su respectivo auto. El sujeto iba a una velocidad muy lenta por la carretera, por lo que la mujer hizo juego de luces para que la dejara adelantar o pasar.

"En varias oportunidades quiso adelantarme y dificultaba mi paso, por lo que discutimos desde nuestros autos", dijo la afectada.

Añadió que en medio de este incidente fue interceptaba por una patrulla y por el vehículo civil. Ya que jamás le dieron una razón del procedimiento, la mujer imaginó que se trataba de un control sanitario, sin embargo en ningún momento le permitieron mostrar su salvoconducto.

En tal contexto, V.R.B se negó a bajar del automóvil, iniciándose así una seguidilla de abusos por un funcionario que la víctima identificó como Erick Salinas.

Salinas "abrió la puerta del auto y forcejeó conmigo, haciéndome bajar del vehículo. Me negué porque no me explicaban nada. Entonces, me puso las esposas y el supuesto carabinero que vestía de civil cortó con un cuchillo negro mi cinturón de seguridad y me sacaron del auto", dijo.

Tras ello, "Salinas jaló de las esposas que no tenían seguro. Por tanto estranguló mis muñecas dejando contusiones. Me empujó y me pateó Llegando a la Comisaría me tomó las muñecas y presionó aún más las esposas. Me ingresó al lugar tirando de mi pelo y advirtiéndome que él sería mi peor pesadilla".

A eso de las 18:45 horas la pareja de la mujer se apostó en la Comisaría, donde le señalaron que la detenida tendría que pasar la noche en el recinto por daños simples y amenaza de muerte a carabineros, sin embargo solo dos horas más tardes comunicaron a V.R.B esta falsa acusación que pesaba en su contra.

A las 21:00 horas, los funcionarios trasladaron a la mujer hasta el Centro de Salud Familiar Plaza Justicia, donde se constaron lesiones en su párpado, muñecas y pierna derecha.

Saliendo del recinto médico, el funcionario Salinas "se ensañó conmigo debido a mi denuncia, y me golpeó e insultó durante todo el camino hasta la Comisaria. Azotó mi cabeza contra una pared, me sacó pelo al tirarlo, intentó quebrar mi brazo y mi pierna y mientras me pateaba me gritaba "lesbiana asquerosa". Me amenazó con violarme "desde la vagina hasta la cabeza por ser una lesbiana asquerosa". "Te voy a violar con mi luma", decía mientras gritaba mi dirección particular para amedrentarme", añadió.

Luego, dijo, "me ingresó a la celda jalando del pelo, y todos los otros policías miraban y se reían. Al otro día no me entregaron mi carnet de identidad. Dijeron un montón de mentiras hasta que el Mayor de la comisaría se dio cuenta y exigió conocer los hechos sucedidos debido a mi evidente mal estado de salud. Es él quien hace aparecer mi carnet de identidad y toma conocimiento y denuncia de todo lo sucedido", dijo.

La afectada constató por segunda vez lesiones, en el Hospital Carlos Van Buren. Ahí quedó establecido que la mujer quedó que con policontusiones y hematomas en muslo y rodilla derecha; más esgince en tobillo derecho y codo izquierdo. Debió tomar licencia por 15 días.

En abril el Movilh envío un reclamo a Carabineros solicitando una investigación de los hechos y sanción contra los responsables, recibiéndose el 22 de septiembre una respuesta insólita.

"Con fecha 15 de septiembre del 2021 el mando de la prefectura de Valparaíso determinó declarar el abandono del reclamo, toda vez que pese a ser citado los términos del artículo 43 de la Ley 19.880, no concurrió a prestar declaración, ni aportó medios de pruebas que permitieran acreditar los hechos denunciados". La carta fue firmada por el coronel de carabineros Cristián Clavería Poblete.

Lo cierto, es que Movilh nunca fue citado a declarar. Además de ello tampoco le correspondía declarar, ni menos aportar pruebas, en tanto, era una labor de Carabineros investigar los hechos y dar con los medios probatorios, así como contactar a la víctima y brindarle protección, nada de lo cual ocurrió

Este relato suma al menos 4 episodios de discriminación.

**Respuestas:** El Movilh brindó asesoría jurídica a la afectada, denunció lo ocurrido al INDH y a la Fiscalía, además de presentar un reclamo en el Departamento de DDHH de Carabineros y efectuar gestiones ante el Colegio Médico para que realizaran una pericia a la víctima.

# 4. Discriminación laboral

Un 3,6% bajaron las denuncias o casos por discriminación laboral en 2021 en comparación con el año precedente.

Del total de 106 casos, 16 afectaron a personas trans (6 mujeres, 7 hombres y 3 no binarios), 29 a lesbianas y 61 a gays.

Los abusos ocurrieron en Iquique (4), Antofagasta (6), Calama (2), Copiapó (3), Coquimbo (7), Valparaíso (5), Viña del Mar (1), Quilpué (1), San Antonio (3), San Felipe (1), Buin (1), El Monte (1), Cerrillos (1), Colina (3), Estación Central (1), Huechuraba (3), Las Condes (8), Lo Prado (1), Maipú (1), Ñuñoa (3) Pedro Aguirre Cerda (1), Providencia, (1), Pudahuel (2), Puente Alto (2), San Bernardo (2), San Miguel (1), Santiago (7) Providencia (2), Vitacura (5), San Vicente de Tagua Tagua: (2), San Francisco de Mostazal (1), Santa Cruz (1), Curicó (2), Talca (1), Linares (3), Chillán (1), Concepción (6), Coronel (1), Arauco (2), Talcahuano (3), Futaleufú (1), Punta Arenas (1) y redes sociales (2).

																				Total
2	2	3	1	1	10	9	3	9	13	9	10	12	16	32	38	28	72	110	106	486

# "Maricones"

Fecha: Diciembre 2020 al 11 de enero del 2021

**Hecho:** Burlas y acosos de jefes y compañeros de trabajo recibió una pareja gay en una empresa procesadora de alimentos, ubicada en Linares.

Uno de los afectados precisó que en diciembre del 2020 un superior los vio despedirse afuera de la empresa con un beso. Al día siguiente comenzaron los problemas.

"Nos cambiaron de áreas u horarios de trabajo, obstaculizaron que estuviéremos cerca y comenzó el rumor de que había "maricones" en la empresa. Esto, muy a diferencia del trato que daban a parejas heterosexuales que trabajan en el mismo lugar", señaló uno de los afectados

Dado que la situación se volvió insostenible, el 11 de enero del 2021 ambos trabajadores presentaron su renuncia.

Respuestas: El Movilh brindó orientación jurídica a la pareja.

Clasificación: Homofobia

#### Burlas por nombre social

Fecha: Enero

**Hecho:** Un joven trabajador de la Comercial Súper Bodega a Cuenta, de la comuna de Coquimbo, denunció que al poco tiempo de ingresar a la empresa, en 2017, solicitó ser tratado por su sexo y nombre social, sin embargo, sus superiores se negaron a e ello.

"Me dijeron que fuera del trabajo podría ser, pero que dentro tendría que ser llamado y tratado según lo que decía mi carnet de identidad. Me agüanté hasta que salió la Ley de Identidad de Género y pude cambiar mi nombre y sexo registral. En enero del 2020 tuve mis documentos nuevos en la mano, se demoraron mucho en cambiar mi contrato y otros documentos internos en mi trabajo. Cuando les dije que debían permitirme usar el baño de hombres; porque por razones obvias no quería seguir usando el de mujeres, recibí un rotundo no porque otros se podrían sentir incómodos. Tampoco han cambiado el nombre de mi credencial, pues señalan que deben esperar autorización de Santiago".

"Por otra parte tengo un par de compañeros de trabajo que se burlan de mí. Me siento como en un circo freak en mi trabajo. Ya que la testosterona ha hecho su trabajo en mí, están todos pendientes que les muestre mis pelos. Hace poco hicieron un grupo de WhatsApp para burlarse de mí", dijo.

"Toda esta situación ha hecho que se me haga insostenible ir a trabajar. Ando irritable cuando se acerca la hora de ingreso al trabajo y me dan ganas de llorar. Lloro trabajando, me hace muy mal ir. El ambiente es súper malo para mí", añadió, tras precisar que desde el 25 de enero tomó licencia médica por estrés.

Este relato suma al menos 4 episodios de discriminación.

**Respuestas:** El Movilh brindó asesoría jurídica al afectado y lo orientó los pasos a seguir para denunciar los hechos en la Inspección del Trabajo.

Clasificación: Transfobia

# Persistencia homofóbica

#### Fecha: Enero

**Hecho:** La Casa de Cambio Sociedad e Inversiones y Rentas Efesis SpA, operadora de los locales "E-Change" continuó en 2021 con la discriminación hacia uno de sus ex trabajadores al persistir en tribunales con anular una sentencia por homofobia.

Felizmente, la Corte de Apelaciones de Antofagasta confirmó el 27 de enero del 2021 la sentencia por homofobia laboral dictada por el Juzgado de Letras del Trabajo, el cual obligó a la Casa de Cambio a indemnizar con \$5.532.639 al trabajador.

Los acosos contra J.R.M.C ocurrieron luego de que dos compañeros/as lo vieran en la calle tomando la mano de su pareja y le pidieran en distintas ocasiones a sus superiores que lo despidieran porque "no soportamos trabajar con gays", denunció el afectado al Movilh en enero del 2020.

A esto se sumaron interrogatorios de un jefe directo "respecto a si "yo era o no gay"y si en mi casa compartía o no habitación o cama con otras personas. Inicialmente, yo había dicho que tenía novia, para que me dieran el trabajo", dijo al denunciante para precisar que tras los acosos fue despedido el 24 de enero del 2020.

Los jueces/as de la Primera Sala de la Corte de Apelaciones de Antofagasta, Dinko Franulic Cetinic, Myriam Urbina Perán y el abogado (i) Gabriel Sánchez Rubio, confirmaron el fallo de primera instancia al rechazar recurso de nulidad presentado por la Casa de Cambio.

"La demandada no pudo sostener la legalidad de su despido y conforme a los indicios que se dieron por concurrentes, que no pudo demostrar la necesidad y justificación de su actuar o que no ha habido vulneración del principio de la igualdad de trato. Por lo anterior se acogerá la tutela, puesto que el despido surge como discriminatorio, motivado por la orientación sexual del demandante", señalaba el fallo de primera instancia dictado el 7 de noviembre del 2020

Respuesta: El Movilh brindó orientación jurídica.

Clasificación: Homofobia

# Inapropiadas

Fecha: 12 de enero

**Hecho:** Una pareja lésbica, de 21 y 19 años, fue desvinculada de una empresa agrícola, ubicada en Curicó, luego de que fuesen descubiertas de la mano en horario de almuerzo.

"Solo nos dijeron "son despedidas por conductas inapropiadas". Fue muy injusto", señaló una de las jóvenes

Respuestas: El Movilh brindó orientación jurídica a la pareja.

# Pecado

Fecha: 27 enero

**Hecho:** Una guardia contratada por una empresa externa que presta servicios a centros de Salud en Talca fue insultada por un compañero de trabajo.

"Yo llevo dos años en este trabajo. Él solo una semana. Comenzó a preguntarle a otros si yo era lesbiana. Cuando supo que sí, se acercó a mí solo para decirme que él podía ayudarme a ser buena persona, que el pecado homosexual puede superarse. No podía creerlo", denunció la mujer.

**Respuestas:** El Movilh brindó orientación jurídica a la trabajadora y medió ante la empresa, tras lo cual los acosos cesaron.

Clasificación: Homofobia

# Circo lésbico

Fecha: 28 de enero

**Hecho:** La trabajadora de un centro médico de San Bernardo fue increpada por la cocinera de un casino, ubicado en el mismo lugar, cuando la vio junto a su conviviente civil tomada de la mano.

"El circo lésbico, eso es lo que tenemos que aguantar los creyentes", dijo la agresora al pasar al lado de la pareja. Minutos después, comentó a distintos trabajadores que "mis creencias primero. La suciedad no me la va a ganar".

Respuestas: El Movilh brindó orientación jurídica y psicológica a la afectada

Clasificación: Homofobia

# Peligrosa

Fecha: 28 de enero

**Hecho:** Como "sucia, asquerosa y peligrosa" trató una enfermera de Buin a una compañera de trabajo solo porque la mujer había publicado en Facebook una foto junto a su pareja.

"Nunca he ocultado que soy lesbiana y asumo que todos los saben. Cuando G.E.P.B me ofendió por publicar una foto se me vino el mundo abajo, más que por sus palabras, porque nadie de quienes presenciaron esto dijo algo, ni siquiera nuestra jefa", señaló la denunciante.

**Respuestas:** El Movilh brindó orientación legal y psicológica a la mujer y medió ante sus jefes/as, tras lo cual no hubo más problemas.

#### Con maricones no hablo

#### Fecha: Febrero-marzo

**Hecho:** Un jardinero del Museo de Historia Natural e Histórico San Antonio, E.H.S.L, denunció que el director de dicha entidad, José Luis Brito Montero, lo discriminó en razón de su orientación sexual al señalarle en distintas ocasiones que "con maricones no hablo".

Los hechos, ocurridos en el transcurso de febrero y marzo, fueron denunciados por el trabajador (contratado por la empresa Phoenix) ante la Oficina de la Diversidad del municipio, la Inspección del Trabajo y el Movilh.

En otra oportunidad Brito Montero le señaló "parece que no sirves para este trabajo, lo haces mal, lo haces muy débil, amanerado".

El 8 de marzo Brito Montero desvinculó a E.H.S.L con la excusa de que había estado el viernes previo bebiendo alcohol en su hora de almuerzo y fuera del museo junto a un compañero.

Al ser notificado de ello, E.H.S.L intentó exponer sus descargos, pero Brito Montero, según la denuncia, puso la mano sobre la mascarilla del trabajador impidiéndole que hablara. Acto seguido, Phoenix no le renovó el contrato

Cuando el trabajador se retiró del Museo, recibió una llamada de la secretaria Jessica Guerrero, quien le señaló: "por fin te fuiste maricón de mierda!", informó el afectado.

Finalmente, el 10 de marzo Brito Montero indicó por su Facebook que "bajo mi jefatura nunca se ha discriminado a nadie de ninguna forma. Por lo que la acusación no es solo falsa, sino también malintencionada".

Este relato suma tres episodios de discriminación.

**Respuestas:** El Movilh brindó orientación jurídica al afectado y reportó los hechos en una carta dirigida al Alcalde de San Antonio, Omar Vera, quien dio inicio a una investigación sumaria.

Clasificación: Conducta homofóbica

# Xenofobia y homofobia

#### Fecha: Febrero a julio

Hecho: Al menos cuatro episodios de discriminación por su orientación sexual vivió un trabajador, W.J.G.P, de un supermercado de Cencosud.

El joven venezolano se desempeña en un supermercado Jumbo, ubicado en Las Condes, donde desde febrero a julio pasado, según denunció, dos compañeros/as de trabajo, Felipe Vargas y Daniela Morales, lo venían discriminado reiteradamente en razón de su orientación sexual y nacionalidad.

"He recibido constantes cuestionamientos sobre mi orientación sexual o sobre mi nacionalidad. Felipe Vargas, me acosa diciéndome "maricón culiao", me critica señalando que trabajo "mal como todos los venezolanos del supermercado". En un ocasión, y junto a su pareja mujer, Daniela Morales, que trabaja en el mismo local, me encararon en una cámara de frío, gritándome "maricón, hazte hombre"", denunció el trabajador.

Añadió que a los insultos homofóbicos y xenofóbicos se sumó "sobrecarga en las labores que Felipe Vargas me asigna, amenazas del tipo "hoy no saldrás temprano" o "ya verás lo que es trabajar"".

Explicó que al comentar lo sucedido a su jefe directo, la situación laboral empeoró, "pues Felipe Vargas me trata de maricón cobarde". Aunque luego denuncié por escrito los hechos, hasta ahora desconozco los resultados de esa gestión, así como cualquier investigación sobre la materia".

"El 22 de julio fui cambiado de sección en medio de nuevos comentarios despectivos sobre mi orientación sexual y mi nacionalidad (...) Necesito de verdad ayuda, estoy desesperado", señaló el joven.

Tras la intervención del Movilh, el Sub gerente de Asuntos Legales de Cencosud, Ricardo Alonso González Novoa, anunció que habían despedido a los responsables de los acosos y que implementarían capacitaciones en temas de inclusión para sus trabajadores/as.

Sin embargo, y paradojalmente, nada dijo sobre la xenofobia y restó relevancia al explícito componente homofóbico de las agresiones verbales, además mal utilizó los conceptos sobre diversidad sexual y de género (al hablar de "condición") al mismo tiempo que comprometía capacitaciones en la materia.

En efecto, el 10 de agosto González Novoa señaló en correo dirigido al Movilh que "hemos investigado los hechos denunciados. En efecto, se tomó declaración al denunciante y a testigos de los hechos. Se informa, además, que los trabajadores denunciados, Sres. Felipe Vargas y Daniela Morales, fueron desvinculados de la empresa".

"De los hechos denunciados se verificó que producto de un reclamo realizado por el señor W.G a su jefatura, respecto a la forma de trabajo de los denunciados, estos lo empezaron a tratar con improperios. En efecto, conforme declararon los testigos, luego de la queja realizada por el Sr. W.G los denunciados le dijeron "maricón", pero no aludiendo a su condición sexual, sino más bien, tal improperio, en palabras de los testigos, fue utilizado a modo de insulto al denunciante –en referencia, según ellos, a la falta de coraje de una persona– por haberlos acusado de que no realizaban su trabajo. Esta situación habría sido interpretada por el W.G como improperios proferidos en su contra únicamente por su orientación sexual, sin embargo, los testigos no concuerdan con tal apreciación", añadió.

"Por otra parte, de la investigación realizada se concluye asimismo que la Empresa sí atendió las quejas realizadas por el señor W.G, lo cual se hizo hablando con él y con las personas denunciadas, instándoles a cambiar su conducta y a mejorar la relación laboral. También es importante señalar que no se pudieron constatar otros detalles de la denuncia ya que el personal entrevistado desconoce los demás hechos contenidos", sostuvo.

Además anunció que se efectuaría "un acompañamiento en el desarrollo de sus funciones (al denunciante) (...) garantizado el respeto absoluto a sus derechos, en particular a su orientación sexual", "una charla de derechos fundamentales e inclusión para el turno nocturno del local" y un reforzamiento de la normativa y protocolos establecidas en nuestro Reglamento Interno de Orden, Higiene y Seguridad (RIOHS) al personal.

Respuestas: El Movilh brindó orientación legal y psicológica al joven y medió ante la empresa.

Clasificación: Homofobia en el caso de los agresores directos. Conducta homofóbica por parte de Cencosud.

# Disco gay

Fecha: 2 de febrero

**Hecho:** Un docente denunció que fue despedido del Colegio Saint Dominic, de Viña del Mar, solo por haber visitado una "discoteca gay" y pese a contar con 12 años de intachable trayectoria

La desvinculación tuvo lugar luego de que el docente se encontrara con un ex alumno en la "discoteca gay", siendo posteriormente conocido el hecho por la dirección del establecimiento.

"Me llamaron a Dirección. Fue muy humillante al punto de decirme que como pertenecía a un colegio de alta sociedad no podía vincularme ni tampoco asistir a discos gay. Esto me dejó muy mal. Me hicieron firmar un documento con el compromiso de no asistir nunca más a "este tipo de lugares". Sin embargo días después, el 9 de diciembre del 2020, me anunciaron que a partir del 28 de febrero del 2021 me desvincularían por necesidades de la empresa", denunció.

Respuestas: El Movilh brindó asesoría jurídica al trabajador.

Clasificación: Homofobia

#### Burlas

Fecha: 3 de febrero

**Hecho:** Dos trabajadores de una línea de buses que circula por Santiago dieron a conocer la orientación sexual de uno de sus compañeros sin su consentimiento, además de burlarse de él frente a otros empleados con risas y tonos de voz afeminados.

Respuestas: El Movilh medió ante la empresa, tras lo cual cesaron las agresiones.

Clasificación: Homofobia

# Maricón y cola

Fecha: 4 de febrero

**Hecho:** Un vendedor de 20 años de una tienda de ropa ubicada en Pudahuel fue insultado en razón de su orientación sexual por una compañera de trabajo, en momentos cuando dialogaban sobre sus respectivas vacaciones.

"Me dijo "maricón y cola" delante de otros compañeros, solo porque comenté que durante mis vacaciones le había pedido la unión civil a mi pareja. Todos se rieron con la reacción de mi compañera, la cual me humilló", dijo el joven.

Respuestas: El Movilh medió ante la tienda y capacitó a sus trabajadores/as en temáticas LGBTIQA+.

Clasificación: Homofobia

#### Solo hombres

Fecha: 4 de febrero

**Hecho:** Un funcionario de un local de comida rápida ubicado en Vitacura ofendió en razón de su identidad de género a un joven trans que estaba buscando trabajo.

Tras presentarle su currículum, el funcionario lo miró a los ojos y en tono burlesco le dijo "aquí se necesitan hombres, ya llenamos las vacantes de mujeres".

Respuestas: El Movilh brindó orientación jurídica al afectado.

Clasificación: Tranfobia

#### Huequito

#### Fecha: 5 de febrero

**Hecho:** Un trabajador de un supermercado, J.A.P.C (39), denunció que dos compañeros lo trataron de "huequito y hueco", además de burlarse de él con gestos obscenos. La supervisora de los tres trabajadores también se mofó, señaló el afectado.

Hechos ocurrieron en Santiago.

Respuestas: El Movilh brindó orientación jurídica al afectado.

Clasificación: Homofobia

# Patas de chancho

#### Fecha: 8 de febrero

**Hecho:** Un trabajador de 37 años de un servicio público de salud, ubicado en Talcahuano, denunció a dos de sus jefes, R.G y J.S, por discriminarlo en razón de su orientación sexual al hacer comentarios ofensivos sobre su persona ante terceros.

En conversación con colegas, los jefes se refierieron al trabajador como hueco, marica, maricón, huequerehue, cola, "le gusta las patas de chancho" y "le dan duro" (Sic).

A esto se sumaron acosos laborales de otra índole, por ejemplo "se me omite de correos electrónicos atingentes a mis funciones, no se respetan las actividades que el manual organizacional indica que yo debo cumplir, me contactan fuera de horario laboral y hay intentos de dejar mal mi reputación en mensajes dirigidos a pares y directivos de la institución" señaló el denunciante.

Añadió que "estas situaciones las soporté durante estos años por temor a denunciar y proteger mi trabajo, pero un día mi jefe me pasó su celular para que buscara una información y me encuentro de frente con un mensaje donde habla del "maricón", en referencia a mí".

Este relato suma dos casos de discriminación.

**Respuestas:** El Movilh brindó orientación jurídica al afectado y medió ante la dirección del centro médico, iniciándose un sumario para investigar la denuncia.

Clasificación: Homofobia

#### **Oculta**

Fecha: 13 de febrero

**Hecho:** Una auxiliar de aseo (20) de la Clínica Santa María, contratada por la empresa externa Aramark, fue impedida de realizar de manera normal su trabajo solo por ser trans.

"El 13 de febrero pregunté a mi supervisora por qué no me subían a los pisos superiores. Me dijo que no podían por que yo era una chica transgénero y no querían que me vieran los pacientes. Dijo que podía subir los domingos cuando no hubiera gente", señaló.

Añadió que tres días más tarde, "me vieron en el trabajo llorando por esta situación. Me dio un ataque de pánico. Desvanecí en tres ocasiones. Ahí, los superiores me dijeron que lo que habían hecho no era discriminación".

Hechos ocurrieron en Providencia.

**Respuestas**: El Movilh orientó jurídicamente a la afectada y envió una carta a Aramark. Tras ello, la empresa comunicó el desarrolló de capacitación en temáticas LGBTIQ+ para sus trabajadores/as, así como acompañamiento para la trabajadora en todo su proceso de transición.

Clasificación: Transfobia en el caso de la supervisora. Conducta transfóbica en relación a la empresa.

#### Aros

Fecha: 17 febrero, 10 de marzo y 23 de abril

**Hecho:** En al menos tres ocasiones la cajera de una empresa ubicada en Coquimbo solicitó a une joven trans no binario de 27 años que dejara de usar aro, humillándolo frente a terceros y desconociendo su identidad.

"Las cajeras pueden usar aros. Yo uso aros también, pero una de las jefas me ha pedido 3 veces que me los saque al frente de todos/as solo por ser "hombre", según ella", señaló le trabajadore.

Respuestas: El Movilh brindó orientación jurídica a la persona afectada.

Clasificación: Homo/transfobia

#### Peligro

Fecha: 23 de febrero

**Hecho:** Una funcionaria lesbiana de carabineros denunció que su superior directo comenzó a insultarla por su orientación sexual tras conocer que mantenía una relación con otra policía.

"Fui catalogada por mi superior como "un peligro para la institución". Me dice que me creo "un verdadero hombre con mi corte de pelo, señalando que por ser mujer no debía usar así el pelo", denunció.

Hechos ocurrieron en Viña del Mar.

Respuestas: El Movilh orientó a la afectada para reportar los abusos de manera formal en la institución.

Clasificación: Homofobia

## "Mujer"

Fecha: 26 de febrero

**Hecho:** Una trabajadora de una perfumería ubicada en Vitacura trató de "maricón" y "mujer" a un compañero solo con el fin de denigrarlo por su orientación sexual.

El afectado, de nacionalidad venezolana, precisó que "los insultos surgen de la nada. Ella aprovecha cualquier oportunidad para humillarme, esté o no en compañía de otras personas".

Respuestas: El Movilh medio ante la tienda, tras los cual cesaron los atropellos.

#### "Rarito sexual"

Fecha: 4 de marzo

**Hecho:** Un garzón de un bar ubicado en San Felipe denunció agresiones verbales propinadas por un compañero de trabajo.

"A raíz de nada hace gestos femeninos a mis espaldas, grita con voz aguda cuando me ve y me trata de "rarito sexual" delante de otros personas", dijo.

Respuestas: El Movilh dio asesoría legal al afectado y medió ante el bar.

Clasificación: Homofobia

# Maraco

Fecha: 27 de marzo

**Hecho:** Un trabajador de 38 años, C.A.L.C, de un condominio ubicado en Vitacura denunció que un compañero de trabajo, un conserje, lo hostiga con insultos homofóbicos cada vez que tiene alguna discusión o diferencia con él.

"Maraco" fue la frase más repetida por el conserje de manera verbal antes terceros y por un grupo de WhatsApp.

Respuestas: El Movilh brindó orientación jurídica al afectado

Clasificación: Homofobia

#### Cola

Fecha: 31 de marzo

**Hecho:** El guardia de un supermercado ubicado en Santa Cruz, Región de O'Higgins, se mofó de un reponedor en razón de su orientación sexual, calificándolo de "cola" y "fleto".

Cuando al afectado denunció los hechos ante su jefe, este le bajó el perfil a lo ocurrido, indicando que eran solo "palabras, no ofensas".

**Respuestas**: El Movilh brindó orientación jurídica al afectado y medió ante el supermercado, tras lo cual los acosos cesaron.

Clasificación: Homofobia

# Tanto hombre

Fecha: 7 de abril

**Hecho:** Una mujer de 25 años denunció a su jefe directo, M.D, de ridiculizarla por mantener una relación amorosa con otra mujer.

"Desde febrero pasado que me dice comentarios fuera de lugar, como que "dos mujeres juntas es una tontera habiendo tanto hombre" o "es cosa de probar para saber si gusta o no". Esto lo dice frente a mis compañeros. Todos se dan cuenta de que me discrimina", dijo la afectada.

Hechos ocurrieron en una tienda de artículos de casa ubicada en Cerrillos.

Respuesta: El Movilh medió ante la empresa, tras lo cual cesaron los abusos.

# Hombre de verdad

#### Fecha: 3 de mayo

**Hecho:** Un trabajador trans de 36 años de una empresa ubicada en Pudahuel denunció a su jefa directa por insultarlo en razón de su identidad de género.

El 30 de abril "en plena faena empezó a tratarme mal, a insultarme a decirme que por ser transgénero era menos hombre que su hijo que si es un hombre de verdad. Todo ocurrió porque le dije que su hijo, que trabaja en el mismo lugar, había cometido un error".

Respuestas: El Movilh brindó orientación jurídica al afectado y medió ante la empresa.

Clasificación: Transfobia

# Con la regla

#### Fecha: 7 de mayo

**Hecho:** Un trabajador de la Sociedad de Servicios Mesut SpA, de Calama, denunció a uno de sus jefes, A.F, de menoscabarlo en razón de su orientación sexual, mientras que la gerente del recinto, J.H, nada hizo para enfrentar los atropellos.

Precisó que el 6 de abril, al consultar sobre un asunto laboral A.F "me miró con cara de desprecio y asco y movió su brazo exagerando un movimiento femenino. Tres días más tarde él se dirigió a mí para decir en voz alto que "los maricones cuando andan enojados es porque andan con la regla"".

En otra ocasión A.F "me comentó que todos hablaban de mi orientación sexual y que eso era mi culpa, por como yo me vestía, porque utilizaba camisas con colores que no eran masculinos, porque siempre andaba peinado y por mi forma de hablar. También, me comentaba que todos querían que yo me fuera porque eran todos homofóbicos y no querían maricones".

Por todo, el 16 de abril el trabajador tomó licencia médica y el 5 de mayo denunció los hechos ante la Inspección del Trabajo.

Respuestas: El Movilh brindó orientación jurídica al trabajador y estampó un reclamo en la empresa.

Clasificación: Homofobia

# Acosos y despido

#### Fecha: 20 de mayo

**Hecho:** Una vendedora de una multi-tienda, ubicada en Copiapó, denunció a su jefa directa, C.D, por hostigarla solo porque mantenía una relación con otra trabajadora.

"Demuestra desprecio con muecas despectivas, impedía que conversara con mi pareja en horario de almuerzo o que fuéramos al baño juntas", señaló la denunciante.

Añadió que la jefa "demostró de todas las formas posibles su descontento con nuestra relación. A veces también involucraba a otras personas, diciendo, por ejemplo, que nos habían visto hablando, riéndonos o simplemente juntas. Es decir, nos espiaba y fue tanto así, que con mi pareja decidimos saludarnos a escondidas en los casilleros o tomar mi media hora de colación fuera del edificio, sin poder siquiera entrar a lavarnos las manos juntas para no dar oportunidad o razón a algún comentario despectivo hacía nosotras".

"Con el pasar de los meses fueron tantos sus comentarios negativos hacia nuestra relación que despidieron a mi pareja, justificando esto la tienda "como necesidad de la empresa". Pero dentro de la tienda se siguen contratando personas, sin entender nadie lo que ha sucedido". "Hoy que ha pasado casi un año desde esto y ha empezado la persecución hacia a mí, mirando cámaras para saber dónde estoy y con qué chicas de la tienda hablo. Mi jefa habla a mis espaldas, diciendo que a mi pareja la despidieron porque nos besábamos en público. Su clara intención es querer sacarme de la tienda por mi condición de lesbiana", señaló.

Este caso suma al menos 3 episodios de discriminación.

Respuestas: El Movilh brindó orientación jurídica a la afectada.

Clasificación: Homofobia

# "Homosexual declarado"

Fecha: 27 de mayo

Hecho: La concejala de San Miguel, Carolina Onofri Salinas (RN), sacó del armario al director jurídico del municipio sin su consentimiento, Armando Aravena.

"Nunca he declarado pública, ni privadamente mi orientación sexual, cuestión que tampoco oculto, pero no tiene porque ser publicada, difundida ni comentada mediante redes sociales por terceras personas no autorizadas por mí", denunció Aravena.

Añadió que "la discriminación se produce mediante el asedio propiciado por la concejala en razón de mi orientación sexual, cuestión que ella explicita en sus redes sociales, del siguiente modo: "es homosexual declarado y casado"".

Aravena explicó que los acosos de la concejala tuvieron lugar luego de que él la denunciara ante la Contraloría General de la República "por un mal uso de dineros públicos que hizo durante la reciente campaña electoral".

"A raíz de este deber, que tuve que cumplir de acuerdo al rol que legalmente me cabe dentro de la estructura municipal, la concejala ha orquestado una serie de ataques hacia mi persona, sintiéndose en todo momento perseguida por mi actuar, en circunstancias que yo solamente cumplí con las leyes de probidad administrativa que rigen en este país", explicó.

Sea cual sea el conflicto que la concejala "tenga conmigo, no debió haber utilizado sus redes sociales para denostar mi orientación sexual, argumentando como excusa unos epítetos yo emití en la sesión Concejo del pasado 25 de mayo, pero que no iban dirigidos a ella, cuestión fácilmente demostrable con la grabación de ese momento".

El Movilh asesoró al afectado patrocinando un recurso de protección que fue acogido el 26 de julio del 2021 por los magistrados/as de la Cuarta Sala de la Corte de Apelaciones de San Miguel, Dora Mondaca Rosales y Patricio Martínez Benavides y la abogada integrante Regina Díaz Tolosa.

"Quedando demostrado que la recurrida, al divulgar las expresiones referidas en las publicaciones materia de estos autos, incurrió en una conducta arbitraria e ilegal que vulnera la garantía del artículo 19 N° 4 de la Constitución Política de la República, por cuanto su actuar no puede entenderse como el ejercicio legítimo de un derecho, sino más bien una fórmula indebida para proveerse de tutela (...) se le ordena eliminar las publicaciones materia de estos autos, y abstenerse en lo sucesivo de realizar otras similares en cuanto a su tenor", señaló el fallo.

**Respuestas**: Junto con patrocinar un recurso a favor del afectado, el Movilh denunció y repudió públicamente los hechos y solicitó al alcalde Luis Sanhueza Bravo, que adoptara medidas preventivas para prevenir y erradicar la discriminación y para sancionar a la funcionaria.

# Insultadas y despedidas

#### Fecha: 28 de mayo

**Hecho:** Una pareja de mujeres, María Emilia Carrillo y Ruth García, denunció a la concesionaria Central de Restaurantes Aramark por no haber implementado ninguna medida por la discriminación que vivieron mientras trabajaban como auxiliares de aseo en el casino que la Forestal Arauco dispuso para el Proyecto de Modernización y Ampliación de la Planta Arauco (MAPA)

Las mujeres señalaron que tras denunciar los insultos propinados por compañeros, sus superiores cambiaron la rutina de trabajo de ellas y, lejos de recibir ayuda, luego fueron despedidas con la falsa excusa de "necesidades de la empresa".

"Comenzaron a cambiarnos los turnos, a separarnos. A mí, me decían infinidades de cosas, insultos y humillaciones. Dijeron que nos despedían por necesidades de la empresa, pero solo fue porque nosotras éramos pareja, algo que era solo parte de nuestra vida personal" dijo García (Radio Biobío, 28 de mayo).

Carrillo añadió que los acosos "se les informé a mi jefe y no hizo nada. Después empezaron con preguntas. Qué por qué vivía con Ruth, qué si acaso queríamos el mismo turno....".

Las afectadas interpusieron una demanda en el Juzgado del Trabajo de Arauco, estando la investigación en curso al cierre de este informe.

Respuestas: El Movilh recopiló los antecedentes del caso para el presente informe.

Clasificación: Homofobia

#### **Permanentes ofensas**

Fecha: Junio a septiembre

Hecho: Una auxiliar de la empresa CYG que trabaja en el Mall Alto Las Condes denunció a su empleador por lesbofobia.

Los abusos iniciaron en junio del 2021, cuando una superior, N.M, "dio a conocer sin mi consentimiento mi orientación sexual frente a terceros, específicamente ante compañeros/as de labores y de guardias una empresa externa, Liderman", señaló la trabajadora.

"Mientras mis compañeros/as comenzaron a consultarme sobre mi vida privada, guardias de la empresa externa me hostigaron con burlas y obscenidades. "No te vaya a salir el negro de whatsaap" o "habiendo tanta pichula te quedaste con una zorra" (Sic), fueron algunas de las ofensas que recibí", señaló.

Añadió que "estos hechos los comuniqué a mi jefe, el señor S.V, quien comprometió una reunión para abordar lo ocurrido, pero el encuentro jamás se concretó. También hice llegar mi denuncia al jefe de S.V, el señor C.A, sin embargo, tampoco hubo resultados".

El 15 de septiembre el Movilh envió una carta al gerente general de la empresa, Germán González Politt.

Respondió una persona identificada como Bernardo Salazar, quien comprometió que haría las consultas sobre la materia. Sin embargo, pasado un mes no hubo ninguna respuesta.

Por el contrario, añadió la trabajadora, "el 14 de octubre llegó a mi domicilio una carta de la designada investigadora del caso, Bernardita Barrera. Ésta sostuvo que tras entrevistar a la encargada de turno y acusada de violentar mi vida privada y a otros trabajadores/as, no hubo "constatación de los hechos denunciados"".

En la carta enviada por la empresa "no existió claridad de cuáles criterios usaron para descartar los abusos que sufro, los mismos que algunos trabajadores confirmaron. Tampoco CYG se hace cargo de que fui discriminada e insultada en horario laboral por guardias de otra empresa a raíz de que una de sus trabajadoras dio a conocer mi identidad. Menos se hace cargo la empresa de la responsabilidad que les compete a mis superiores, en tanto nada hicieron cuando les informé los acosos que estaban sufriendo", denunció la auxiliar.

El Movilh, envió el mismo 14 de octubre otra carta de reclamo a la empresa, la cual citó a reunión a la trabajadora y a dicho movimiento para el 28 de octubre, sin llegar a acuerdos.

Finalmente el 13 de diciembre; y en una reunión donde estuvo el dirigente del Movilh, Rolando Jiménez; las partes llegaron a un acuerdo que dejó satisfecha a la trabajadora.

Este relato suma al menos 4 episodios de discriminación.

**Respuesta:** El Movilh brindó orientación jurídica a la afectada, medió ante la empresa y denunció públicamente los abusos.

Clasificación: Homofobia

#### Abusos impunes

Fecha: Junio a noviembre

**Hecho:** P.A.P.M, un trabajador de 31 años de la empresa Eulen, fue hostigado en Antofagasta por uno de sus superiores, V.B.R debido a su orientación sexual.

"En un comienzo, él me dio confianza, entonces le comenté mi orientación sexual homosexual y que vivo con VIH. Al pasar, los días me di cuenta de que él había contado a mis compañeros mi orientación sexual y condición de VIH", denunció el trabajador el 16 de noviembre al Movilh.

Añadió que "el 24 de septiembre me gritoneó y me trató de "sidoso" frente a mis compañeros. Denuncié lo ocurrido ante la empresa, pero no hicieron nada, aunque dicen que investigaron. Ni siquiera lo cambiaron de lugar de trabajo. Sigue haciendo morisquetas como burlas afeminadas", añadió el estafeta.

La discriminación, y otros tipo de abusos denunciados por P.A.P.M ante le empresa; como el no respeto del horario laboral, terminaron por provocar un severo estrés, con la respectiva licencia psiquiátrica.

P.A.P.M denunció la discriminación junto a los trabajadores, J.C.A y N.G.C, los cuales a su vez sufrieron otros atropellos laborales en manos de V.B.R.

En una carta firmada el 9 de noviembre por el director nacional de Recursos Humanos del Grupo Eulen Chile S.A, Rafael Tenajo Sepúlveda, se cuenta que los hechos fueron investigados en octubre del 2021 por un auditor laboral del departamento de fiscalía de la empresa, identificado como L. Marzel Vidal M.

Basándose exclusivamente en la versión del denunciado, que negó los hechos, la empresa concluyó que "no existen indicios suficientes" sobre la existencia de "actos lesivos y atentatorios contra los derechos fundamentales de los denunciantes", por lo cual "se rechaza la denuncia de acoso laboral".

Paradójicamente, y sin precisar hechos concretos, la carta añadió que "sin perjuicio de lo señalado en la investigación se ha podido constatar que el denunciado ha presentado conductas que difieren con los principios y valores que la compañía insta en las relaciones interpersonales, específicamente en el trato y en la forma de relacionarse con compañeros de laborales".

Como consecuencia, solo se instó a V.B.R a "firmar una carta de compromiso" para cumplir "con todos los procedimientos y políticas de la empresa". A la par se instruyó a un subgerente de operaciones a "supervisar y revisar" las funciones" de V.B.R.

Este relato suma dos episodios de discriminación, el del agresor directo, y el de la empresa por no garantizar derechos a las víctimas.

Respuesta: El Movilh brindó orientación jurídica al trabajador y medió ante la empresa.

# **Tiene tetas**

Fecha: 7 de junio

**Hecho:** Un graves episodio de discriminación sufrió un joven trans de 29 años en su primer día de prueba de trabajo, en una pesquera de Valparaíso.

Al llegar al lugar, fue hostigado al instante por tres sujetos, quienes le dijeron: "ahí viene el machito que tiene tetas". Luego, mientras cumplía sus funciones, lo empujaron y le botaron las bandejas que debía trasladar. Al intentar defenderse, le dieron golpes de puño en la cara y le lanzaron las bandejas, quedando con un corte en el labio y ceja.

La encargada del local, se negó a adoptar sanciones contra los agresores, pese a que el joven estaba sangrando.

Este relato suma al menos dos episodios de discriminación.

Respuestas: El Movilh orientó al afectado para que formalizará su denuncia en la PDI y la Fiscalía.

Clasificación: Transfobia

# Fotografía

Fecha: 9 de junio

**Hecho:** Una joven trans (21) de una gran empresa ubicada en El Monte fue fotografiada sin su consentimiento por un compañero de trabajo en momentos cuando estaba desnuda en un camarín, solo con el fin de burlarse de identidad de género

Al encararlo y solicitarle que borrara la imagen, el sujeto se negó.

Respuestas: El Movilh brindó orientación jurídica a la trabajadora.

Clasificación: Transfoba

#### Pecado

Fecha: 11 de junio

**Hecho:** El encargado de recursos humanos de una empresa ubicada en Talcahuano se burló de una compañera tras enterarse que era una persona trans.

Cuando un grupo de trabajadores estaba almorzando, el sujeto consultó con carcajadas a su compañera si "¿eres hombre o mujer? Parece que nos engañaste a todos con tus pecados".

Respuestas: El Movilh brindó medió ante la empresa, tras lo cual cesaron los acosos.

Clasificación: Transfobia

# Naturaleza

#### Fecha: 11 y 12 de junio

**Hecho:** Tras informar de su orientación sexual en su trabajo, un hombre de 38 años comenzó a ser acosado por redes sociales por un compañero, para quien "la homosexualidad es una enfermedad que además provoca VIH".

A la par acusó al trabajador de "transmitir enfermedades sexuales debido a su naturaleza". Su discurso luego lo repitió en una reunión de trabajo, en Concepción.

Este relato suma dos episodios de discriminación, uno por redes sociales y otro de manera presencial.

**Respuestas:** El Movilh brindó orientación jurídica al afectado y medió ante la empresa, tras lo cual cesaron los abusos.

Clasificación: Homofobia

# Caballo

Fecha: 23 de junio

Hecho: M.A.P.C, un operador de camiones, denunció a uno de sus jefes, R.A, de hostigarlo e insultarlo por su orientación sexual durante su jornada laboral en el Consorcio Minero Trébol-Agua Santa LTDA, domiciliado en Vitacura.

"En cada charla de seguridad y frente a todos los trabajadores realiza comentarios y gestos obscenos sobre mi orientación sexual , me trata de "maricón" y habla de mi vida personal frente a todos los trabajadores, o hace comentarios como "denle pasto al caballo". Todas estas situaciones las hice llegar a mi jefatura en forma escrita, pero a la fecha no he tenido respuesta alguna", denunció el afectado en una demanda de tutela laboral.

"Producto de lo anterior, con fecha 3 de junio de 2021, mi salud decayó gravemente, y debí acudir por asistencia médica en la especialidad de Psiquiatría en el Centro Medico Vida Plena. Presentaba un trastorno de adaptación, con crisis de pánico por estrés laboral. Los síntomas eran demostrativos: dolor de pecho, dolor de cabeza, dolor muscular, con una situación mental, y física, altamente deteriorada", añadió.

El episodio suma dos casos de discriminación, el del agresor directo y el de la empresa por no haber resguardado la integridad del denunciante.

Respuesta: El Movilh recopiló antecedentes del caso para el presente informe.

Clasificación: Homofobia

# "Linda"

Fecha: 29 y 30 de junio

**Hecho:** Un diseñador gráfico 35 años de una empresa de cerrajería automotriz ubicada en Ñuñoa denunció por homofobia a su jefe, G.V, y a la polola de éste, C.B.

"En diversas ocasiones C.B se refería a mí como "linda" o "querida" con el único fin de ofenderme. En otras ocasiones me decía "tranquila querida" ¿tuviste una mala noche?" o "te estoy hablando ¿estás que no escuchas?". Por su lado mi jefe en muchas ocasiones se refería a mí como el "maricón"", señaló.

De esa manera "mi jefe le daba la razón a su polola y me decía que yo debía encontrar la forma de llevarme bien con ella. Él en su molestia decidió colocarme en recepción, pero yo nunca acordé realizar ese tipo de trabajo", apuntó.

El 29 de junio "y casi a punto de llorar, le pregunté a mi jefe cómo era posible que yo tuviera que tolerar este trato tan indigno, en especial de su polola que no trabajaba en la empresa. Él me respondió "ella es mi polola y vive conmigo, tienes que hacer lo que ella te mande".

Finalmente, 30 de junio del 2021 al afectado no le renovaron el contrato.

Este relato suma dos episodios de discriminación.

Respuesta: El Movilh brindó orientación jurídica al afectado.

Clasificación: Homofobia

# Lacra

Fecha: 3 de julio

**Hecho:** Un técnico en enfermería del Instituto Traumatológico, ubicado en Santiago, denunció a un compañero de trabajo, C.L, de hostigarlo en razón de su orientación sexual.

"Él siempre anda pendiente de si yo hago o no las cosas, de si las hago bien o mal. En los camerines o duchas recurrentemente se pasea desnudo frente a mí, con mirada burlesca. Además se me ha acercado de manera inadecuada, invadiendo mi espacio personal. En muchas ocasiones le dije que su comportamiento era inadecuado, pero él siguió incomodándome en todo momento", relató el afectado.

Añadió que "en dos ocasiones hablé con mi jefe para informar estas situaciones, pero no fui tomado en cuenta. Esto pese a que C.L me señaló en distintas ocasiones que "odio a los gays porque son una plaga culiá, enfermos mentales y lacras asquerosas". También dijo que "me considero orgullosamente homofóbico"".

**Respuesta:** El Movilh brindó orientación jurídica al afectado y estampó un reclamo en el centro médico, pidiendo medidas contra la discriminación.

Clasificación: Homofobia

#### Poleras

Fecha: 15 de julio

**Hecho:** Un paramédico de un centro médico ubicado en Futaleufú denunció a la secretaria del recinto por burlas homofóbicas.

"En una ocasión cuando llegaron las poleras institucionales la secretaria me dijo que no sabía si darme una de hombre o de mujer. Hoy en día estoy con reposo medico por el estrés laboral", dijo.

Respuesta: El Movilh orientó al afectado para que formalizara su denuncia.

Clasificación: Homofobia

#### Ofensas

Fecha: 15 de julio

**Hecho:** Un trabajador de 22 años de un centro médico ubicado en Punta Arenas denunció a la paramédico, A.T, por lanzarle ofensivas frases en reiteradas ocasiones.

"Me ha dicho "te van entubar por el culo" y "te violaron y te quedó gustando la weá (sic)" entre otras cosas. Informé de esto a una de mis jefaturas, pero ellos tomaron la decisión de cambiarme turno y luego me suspendieron de mis labores".

Respuesta: El Movilh orientó al afectado para que formalizara su denuncia

# **Burlas**

#### Fecha: 16 y 17 de julio

Hecho: Un cajero (N.I.Z.C) denunció a tres compañeros de trabajo por discriminarlo en razón de su identidad de género al interior de un supermercado Santa Isabel, ubicado en Colina.

El denunciante identificó como responsables al guardia Edison Mella, a su supervisor, Manuel Espinoza y al administrador del recinto, Gary Orellana.

El 16 de julio el guardia "se acercó a mí y se burló de mis gestos diciendo que eran femeninos y que yo era mujer", señaló.

Añadió que su jefa, M.H, presentó una queja ante la subgerencia por la discriminación, lo cual gatilló una discusión entre ella y el supervisor de los guardias, Manuel Espinoza, quien dijo "no entender el escándalo".

El 18 de julio, en tanto, "denuncié la discriminación ante el administrador Gary Orellana, sin embargo, él se burló con el supervisor de lo que estaba viviendo".

Tras la denuncia pública de los hechos, el subgerente de Asuntos Legales del supermercado. Ricardo Alonso González Novoa, señaló el 30 de julio al Movilh que la empresa solo pudo establecer sanciones para el guardia, no así para el supervisor y administrador, pues a su juicio, no lograron comprobar la queja por falta de testigos. Aun así, indicó, el supervisor fue amonestado.

En relación a los hechos del 16 de julio añadió que "no hemos podido constatar la existencia de testigos presenciales del hecho, ni tampoco fue posible ubicar a los clientes que se indica que habrían presenciado esta situación. Sin embargo, sí se acreditó que N.I.Z.C quedó afectado por dicha circunstancia, razón por la cual la Sra. M.H informó de dicha circunstancia al Sr. Manuel Espinoza y este a su vez conversó con el guardia de seguridad, solicitando que no se acercara a N.I.Z.C. Tanto el sub gerente como el Sr. Espinoza negaron la existencia de una discusión por este hecho".

"Respecto del actuar del sub gerente Sr. Orellana, no fue posible tener por acreditados los hechos de la denuncia. Por el contrario, se acreditó en la investigación que tal trabajador ofreció ayuda a N.I.Z.C indicando los nombres de las personas respecto de las cuales quería hacer la denuncia e incluso le ofreció solicitar a la empresa de guardias el cambio de local del Sr. Mella", apuntó.

"Atendido los hechos acreditados, nos comunicamos con la empresa contratista y solicitamos que el guardia de seguridad Sr. Mella, no continuara prestando servicios al local de Santa Isabel. Lo anterior, con la finalidad de evitar cualquier tipo de conducta de tal persona en contra de N.I.Z.C. También se decidió amonestar al Sr. Espinoza por la utilización de un vocabulario inadecuado al ámbito laboral. No se amonestó al sub gerente de local, por cuanto no se acreditaron los hechos denunciados por usted en la misiva".

Este relato suma tres casos de discriminación.

Respuesta: El Movilh brindo orientación jurídica al afectado y presentó un reclamo ante la empresa.

Clasificación: Transfobia

#### Sarcasmo

Fecha: 2 de agosto

**Hecho:** Una trabajadora de la salud denunció a un médico por "revelar mi orientación sexual con comentarios sarcásticos, como "optó por alejarse de los hombres" o "¿solo para mujeres, cierto?. Cosas así dice de manera recurrente, incluso frente a pacientes".

Hechos ocurrieron en Valparaíso.

Respuesta: El Movilh brindó orientación jurídica y psicológica a la afectada.

# Amanerado

#### Fecha: 3 de agosto

**Hecho:** Un vendedor de 33 años fue despedido de una tienda de ropa, ubicada en Concepción, por "exagerado amaneramiento al atender clientes", según le señaló un compañero de trabajo.

Al anunciarse el despido, el trabajador consultó si se relacionada con su forma de ser, tras lo cual "mi jefe solo guardó silencio. Ahí supe que mi compañero me decía la verdad. Fue un despido homofóbico", dijo.

Respuesta: El Movilh brindó orientación jurídica al afectado.

Clasificación: Homofobia

### Abuso

Fecha: 5 de agosto

**Hecho**: Un trabajador de 48 años de un centro médico ubicado en Coronel denunció a su jefa directa y a la directora del recinto por afirmar, en el marco de una discusión, que "por razones cristianas" no estaban dispuestas "a trabajar con un homosexual".

La discusión se había originado por otro abuso: la jefa había dado a conocer a terceros que el trabajador vivía con VIH. "Hoy todo saben de esto. Me da mucha impotencia y vergüenza porque es algo que mantengo en reserva", dijo.

Los hechos fueron denunciados por el trabajador ante los superiores de la jefa, sin embargo, al cierre de este informe no había resultados, ni sanciones.

Respuesta: El Movilh brindó orientación jurídica al afectado.

Clasificación: Homofobia

#### Cuestionamientos

Fecha: 13 de agosto

**Hecho:** La supervisora de una tienda de ropa Nostagic, ubicada en Santiago, hostigó a un trabajador tras enterarse de que la pareja de este efectuaba compras en el local.

Al visitar la tienda, la supervisora, J.P, "me dijo que tenía que comunicarme algo muy delicado. Bajé con ella a la bodega. Me dijo que no sabía como decirme, que ella no quiere meterse en mi vida privada pero que no le parecía bien que yo tuviera una pareja que comprara en las tiendas, menos si era gay, señaló.

Respuesta: El Movilh brindó orientación jurídica al afectado.

Clasificación: Homofobia

#### Daño a niños

Fecha: 20 de agosto

**Hecho:** Una trabajadora de 21 años de un jardín infantil ubicado en Concepción denunció a la directora el establecimiento por discriminarla tras enterarse en mayo del 2021 que tenía una pareja del mismo sexo.

"Me ha dicho que no puedo llevar a los niños al baño sola ya que les puedo hacer algún tipo de daño. Dice que por el hecho de ser lesbiana merezco trabajar en la última jornada del día ya que no confía en mí", denunció la joven.

Respuesta: El Movilh brindó orientación psicológica y jurídica a la trabajadora.

# Lelas

Fecha: 20 de agosto

**Hecho:** Una funcionaria civil del Ejército, de 49 años, denunció a su jefa directa y a dos compañeros de trabajo de hostigarla desde diciembre del 2020, cuando anunció que contraería la unión civil con alguien de su mismo sexo.

"A mis espaldas escucho frases como "las lelas ahora se casan", "¿quién será el hombre?", "¿Cómo lo harán?" o "¿usan tijeras". Hasta ir al comedor me complica ya que siempre hay miradas o comentarios feos", dijo.

Los hechos ocurrieron en Santiago.

Respuesta: El Movilh orientó a la afectada que formalizara su denuncia ante el alto mando.

Clasificación: Homofobia

# Niñita

Fecha: 25 de agosto

**Hecho:** Un trabajador denunció al propietario de una empresa de transportes, ubicada en Pedro Aguirre Cerda, de insultarlo por su orientación sexual en momentos cuando fue a entregarle una encomienda.

"En todo momento se refirió a mi como "esta mujer, la mujer, niñita y maricón culiao" (Sic) con un tono de desprecio, denigrando de forma total mi dignidad, sin mostrar interés en escucharme, sólo enfocándose en repetir tonos discriminatorios, con groserías. Asumí en el momento que todo se gatilló debido a que mi cabello es largo", señaló.

Respuesta: El Movilh orientó al afectado en los antecedentes a recopilar para formalizar su denuncia

Clasificación: Conducta homofóbica

# Covid

Fecha: 26 de agosto

**Hecho:** Una trabajadora de una tienda de ropa ubicada en Estación Central insultó a una compañera señalándole que "ser lesbiana es peor que el Covid-19. Hay mucha infección en estas relaciones".

La reacción ocurrió luego de que la agresora viera a su compañera de la mano de su pareja, en las afueras del trabajo.

Respuesta: El Movilh medió ante la tienda, tras lo cual cesaron los acosos.

Clasificación: Homofobia

#### "Marinconcito"

Fecha: 5 de octubre

Hecho: Un trabajador de 36 años, A.E.H.K, denunció a su jefe directo, C.C.G, por dirigirse a él, y frente a terceros, con comentarios homofóbicos.

"Siempre dice, mirándome a mí, "ah, es que así son los mariconcitos". Otra vez directamente me dijo que yo era "muy niñita , muy mariconcito". Estoy muy mal por esto", dijo.

Abusos ocurrieron en Valparaíso.

Respuesta: El Movilh brindó orientación jurídica al afectado.

#### Hueco

Fecha: 7 de octubre

**Hecho:** Un trabajador, G.E.A.S (41), de un restaurante de Valparaíso comenzó a recibir insultos en sus redes sociales de parte de dos compañeros de trabajo.

"Este es hueco, lo va a buscar su pololo a la pega", dijeron, publicando una fotografía del afectado.

Cuando la víctima comunicó lo ocurrido a su jefe, no obtuvo la ayuda esperada. "Me dijo que no era relevante", denunció.

Respuesta: El Movilh medió ante la jefatura, tras lo cual cesaron los acosos.

Clasificación: Homofobia

"Poco hombre"

Fecha: 13 de octubre

Hecho: Un uniformado denunció ante la División de Bienestar del Ejército comentarios homofóbicos emitidos por un funcionario civil, R.H.CB, aún cuando el afectado heterosexual.

"Dijo que yo era poco hombre y homosexual porque junto a mi señora tuvimos una hija por fertilización humana asistida y que eso lo hacen los homosexuales", denunció desde Concepción.

Respuesta: El Movilh ofreció colaboración al afectado en su denuncia.

Clasificación: Homofobia

## Renuncia

Fecha: 15 de octubre

**Hecho:** Una supervisora de operaciones de una empresa de seguridad ubicada en Santiago, denunció que fue presionada a presentar su denuncia, luego de reportar que su jefe directo, H.N, la hostigaba por su orientación sexual.

Respuesta: El Movilh expuso a la afectada sus posibilidades jurídicas.

Clasificación: Homofobia

## "Ten cuidado"

Fecha: 15 de octubre

**Hecho:** Un trabajador de 47 años, R.G.O, denunció episodios de discriminación laboral en una carnicería ubicada en Ñuñoa.

Señaló que después de conocerse su orientación sexual, "un compañero de trabajo siempre se ríe de mí cuando me ve conversando con algún hombre. "¿Te gusta? Ten cuidado, eso no hace", me dice. Luego ha dicho lo mismo muchas veces frente a otros compañeros".

Respuesta: El Movilh brindó orientación jurídica al afectado.

## Prohibiciones

## Fecha: 20 de octubre

**Hecho:** Una profesora de un colegio ubicado en San Vicente de Tagua Tagua, de la región del Libertador General Bernardo O'Higgins, denunció hostigamientos lesbofóbicos de parte de la directora y la jefa de las Unidad Técnica Pedagógica del establecimiento.

Si bien la docente llevaba 8 años trabajando en la misma escuela, la discriminación afloró el 20 de octubre, cuando la dirección se enteró que para el 2022 ingresaría al colegio uno de los tres hijos/as que la profesora tiene junto a su pareja del mismo sexo.

"Me pidieron que le contara a todos mis compañeros de trabajo cuál era mi orientación sexual, ya que a partir del 2022 la madre de mi hijo sería apoderada en el colegio. Repitieron que era importante que mis compañeros/as lo supieran. La directora me pidió abiertamente que debía evitar las muestras de cariños con mi pareja frente a los demás. O que las muestras de cariño ojalá solo fueran un abrazo o un beso en la cara para así no generar algún mal entendido, para evitar que otros apoderados se molestaran".

Este caso suma dos episodios de discriminación, uno por cada responsable de los abusos.

Respuesta: El Movilh brindó orientación jurídica a la afectada.

Clasificación: Homofobia

## Burlas y despido

#### Fecha: 27 de octubre

**Hecho:** Un trabajador fue objeto de burlas y comentarios indignos en razón de su orientación sexual, mientras que la empresa Easy Retail SA, en vez de resolver el conflicto, lo despidió.

Los hechos fueron conocidos el 27 de octubre mediante un comunicado del Poder Judicial donde se informó que la magistrada del Juzgado de Letras del Trabajo de Antofagasta, Abigail Tapia Alarcón, acogió la denuncia por discriminación por orientación sexual ordenando a Easy Retail S.A, indemnizar al afectado con \$12.910.350, más \$7.100.692 por recargo legal y \$2.705.628 por seguro de cesantía.

"Conforme a lo relatado por las testigos de la parte demandante, se verifica que la causa de la discriminación es la percepción de no conformidad con la heteronormatividad (la creencia de que lo normal es ser heterosexual), los cuales son objeto de preguntas invasivas sobre su vida privada, además de comentarios por sus compañeros de trabajo, lo que en la especie, se verificó, además de ideas preconcebidas sobre la apariencia y comportamiento que supuestamente ha de tener un hombre y una mujer, lo que en la especie, se verificó en atención a lo relatado de manera pormenorizada por parte de las testigos", señaló la sentencia.

Además, la empresa no logró "demostrar la justificación" del despido "en razón al cargo que ejercía el demandante a la fecha de terminación de los servicios, los años de servicios y más aún, el ascenso del cual había sido acreedor en el mismo año en que fue despedido", añadió.

Este caso suma tres episodios de discriminación: el propinado por compañeros, la falta de medidas contra la discriminación por parte de la empresa y el despido.

Respuesta: El Movilh recopiló los antecedentes del caso para el presente informe.

## "Hombre"

#### Fecha: 4 de noviembre

**Hecho:** Un trabajador de 39 años denunció que su jefa lo insultó en razón de su orientación sexual tras discrepancias por el pago de un dinero que le adeudaba.

"Cuando le pedí que me pagara el dinero por el trabajo efectuado, dijo que yo era un maricón, degenerado y pervertido. Que ya no quería seguir trabajando conmigo y que el infierno era el castigo por mi condición sexual", denunció.

Hechos ocurrieron en Chillán.

Respuesta: El Movilh orientó al afectado en los datos a recopilar para que formalizara una denuncia por discriminación.

Clasificación: Homofobia

## "Solo mujeres"

Fecha: 5 de noviembre

**Hecho:** Un auxiliar de Servicio del Hospital Sótero del Río, M.B.R, informó que el 3 de noviembre fue despedido, luego de denunciar a una compañera de trabajo, C.M por violentos hostigamientos en razón su orientación sexual que se extendieron durante el 2021.

"Todo empezó con bromas, con indirectas que fueron en aumento, señalando que algunos espacios o lugares eran solo para mujeres, y no para personas como yo, en alusión a mi homosexualidad", dijo.

Añadió que "un día llegué a trabajar y me encontré con que había puesto un cartel con mi nombre y apellido en la puerta. El cartel decía "M.B no puede entrar, solo se admiten mujeres con vagina""

"Cuando me quejé de estas y otras cosas ante mi jefatura, esta optó como única solución cambiarme de turno y, luego, una semana después, terminaron despidiéndome", señaló.

El auxiliar se desempeñaba en su cargo en Puente Alto desde mayo del 2020, en calidad de reemplazante.

Respuesta: El Movilh brindó orientación jurídica al afectado.

Clasificación: Homofobia

## "Maricón"

## Fecha: 9 de noviembre

**Hecho:** Un ingeniero en ejecución industrial, H.A.A.S, denunció al gerente general de la Corporación Regional de Desarrollo Productivo de Tarapacá, R.E.G.H, y a otros/as tres compañeros/as de trabajo de hostigarlo por su orientación sexual desde el 2018 y hasta agosto del 2021.

Entre otros, el trabajador fue humillado en Iquique con ofensas del tipo "maricón", "fleto culiao", "yegua" "lelo" y "maraco". Debido al estrés y daño psicológico ocasionado por las burlas, el trabajador comenzó a tener problemas de salud, lo cual dio paso a que lo acusaran de tener "una condición Sidosa".

El 1 de septiembre del 2021 la Asociación Chilena de Seguridad diagnosticó "trastorno adaptativo mixto de ansiedad y depresión" y le dio 30 días de reposo al trabajador debido a la discriminación que lo afecta.

Los hechos fueron denunciados a la Dirección del Trabajo.

Este episodio suma 4 episodios de discriminación laboral, uno por cada victimario.

**Respuesta:** El Movilh brindó orientación jurídica al afectado.

## Acosos

## Fecha: 17 de noviembre

**Hecho:** Una guardia de seguridad, V.G.M (34) denunció a una vendedora de una sucursal de Salcobrand, ubicada en San Bernardo, de hostigarla en razón de su orientación sexual en el horario laboral.

La vendedora, identificada con las siglas, C.C.N.R, "le ha dicho a otras trabajadoras que soy un peligro para ellas. Les dice que no se dejen abrazar por mi porque soy una aprovechadora que manosea mujeres. Lo dice solo porque sabe que soy lesbiana".

"No conforme con su homofobia, lanza el rumor de que yo la he hostigado. Debido a esto no logró dormir bien. Esto es un daño grave que no asimilo", dijo la trabajadora cuyo contrato depende la empresa seguridad Semper Fi.

Tras la mediación del Movilh, la subgerente de relaciones laborales de SalcoBrand, señaló el 20 de diciembre a dicho organismo que "producto de la investigación realizada, se decidió la desvinculación inmediata de la trabajadora sindicada como denunciada, atendido que las conductas, expresiones y comentarios por ella proferidos ciertamente denotan una actitud contraria a los lineamientos que la empresa ha dado a conocer a todos sus trabajadores a través de las políticas de inclusión, diversidad y no discriminación".

Respuesta: El Movilh brindó orientación jurídica a la afectada y medió ante Salcobrand.

Clasificación: Homofobia

## Golpiza a pareja

#### Fecha: 25 de noviembre

Hecho: Un joven trans de 25 años y su pareja fueron agredidos por seis personas durante su horario laboral en la empresa Garcés Fruit de San Francisco de Mostazal.

El ataque, que incluyó golpes en los rostros y cuerpos de las víctimas, ocurrió luego de que el joven recibiera insultos en razón de su identidad de género por parte de compañeros de trabajo, a quienes había conocido 15 días antes, cuando comenzó sus funciones en Garcés Fruit

La madre del joven señaló el 2 de diciembre en TVN que "estaban como toda pareja en hora de colación, juntos, se besaban como todo matrimonio, entonces por todo eso los discriminaban, se reían de ellos".

El joven fue internado por lesiones graves en el Hospital de Rancagua, pues resultó con fractura de mandíbula y heridas en su ceja, mientras su pareja con una lesión en la rodilla.

La empresa negó la discriminación y adjudicó lo ocurrido a la pérdida por un objeto personal, reduciendo el conflicto a una riña.

"Ante lo sucedido tomamos la determinación de desvincular de manera inmediata a las 10 personas, quienes fueron detenidos por Carabineros. Revisamos nuestros registros y no existe ningún reporte en nuestros canales de denuncia sobre acoso u hostigamiento por parte de compañeros de trabajo previo al incidente. Somos una empresa inclusiva y respetuosa, que busca entregar oportunidades para todos", señaló la entidad en un comunicado.

La investigación del caso quedó en manos de la Unidad de Atención a Víctimas y Testigos de la Fiscalía de Graneros.

#### Respuesta:

-El Frente Trans denunció públicamente los hechos.

-El 30 de noviembre OTD comunicó el ataque en su sitio web.

Clasificación: Transfobia

## "Ojalá salga Kast"

## Fecha: 25 de noviembre

**Hecho:** E.A.C.C (26), trabajador de una tienda de ropa ubicada en Concepción, fue insultado en razón de su orientación sexual por un compañero al momento de discutir sobre la ubicación y horarios de distribución de algunos productos.

"Sabiendo que soy gay, comenzó a molestarme, diciéndome delante de otros "ojalá salga Kast<sup>5</sup>, para que te vayas a la chucha". Me hizo sentir muy mal, avergonzado", dijo.

Respuesta: El Movilh brindó orientación al joven para que expusiera lo ocurrido a sus superiores.

Clasificación: Conducta homofóbica

## "Hostigamientos"

Fecha: 3 de diciembre

**Hecho:** Hostigamiento en razón de su orientación sexual recibió un hombre de 32 años, L.C.N, en manos de una compañera de trabajo, en Quilpué.

Si bien denunció los hechos ante sus superiores y la empresa se comprometió a investigar lo ocurrido, las diligencias no terminaron en ninguna sanción para la agresora o medida protectora para la víctima.

Respuesta: El Movilh orientó al afectado en los datos a recopilar para la formalización de su denuncia.

Clasificación: Homofobia

## Homofobia y Xenofobia

Fecha: 3 de diciembre

**Hecho:** Un trabajador de nacionalidad venezolana, G.G.A (37), fue víctima de acosos homofóbicos y xenofóbicos propinados por el Encargado de Control de Despacho, identificado con loas siglas J.M.

Los hechos ocurrieron en la empresa Ellus ubicada en Huechuraba, donde el denunciante desempeñaba la función de cierre de cajas desde el 12 de enero del 2015.

El agresor supo de la orientación de la víctima debido a que es conviviente civil con una persona de su mismo sexo.

"Cuando lo veo el pasillo, le hablo o voy buscar correspondencia me trata de "maricón" y "hueco"", dijo.

Una de las agresiones verbales ocurrió el 2 de diciembre luego de que G.G.A se quejara porque J.M no le entregó a tiempo una correspondencia. "Por teléfono me dijo "eres un maricón como persona y un maricón que le gusta la tula" y me cortó", señaló.

Con anterioridad, en diversos momentos, "me dijo que los extranjeros venimos Chile a robarle el oxígeno a los chilenos, que me fuera a mi país".

El trabajador reportó lo ocurrido a su jefa, I.R quien pidió al agresor que solicitara disculpas al afectado.

Junto a IR, de estos hechos también tuvieron conocimiento, los/as jefes/as de Contabilidad, R.F, y de Recursos Humanos, C.A; así como la analista y la asistente de Recursos Humanos, A.A y C.M, en forma respectiva.

Este relato suma al menos tres episodios de discriminación, uno por cada agresión verbal en distintos momentos.

Respuesta: El Movilh brindó orientación jurídica al afectado.

<sup>[5]</sup> José Antonio Kast, candidato presidencial abiertamente homófobo.

## Falta de respeto

## Fecha: 13 de diciembre

**Hecho:** Una joven trans de 28 años, F.L.C. fue ofendida en razón de su identidad de género por el guardia de la empresa de seguridad de Talleres Neptuno, en momentos cuando ingresaba a su trabajo, en Lo Prado.

"Al momento de ingresar por portería y realizar control de identidad, el guardia se negó a respetar mi nombre social, colocando en un libro mi nombre legal. Aunque le pedí que respetara mi nombre social se negó a ello. Respetuosamente le dije que estaba vulnerando mis derechos. Me dijo que no era así y que él debía anotar lo que mi credencial señala", explicó F.L.C, quien presta servicios para la empresa de servicios de mantenimiento ferroviario CAF Chile.

Añadió que en la credencial figuraba su nombre legal, y no el que la identifica, pues la empresa se había negado a ello.

Finalmente los superiores del guardia ofrecieran disculpas, a la mujer mientras que CAF Chile modificó los datos de la credencial el 17 de diciembre.

Respuesta: El Movilh medió a favor de la denunciante ante la empresa de seguridad y CAF Chile.

Clasificación: Transfobia

#### Ataques verbales

Fecha: 13 de diciembre

**Hecho:** Un trabajador de 31 años, B.B.M, denunció constantes acosos en razón de su orientación propinados por un sujeto al cual previamente le había vendido un artículo de colección, en Linares.

"Hace un tiempo conocí a dicha persona por medio de otros coleccionistas. Me agregaron a un grupo de WhatsApp, pero luego de sentirme incómodo con sus comentarios me salí de ahí. A pesar de ello, me siguió buscando con la finalidad de crear problemas, recibiendo insultos y amenazas de su parte. Además insta a sus amigos a agredir con mensajes y audios a otras personas", señaló.

Entre otros mensajes, el agresor señaló a la víctima "te paso la senda pichula, la huevá que te encanta maricón culiao" (Sic).

Respuesta: El Movilh brindó orientación jurídica al afectado.

## Pololita

## Fecha: 18 de diciembre

**Hecho:** Una enfermera de 36 años del Hospital del Salvador, ubicado en Providencia. denunció una seguidilla de episodios de discriminación luego de que una compañera de trabajo hiciera pública en el espacio laboral su orientación sexual, pese a no contar con su consentimiento.

"Ella sin mi autorización comentó el tema en la Subdirección de Enfermería, en la Jefatura de Pabellón y en la Supervisión del Servicio, desde donde ahora cuestionan mi trabajo y el hecho de que tenga una pareja del mismo sexo, quien trabaja en el mismo Hospital", señaló la denunciante.

En tono de burla o reproche algunos compañeros/as "lanzan comentarios como ahí "está tu pololita". Han cuestionado que vea a mi pareja incluso fuera de horario laboral. Me han pedido que deje de verla para evitar conflictos. También me han pedido que sea tolerante con las personas a las cuales no les gustan las parejas del mismo sexo", denunció.

Este relato suma al menos dos episodios de discriminación.

**Respuesta:** El Movilh orientó a la afectada en los antecedentes a recopilar para formalizar una denuncia por discriminación

Clasificación: Homofobia

## Lesbiana

Fecha: 28 de diciembre

**Hecho:** Un trabajadora de 49 años de un local de alimentos, ubicado en Maipú, denunció a un jefe directo por tratarla frente a terceros de "lesbiana" solo para ridiculizarla.

**Respuesta:** El Movilh medió ante la empresa, tras lo cual cesaron los acosos, mientras que el agresor fue capacitado en temáticas LGBTIQA+.

# 5. Discriminación educacional

Un 63% bajaron las denuncias o casos por discriminación en el campo educacional.

Del total de casos, 6 afectaron a personas trans (4 a hombres y dos a mujeres), 2 a lesbianas, 1 a gays y 3 a la población LGBTIQA+ como conjunto.

Los atropellos ocurrieron en Coquimbo (1), Santiago (2), Maipú (2), Molina (3), Osorno (1), Puerto Montt (1) y redes sociales (2).

2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Total
1	0	4	5	4	3	4	4	6	6	10	5	17	18	13	20	37	39	33	12	241

## Nombre y sexo

Fecha: Noviembre del 2020 abril 2021

Hecho: El nombre de una mujer trans no fue respetado en la base de datos del proceso de rendición de la Prueba de Transición para ingresar a las universidades.

Aún cuando la mujer había rectificado su nombre y sexo legal el 19 de noviembre del 2020, al 2021 el Ministerio de Educación no actualizaba sus datos.

El 4 de enero del 2021 la estudiante tuvo que rendir la prueba con una tarjeta de identificación donde figuraba el nombre asignado al nacer, el cual a su vez no coincidía con su cédula de identidad. Esto provocó una serie de inconveniente, pues se vio en la obligación de exponer su vida privada para explicar lo ocurrido y dar la prueba.

El problema no terminó ahí, pues el Mineduc luego modificó su nombre, pero no el sexo, por lo que la estudiante, debido al impacto emocional, desistió de su matrícula en una universidad.

El Mineduc solo logró corregir el problema en el transcurso de abril, luego de que la afectada presentara un recurso de protección con el patrocinio del Movilh.

Hechos ocurrieron en Santiago.

Este relato suma al menos dos episodios de discriminación.

Respuesta: El Movilh representó jurídicamente a la denunciante.

Clasificación: Conducta transfóbica.

## "Algo no coincide"

Fecha: 9 de marzo

Hecho: Un joven de 20 años fue insultado por dos compañeros de un instituto, ubicado en Santiago, mientras tenía una clase online.

"Comenzaron a difundir mi nombre de nacimiento por el chat, así como una foto mía. Señalaban que "algo no coincide", al lado de mi nombre de nacimiento y una foto actual. Varios reaccionaron con risas", dijo.

Este hecho suma al menos dos episodios de discriminación.

Respuestas: El Movilh medió ante el establecimiento educacional, tras lo cual cesaron las burlas.

Clasificación: Transfobia

## Hostigamiento a niña

#### Fecha: 18 de marzo

**Hecho:** Una mujer hostigó a una estudiante de 11 años del Colegio Los Alpes de Maipú, solo porque había iniciado una relación de amistad con su hija, de la misma edad.

La apoderada de la afectada, precisó que "cuando mi hija le envió un video de tik tok a la niña, su madre se molestó. Decidió llamar por teléfono a mi hija para amenazarla y decirle que la iba a denunciar por enviarle contenido sexual, acción que realizó vía whatsaap también".

El video, empero, no tenía ninguna imagen sexual, sino solo un beso entre dos mujeres.

Este relato suma dos episodios de discriminación.

Respuestas: El Movilh brindó orientación jurídica a la madre de la niña.

Clasificación: Homofobia

## Alcoholismo y homosexualidad

Fecha: 14 de abril

**Hecho:** Estudiantes del Colegio Adventista de Molina denunciaron al establecimiento por usar libros con mensajes de odio contra las personas lesbianas y gays.

El libro de religión señala que "cómo cristianos ¿de qué manera debemos responder al problema de la homosexualidad? ¿Cómo debemos relacionarnos con las personas que se declaran homosexuales? ¿qué debemos hacer si alguna vez tenemos fantasías o pensamientos homosexuales?".

Añade que "Dios creó una sexualidad humana sana, y nunca se propuso que existiera la homosexualidad. Nunca quiso que estuviera presente en nuestra vida ningún resultado del pecado. Pero, como el pecado y la tentación son realidades en el mundo actual, debemos elegir vivir vidas puras y santas a pesar de las tentaciones que aparezcan en nuestro camino. Aunque siempre pecamos, es importante aceptar el amor de Dios en nuestro favor, aquí y ahora. Es el primer paso. Después debemos arrepentirnos, pedir perdón".

Agrega que "la Biblia considera a la homosexualidad como inaceptable para un cristiano, aunque las tendencias e inclinaciones no son pecado. Sin embargo, todos somos responsables por lo que hacemos con nuestras tendencias e inclinaciones. Desde la perspectiva bíblica no importa realmente como arribamos a una condición, tendencia o inclinación, sino como actuamos al enfrentarnos con ella, sea el alcoholismo, la homosexualidad, la drogadicción y pensamientos lascivos".

Los estudiantes precisaron al Movilh que el libro fue editado en abril de 2019 y que lo hicieron leer a terceros medios, mientras en 2021 lo difundieron entre cuartos medios.

Este caso suma al menos tres episodios de discriminación, uno por cada año de vigencia del texto.

**Respuestas:** El Movilh repudió públicamente los contenidos homófobos, además de solicitar al Superintendente de Educación, Cristián O'Ryan que investigara los hechos y sancionara responsables. Jamás hubo repuesta.

Abuso y humillaciones

Fecha: 16 de noviembre

**Hecho:** Un estudiante trans de 14 años fue agredido por dos compañeros en el baño de hombres de un establecimiento educacional ubicado en la comuna de Coquimbo.

"Un compañero se subió al hombro del otro para mirarme sobre la puerta. Comenzaron a decir que yo tenía vagina y que sino salía del baño me iban a violar", señaló el joven.

Respuesta: El Movilh brindó orientación jurídica y psicológica al joven y a su abuela.

Clasificación: Transfobia

## "Loca"

Fecha: 16 de noviembre

**Hecho:** Un profesor de educación física, M.P.P, de una escuela ubicada en Puerto Montt fue insultado por una apoderada, D.A.F.R en razón de su orientación sexual.

El conflicto de originó luego de que el docente citara a la apoderada a una entrevista, pues su hijo no estaba cumpliendo con los horarios de ingreso y termino de clases.

Tras ello, la apoderada señaló por el grupo de WhattsApp del curso que "el profesor se comporta como una loca. El profesor debería volver a tomar clases de ética y formación y que no le gane su condición sexual. Cree que por su condición sexual, que todos saben cuál es, confunde las cosas, y cree que los apoderados son hijos suyos".

Luego de que el afectado denunciara los hechos ante el Movilh, la Dirección del colegio activó los protocolos de convivencia escolar convocando a un Consejo. Se resolvió quitar a la agresora su calidad de "apoderada titular".

Respuesta: El Movilh brindó orientación jurídica al afectado.

Clasificación: Homofobia

## "Nombre legal

## Fecha: 14 de diciembre

Hecho: Un triste y grave episodio de discriminación vivió un niño de 13 años durante la ceremonia de graduación de octavo básico realizada en la Escuela México de Michoacán de Osorno.

La apoderada del niño señaló que ella, la profesora jefe y el encargado de Convivencia Escolar habían firmado previamente un acuerdo donde el establecimiento se comprometía a llamar al estudiante por su nombre social. Ahora, "incurrieron en discriminación al no nombrarlo así en su ceremonia de graduación, pasando a llevar el acuerdo", dijo.

Una docente cercana a los hechos añadió al Movilh que "todos en la escuela conocían sobre la transición del niño hace un buen tiempo. Estaba acostumbrado a que todos sus profesores y compañeros lo llamaran por su nombre social".

Precisó que el niño "vivió una horrible situación. Cuando lo llamaron con un nombre femenino para recibir su diploma, muy sorprendido y acongojado a la vista de todos lo tomó. Dejó que le tomarán fotos sin comprender nada de lo que sucedía. Muchos apoderados quedaron sorprendidos. Más tarde supimos que a pesar de que el equipo psicosocial y profesores estuvieran en desacuerdo, la directora arbitrariamente, vulnerando los derechos de este niño y su libertad de género, no autorizó que se le llamará por su nombre".

El 23 de diciembre la directora de la Escuela México de Michoacán, Eva Díaz Saldivia, señaló al Movilh que "lo ocurrido en la licenciatura del octavo año solo responde a un hecho puntual y absolutamente involuntario de parte de este establecimiento, debido a que al momento de ir nombrando a los alumnos y alumnas que se licenciaban, la persona que realizaba la locución en la ceremonia, contaba con la lista de estudiantes bajada del Sistema de Información de Estudiantes (SIGE), del Mineduc. Por esta razón; como comunidad educativa pedimos las disculpas pertinentes al estudiante y su familia por el error cometido, dado a que en ningún momento hubo una motivación discriminatoria hacia el alumno, muy por el contrario; lamentamos profundamente el daño causado tanto en el ámbito psicológico como social que pudo afectar a este alumno".

A la par, convocó a una "reunión extraordinaria con los docentes para informar y abordar esta situación a fin de reafirmar nuestro compromiso de respeto a las normativas legales vigentes en toda situación que ponga en riesgo la integridad de todos integrantes de la comunidad educativa partiendo por los educandos", mientras en marzo del 202 "se realizará una capacitación a los docentes y directivos en materia de diversidad sexual, de género e infancia".

Finalmente, "de haber mejoras a los protocolos existentes, éstas se harán en su debido tiempo con la debida socialización de la comunidad escolar", señaló.

El niño y su familia no quedaron satisfechos/as con la reacción del establecimiento, mientras cercanos insistieron en que el problema en ningún caso fue un error involuntario.

**Respuesta:** Junto con solidarizar con el niño, el Movilh puso todos los antecedentes del caso a disposición del Ministro de Educación, Raúl Figueroa; del Jefe del Departamento de Educación Municipal Osorno Mauricio Gutiérrez Núñez,, además de expresar su malestar a la directora de la Escuela México de Michoacán, Eva Díaz Saldivia.

Clasificación: Transfobia

## 6. Movilizaciones homofóbicas y transfóbicas

Solo 12 movilizaciones o campañas de odio se implementaron en 2021, la cifra más baja desde el 2008 cuando se conoció de 9 episodios de este tipo.

Esto un implica un descenso de 80% en comparación al año precedente.

La merma tiene diversas particularidades o implicancias.

Por un lado, ocurrió en el mismo período que se dio luz el matrimonio igualitario, en circunstancias que en todos los países donde se avanzó en la materia las movilizaciones iban en ascenso a medida que se acercaba la fecha de aprobación.

En Chile, en parte el fenómeno fue diferente, pues la pandemia obstaculizó que los grupos anti-derechos se coordinaran para incidir con manifestaciones en los espacios públicos o privados. Con todo, la principal razón es que en el plano sociocultural los discursos y acciones de los grupos anti-derechos que impulsan estas campañas tienen cada vez menos eco, lo cual felizmente ha debilitado su accionar. Tal proceso, de una u otra manera, vino expresándose con especial claridad tras el estallido social.

Del total de campañas, 3 afectaron exclusivamente a lesbianas y 9 a la diversidad sexual y de género como conjunto. 3 ocurrieron en Santiago, 1 en Quilpué, 1 por redes sociales y 7 a través de medios de comunicación nacional.

9 de estas movilizaciones se describen otros capítulos por enmarcarse en casos que requieren un análisis especial: 5 fueron dirigidas contra el matrimonio igualitario<sup>6</sup>, 2 contra la derechos de la docente Sandra Pavez<sup>7</sup> y 2 se dieron en el contexto de las elecciones presidenciales<sup>8</sup>, en especial en el marco de las declaraciones o programas de los (pre) candidatos Joaquín Lavín y José Antonio Kast.

2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Total
5	1	5	6	3	7	9	30	22	46	25	19	43	48	37	77	102	31	60	12	588

## Degenerados

Fecha: 9 de abril

**Hecho:** Al referirse a una denuncia formulada por el Movilh sobre un ataque electrónico<sup>9</sup> que sufrió un conversatorio lésbico por Instagram en 2020, el canal de Youtube Comando Rex, trató de "degenerados" a los activistas LGBTIQA+.

"El canal oficial del movimiento de integración y liberación de sodomitas y degenerados expropió el video (del ataque), censuró el logo de Capitalismo Revolucionario (los responsable del hackeo) y lo subió con el título "neonazis boicotean foro lésbico-feminista del Movilh"", señaló el canal.

Acto seguido, Comando Rex subió el video con ataque al conversatorio lésbico, incurriendo en doble discriminación.

Respuestas: El Movilh recopila antecedentes de la nueva campaña homofóbica para añadirla a este informe.

Clasificación: Homo/transfobia

<sup>[9]</sup> https://www.movilh.cl/nuevo-ataque-de-odio-neonazis-hackean-foro-lesbico-del-movilh/

## Corrupción

Fecha: 30 de agosto

**Hecho:** Un grupo de tres personas protestó en las afueras del Teatro Municipal Juan Bustos de Quilpué solo porque en dicho lugar el municipio desarrollaba un encuentro sobre niñez LGBTIQA+.

"Dejen en paz a los niños", "No a la corrupción de menores", "dejen a los niños ser felices y disfrutar su inocencia", decían los carteles desplegados por el grupo de odio.

Respuesta: Mums, Rompiendo el Silencio y Movilh repudiaron por redes sociales el ataque.

Clasificación: Homo/transfobia

## Mural

Fecha: 30 de agosto

Hecho: Desconocidos borraron con pintura gris un mural en memoria de Mónica Briones, artista y lesbiana asesinada en 1984.

Los responsables del ataque se habían desplazado por diversas zonas de Santiago para borrar otras diversas pinturas, hasta llegar al mural de Briones, ubicado en Merced con Irene Morales.

"Desde el municipio de Santiago, rechazamos este acto de lesbo-odio llevado a cabo por un grupo de individuos, y reafirmamos nuestro compromiso con la diversidad y sus distintas manifestaciones artísticas en nuestra comuna", reaccionó la entidad por redes sociales.

El mural había sido creado a comienzos del 2021 por la artista y activista lesbofeminista, Isonauta.

Respuesta: Mums, Rompiendo el Silencio y Movilh repudiaron el acto vandálico.

# 7. Discriminación o intento de exclusión institucional

Un 3,1% aumentó la discriminación institucional en relación al año precedente, alza explicada principalmente por la discusión en paralelo en el Congreso Nacional de 4 proyectos de ley que hacían referencia a los derechos LGBTIQA+ y frente a los cuales en las distintas etapas de la tramitación, congresistas anti-derechos expresaron su rechazo.

El alza particularmente se vincula con la tramitación del matrimonio igualitario que el segundo semestre del 2021 avanzó más que en sus 4 años previos.

Los 391 casos de discriminación ocurrieron en Valparaíso (354), Arica (2), La Serena (4), Quillota (1), Maipú (2), Estación Central (2), Providencia (2), Santiago (23) y Curicó (1).

Del total de casos, 55 afectaron a trans, 22 a lesbianas, 8 a gays y 306 a la población LGBTIQA+ como conjunto.

Del total de casos, 386 se detallan en otros capítulos del presente informe, dado que requerían análisis especiales.

En efecto, 348 casos se relacionaron con el rechazo de congresistas, expresados en votos o indicaciones, a los proyectos de ley de matrimonio igualitario (264)<sup>10</sup>, derogación del divorcio culposo por homosexualidad (27)<sup>11</sup>, inclusión de la homoparentalidad en la reforma al sistema de adopciones (7)<sup>12</sup> y derecho explícito de hombres trans a acceder al aborto por tres causales (50)<sup>13</sup>.

A estos se sumaron la presentación 3 proyectos de reforma constitucional para negar derechos a personas LGBTIQA+14

Otros 35 casos discriminación afectaron a personas individuales o colectivos específicos: la profesora Sandra Pavez, (19)<sup>15</sup>, un conviviente civil sobreviviente (6)<sup>16</sup>, internos/as LGBTIQA+ en las cárceles (5)<sup>17</sup>, madres lesbianas y sus hijos (2)<sup>18</sup> y marinos LGBTIQA+ (1)<sup>19</sup>.

2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Total
6	21	5	7	3	9	16	9	4	18	19	15	26	33	79	38	271	583	379	391	1932

## Sin bendiciones

Fecha: 14 de marzo

**Hecho:** La Congregación para la Doctrina de la Fe del Vaticano señaló en un comunicado que "no es lícito impartir una bendición sobre relaciones o parejas, incluso estables, que involucran actividad sexual fuera del matrimonio, como es el caso de las uniones entre personas del mismo sexo".

Lo anterior porque se trata de "una elección y una forma de vida que no se puede reconocer como ordenada objetivamente en los planes revelados de Dios", dijo.

Lo expuesto "no excluye las bendiciones otorgadas a personas individuales con inclinaciones homosexuales, que manifiestan la voluntad de vivir en fidelidad a los planes revelados de Dios como lo propone la enseñanza de la Iglesia", finalizó la declaración que tuvo amplia cobertura en medios chilenos.

**Respuesta:** El Movilh señaló el 15 de marzo que "una vez más el Vaticano da una señal nefasta contra la dignidad de las parejas del mismo sexo y de las familias homoparentales, llegando al extremo de calificar estos vínculos de ilícitos y contrarios a los planes de Dios. Esta falsedad de la Iglesia, y esta arrogancia para hablar en nombre de un Dios que no le ha dado voz ni legitimidad; y que para muchos/as no existe; es una clara incitación a la violencia, anclada en la irracionalidad y en el desprecio a la diversidad social".

## Banco de sangre

## Fecha: 19 de mayo

**Hecho:** Pacientes de la Mutual de Seguridad denunciaron que la institución difundía en su web políticas para donar sangre que eran abiertamente homofóbicas.

En el polémico documento<sup>20</sup>, la Mutual de Seguridad impedía expresamente a hombres homo y bisexuales donar sangre.

Tras las críticas del Movilh, la Mutual envió una carta a dicho organismo y pidió disculpas "a todos quienes se pudieron ver afectados. Nuestra mirada como organización que protege a los trabajadores del país es abierta e inclusiva; por lo mismo, nos parece que la situación es lamentable y creemos que requieren de la debida explicación".

Añadió que el homofóbico documento disponible en el sitio oficial de la Mutual de Seguridad "es antiguo (más de 7 años) y responde a un error absolutamente desafortunado producto de sucesivos cambios de software y proveedores en nuestra web institucional. Varios archivos antiguos no quedaron debidamente indexados a nuestro sitio actual, "flotando" en la web".

El Subgerente de Marketing y Comunicaciones de la Mutual de Seguridad, Esteban Coindreau Sepúlveda, añadió que "hemos tenido ese inconveniente en otras oportunidades, pero nunca con la relevancia y sensibilidad que tiene esta situación. No obstante lo anterior, realizaremos una rigurosa revisión para que esta lamentable situación, no vuelva a repetirse".

"Antes de despedirme, no puedo sino lamentar y disculparme nuevamente con uds a título personal y de la institución a la que represento, por cuanto tenemos un compromiso irrestricto por el respeto y los valores que promueven la diversidad. La donación de sangre es otro de los aspectos que requieren de esos valores y como Mutual de Seguridad, no sólo debemos representarlos, sino que también debemos promoverlos", finalizó.

**Respuestas:** El Movilh repudió públicamente la publicación y mandó una misiva a la Mutual exigiendo el retiro de la misma de su web y de todo documento.

Clasificación: Conducta homofóbica

## Oficio homo/transfóbico

## Fecha: 9 de julio

**Hecho:** Los diputados Cristóbal Urruticoechea (PR) y Harry Jürgensen (RN) solicitaron a la Universidad de Chile y a la Universidad de Santiago de Chile (Usach) que informaran "sobre recursos, centros, programas y planes de estudio que se refieren a temáticas relacionadas con estudios de género, ideología de género, perspectiva de género, diversidad sexual y feminismo, detallando sus principales características e individualizando a los funcionarios o docentes que están a cargo de ellos".

<sup>[20]</sup> https://www.movilh.cl/wp-content/uploads/2021/05/mutual-sangre-homofobia.pdf

En el oficio 76051 también pidieron se "informe cuántos recursos destina anualmente para financiar los cursos, centros, programas y planes de estudios que se refieren a temáticas relacionadas con estudios de género, ideología de género, perspectiva de género, diversidad sexual y feminismo".

La petición tenía el claro fin de intimidar, generar conflictos u obstaculizar que los docentes y/o centros educacionales debatan o impartan contenidos sobre derechos humanos de las mujeres y de las personas LGBTIQA+, calificando a tales iniciativas como "ideología de género".

En un comunicado del 22 de octubre del 20211, el Consorcio de Universidades del Estado de Chile repudió la acción.

"Las rectoras y rectores de las 18 universidades del Estado manifestamos nuestro rechazo a la solicitud presentada vía oficio por los Diputados Cristóbal Urruticoechea y Harry Jürgensen. En el dicho oficio se solicita, además, individualizar a docentes que imparten estas asignaturas y los recursos destinados por cada institución, lo que nos parece una petición abusiva y con un fin persecutorio", dijeron.

"Rechazamos la utilización de facultades públicas con miras a censurar, limitar o vulnerar tanto la libertad de cátedra, como la autonomía de nuestras instituciones, principios esenciales para el adecuado funcionamiento de los sistemas de educación superior en toda sociedad democrática, y debidamente reconocidos y resguardados en nuestra legislación", añadieron

De todas formas, y con anterioridad a esa declaración, la Facultad de Humanidades de la Usach envío a académicos y alumnos/as una comunicación solicitando que enviaran los datos pedidos por los parlamentarios, lo cual fue denunciado y rechazado por la Federación de Estudiante de la casa de estudios.

**Respuesta:** OTD, Todo Mejora, Acción Gay, Mums. Mogaleth, Iguales, Movilh, entre otros, repudiaron y rechazaron por diversas vías el accionar de los/as parlamentarios/as.

Clasificación: Homo/Transfobia

## Petición homo/transfóbica

Fecha: 9 de julio

**Hecho:** Los diputados Cristóbal Urruticoechea (PR) y Harry Jürgensen (RN) solicitaron a los ministerios de Salud y Hacienda que informaran "cuántos recursos fiscales entrega anualmente el Estado a organizaciones, asociaciones y programas relacionados con la identidad de género y la diversidad sexual, especificando cuáles son esas organizaciones y programas, y señalando cómo se utilizan dichos recursos".

Del mismo modo pidieron en el oficio número 76054 que informen:

- "Si OTD Chile (Organizando Trans Diversidades) recibe recursos fiscales, y de ser así, cuánto es el monto anual que reciben cómo se entregan o adjudican, con qué finalidad son traspasados dichos recursos, y cómo se utilizan

-Si el Estado otorga recursos fiscales para terapias de reemplazo hormonal, especificando para qué se realizan dichas terapias, cuál es el monto de los recursos entregados y quiénes son los destinatarios de estos.

-Si el Estado otorga recursos fiscales para intervenciones quirúrgicas como mastectomías, metoidioplastias, histerectomías, oforectomísa y orquidectomías, especificando para qué se realizan dichas intervenciones, cuál es el monto de los recursos entregados, y quiénes son los destinatarios de estos.

-Si el Estado entrega recursos fiscales a la organización del Transfest, y de ser así, cuantos son esos recursos, cómo se entregan o adjudican y con qué fin se utilizan".

Dado que ambos diputados tienen un historia de rechazo a los derechos LGBTIQA+, era evidente que sus consultas solo buscaban generar polémicas de tipo homo/tranfóbico.

**Respuesta:** OTD, Todo Mejora, Acción Gay, Mums. Mogaleth, Iguales, Movilh, entre otros, repudiaron y rechazaron por diversas vías el accionar de los/as parlamentarios/as.

Clasificación: Homo/transfobia

## "Manzana podrida"

Fecha: 8 de noviembre

**Hecho:** Una mujer de 28 años denunció que en su adolescencia fue expulsada del grupo de Guías y Scout San Francisco de Curicó solo por ser lesbiana, hecho que aún impacta en su estabilidad emocional.

"Me trataban de "manzana podrida" y decían que pudriría al resto", señaló.

Respuesta: El Movilh brindó orientación psicológica a la mujer.

# 8. Discriminación en el espacio público o privado

Un 14% bajaron las denuncias o casos por discriminación o marginación en los espacios públicos y privados, sin embargo, los abusos fueron más violentos que en años previos, pues junto a la negación o obstáculos para el acceso a servicios o productos, en muchas ocasiones hubo agresiones físicas. Atropellos de este tipo ocurrieron incluso en centros médicos.

La situación es muy preocupante, pues a los centros médicos las personas asistenten para mejorar su salud, no para verla empeorada a raíz de prejuicios, odio o ignorancia, pero lamentablemente ello ocurrió en 2021 tanto en servicios públicos, como privados. Otros atropellos de este tipo se dieron en municipios, hoteles, almacenes, supermercados o habitaciones en arriendo.

Del total de abusos, 25 afectaron a gays; 17 a trans (11 a mujeres y 6 a hombres) y 13 a lesbianas. Seis de los casos que dañaron a lesbianas, correspondieron a personas no binarias.

Los atropellos ocurrieron en Copiapó (2), Coquimbo (1), La Serena (3), Valparaíso (4), Viña del Mar (1), Cartagena (2), Colina (3), Cerrillos (1), El Bosque (4), Independencia (3), Pirque (1), Providencia (1), Quilicura (7), Santiago (12), Requinoa (1), Curicó (2), Talca (2), Cobquecura (1), Castro (3) y Puerto Montt (1).

2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Total
1	6	6	6	5	7	4	2	35	9	9	10	11	19	19	11	17	31	64	55	327

## Desalojo

Fecha: Noviembre 2020-enero 2021

**Hecho:** Tras saber que sus dos arrendatarios, ambos venezolanos, era pareja, la dueña de una propiedad ubicada en Curicó comenzó a hostigarlos, a objeto de que abandonaran el lugar.

"Cuando la dueña se enteró de que en su casa vivía una pareja de hombres con un perrito se le hizo demasiado descabellado y comenzó a buscar excusas para que desocupáramos el lugar, porque iba contra sus principios, porque era inmoral y porque le daba asco", denunció W.F.C, uno de los afectados.

Desde noviembre del 2020 en adelante, la dueña y su hija "fueron en varias oportunidades a la casa para amedrentarnos y decirnos que nos fuéramos por las buenas antes de que lo lamentáramos. Decían que la suya era una casa de familia y no se justificaba que dos inmorales vivieran en ella", añadió.

La situación se agudizó el 14 de enero del 2021, pues junto a 8 personas la dueña llegó hasta la casa a exigir la salida de la pareja.

"Entraron al jardín abriendo la primera reja y posteriormente entre todos golpearon y patearon la puerta de entrada de la casa hasta que lograron abrirla. Mi pareja y yo estábamos pidiendo ayuda y tratando de mantener la puerta cerrada hasta que la fuerza de las 8 personas nos superó y lograron entrar a nuestro hogar. Entraron a la casa golpeando y gritando , agarrando nuestras cosas y exigiéndonos que abandonáramos el lugar", señaló.

Por todo "estamos ahora en un nuevo lugar a donde nos mudamos con miedo y con trauma ante cualquier sonido. Estamos más que alerta. He llorado mucho, no he comido, estoy viviendo una agonía", añadió.

Respuestas: El Movilh brindó orientación jurídica al afectado.

## No está bien

## Fecha: 5 de enero

**Hecho:** Dos días después de haber arrendado una cabaña en Cartagena, a una pareja lésbica les llegó un mensaje de texto donde el dueño les pedía que abandonaran el recinto y además les informaba que ya había cambiado la chapa de la vivienda.

Al llegar a las afueras de la propiedad, las mujeres tocaron la puerta. El dueño les abrió y le pidió que se llevaran sus cosas "porque no dijeron que estaban juntas y eso no está bien".

Las mujeres abandonaron el lugar.

Respuestas: El Movilh brindó orientación jurídica a la pareja.

Clasificación: Homofobia

#### "Caballero"

Fecha: 10 de enero

**Hecho:** Una joven, V.S.L.G (24) denunció que fue discriminada por un guardia y un cliente en el Supermercado Santa Isabel, ubicado en Avenida Santa Rosa, solo en razón de su orientación sexual y expresión de género.

Los hechos ocurrieron a eso de las 15:30 horas, cuando V.S.L.G acudió a dicho lugar junto a su pareja.

Cumpliendo con los requisitos sanitarios en período de pandemia, antes de ingresar al local ambas clientas mostraron su permiso temporal y su cédula de identidad, comenzando al instante los inconvenientes porque el aspecto físico de V.S.L.G era diferente al de su carnet, dado que se trata de una mujer lesbiana no binaria.

"Soy mujer pero me gusta vestirme con "ropa de hombre" además de usar el pelo corto. El guardia me empezó a mirar extraño. Me pidió mi carnet y al mirarlo me dijo que no podía ingresar al local", dijo.

Junto a ello, el guardia, " en reiteradas ocasiones me llamó "caballero" siendo que él vio mi cédula y supo como me llamaba. Mi pareja le dijo que yo era mujer que no me tratara de caballero y él seguía haciéndolo", denunció la afectada.

Eso dio paso para que otra persona, un cliente, "llegara a decirme que si yo era mujer me tenía que vestir de mujer. Mi pareja le pidió que no se involucrara y él me seguía diciendo cosas ofensivas, Llegó a punto de tratar mal a mi pareja y decirle "¿Crees que porque eres mujer no te puedo pegar?". Esto ocurrió delante de todos los guardias y ninguno hizo nada solo querían que me fuera", relató V.S.L.G.

Tras el incidente, la pareja de V.S.L.G ingresó al supermercado, solicitando conversar con una supervisora, quien finalmente permitió el ingreso de la afectada, pero sin anunciar o tomar medidas por el abuso del guardia, quien presta servicios a la empresa de Seguridad "Symex".

**Respuestas:** El Movilh repudió públicamente los hechos, brindó asesoría jurídica a la pareja y solicitó al Sub Gerente Legal de Cencosud, Sr. Ricardo González Novoa, medidas contra la discriminación e investigación de los hechos. Sin embargo, González Novoa señaló que tras investigar lo ocurrido, no pudo acreditar la presencia de discriminación.

## Parcito

## Fecha: 15 de enero

**Hecho:** "¿El parcito tendrá VIH?" fue la consulta que una enfermera de un centro médico de Talca formuló a una pareja gay que había acudido al recinto por problemas similares de salud.

"Solo cuando supo que éramos pareja, nos comenzó a hablar a cada rato del VIH. Le explicamos que íbamos por otro motivo, pero insistió con el tema, recalcando que por ser homosexuales, quizás ese era nuestro problema", señaló un miembro de la pareja.

Respuestas: El Movilh brindó orientación jurídica a la pareja.

Clasificación: Homofobia

## Agresiones y amenazas

Fecha: Enero-Mayo

**Hecho:** El 15 de enero dos sujetos agredieron verbalmente a una mujer de 40 años en momentos cuando estaciona su camioneta en las afueras de su trabajo, un local comercial ubicado en Requinoa, Región de O'Higgins.

Uno de los agresores es propietario del local y el otro su pariente.

"Al enterarse que era lesbiana, me gritó, tiró su cuerpo encima para agredirme. Me defendí pegando en sus genitales y luego me fui. Entonces el agresor, ahora junto al propietario del local, se lanzaron hacia mi camioneta y rompieron los espejos retrovisores. Desde enero y hasta mayo, me amenazan con desalojarme del local", señaló.

Respuestas: El Movilh brindó orientación jurídica a la afectada.

Clasificación: Homofobia

## Test

Fecha: 4 de febrero

Hecho: Un trabajador de 35 años fue discriminado en un centro público de Salud, en Valparaíso, donde había asistido por un problema estomacal.

"Hasta antes de decir que era gay todo iba bien. El médico me preguntó por mi rutina, mi alimentación, mis horarios laborales. Cuando dije que era gay, empezó automáticamente a consultar sobre mi vida sexual, sobre las parejas que tenía, y aunque no había nada extraño en mis respuestas, me pidió un test de VIH. Le expliqué que era innecesario, pero dijo que por ser gay era una rutina. Me sentí humillado. Me atendí en otro lado y solo tenía estrés", señaló.

Respuestas: El Movilh brindó orientación jurídica y psicológica al afectado.

## Incomodidad

## Fecha: 10 de febrero

**Hecho:** El arrendador de un inmueble ubicado en La Serena discriminó a dos arrendadores al enterarse de que ambos eran pareja.

"Nunca expresó algún problema, hasta que nos vio a los dos juntos al momento de ir a firmar el contrato para arrendar una pieza. Nos miró con incomodidad, diciendo que era raro que fuéramos pareja. Luego preguntó cómo lo íbamos a hacer para dormir ya que la cama era de dos plazas. Nosotros le contestamos que dormiríamos juntos y nuevamente puso una cara de incomodidad y dijo "bueno, yo no estoy de acuerdo"", denunció uno de los afectados.

"Luego de eso nos invitó a ver la habitación, dijo que que nos arrendaría igual, pero con mi pareja nos sentimos incómodos y desconfiados y preferimos ir a arrendar a otra parte", finalizó.

Respuestas: El Movilh brindó orientación jurídica a la pareja

Clasificación: Conducta homofóbica

## Prohibido

Fecha: 11 de febrero

**Hecho:** Una pareja gay denunció que fue increpada por un guardia de seguridad del Cerro Santa Lucía solo porque estaban tomados de la mano.

"Estábamos de la mano de manera tranquila y sin molestar absolutamente a nadie, cuando se acercó un guardia y de manera prepotente indicó que no podíamos estar ahí porque habían niños y mujeres cerca, dando a entender que nuestra presencia atentaba contra otros. Al preguntar en qué basaba su solicitud, el guardia dijo "por reglamento se prohíbe expresiones de afecto". Agregó que "si no les gusta pueden retirarse", denunció uno de los afectados.

Añadió que tras el incidente prefirieron abandonar el recinto.

Respuestas: El Movilh brindó orientación jurídica a la pareja.

Clasificación: Homofobia

#### Infeccioso, contagioso y peligroso

Fecha: 10 al 28 de febrero

**Hecho:** Un hombre de 40 años denunció que una enfermera de un centro médico ubicado en Viña del Mar se refirió a él como "infeccioso, contagioso y peligroso" al saber que era una persona gay viviendo con VIH.

"Me sentí humillado, vulnerado. Esta profesional partió tratándome con distancia cuando supo que tenía VIH, pero cuando le dije que era gay se puso peor, calificándome en una conversación mutua de "infeccioso, contagioso y peligroso"", dijo.

Respuestas: El Movilh orientó al afectado para que presentara un reclamo formal en el centro médico.

## "Estás mal"

## Fecha: 17 de febrero

**Hecho:** Una docente de 36 años asistió a un centro de Salud de La Serena para que un médico le revisará una serie de exámenes que le habían solicitado previamente en Punta Arenas, su comuna de residencia.

"Asistí con mi pareja, quien se quedó esperando en el pasillo, fuera de la consulta. Cuando entró el médico me preguntó quién me acompañaba. Le dije que mi novia. Me miro y alzó las cejas en señal de desagrado. Revisó mis exámenes, marcó los que estaban fuera de rango y comenzó a hablar más...", recordó la mujer.

"Me dijo "tu problema es que estás mal de acá", indicando el costado de su frente, como haciendo alusión que estaba mal de la cabeza. Le dije "la verdad es que mi problema no es emocional". Me dijo que mi cuerpo se había enfermado por mi orientación sexual porque el fin de la vida era hombre y mujer, procrear y no este tipo de cosas y que la culpa que sentía por mi identidad me había enfermado".

Añadió que "yo estaba en este estado porque vivía de forma equivocada", denunció la mujer.

**Respuestas:** El Movilh orientó ala afectada para que estampara una denuncia formal en el centro médico y explorara acciones legales.

Clasificación: Homofobia

## Enfermedad

Fecha: 28 de febrero

**Hecho:** Un hombre trans de 28 años, M.A.M.H, denunció que la secretaria de un centro médico, donde había asistido para su proceso de cambio corporal, calificó a viva voz a la transexualidad como una "enfermedad.

Hechos ocurrieron en Puerto Montt.

Respuestas: El Movilh orientó al afectado para que formalizara su reclamo en el centro médico.

Clasificación: Conducta transfóbica

## Desperdicio

Fecha: 12 de marzo

**Hecho:** "Lo único malo es que tú eres un desperdicio por tener polola", fue la frase que el médico L.F.S.O lanzó contra una mujer de 25 años en momentos que la atendía en el Centro Red Salud ubicado en Santiago.

El ginecólogo llegó más lejos al tocar el clítoris de la mujer en cosa de segundos, sin avisarle y/o solicitarle autorización previa, denunció la afectada.

La denunciante precisó que "esta fue la segunda vez que me atendía con el doctor L.F.S.O. Cuando me encontraba en la camilla durante la revisión, él me dijo "lo único malo es que tú eres un desperdicio por tener polola. Esto, me generó un sinfín de dudas. El doctor tenía conocimiento de que soy una persona con pareja mujer, ya que se lo revelé en nuestra primera cita".

Señaló además que el médico "se refería a mí persona como si fuera una cercana, es decir "flaca, flaquita". Le hice consultas sobre mis genitales (...) y en cosa de segundos tocó mi clítoris sin mi consentimiento durante la revisión. Además introdujo sus dedos en mi vagina (con guantes) para preguntar si sentía algo. Recuerdo que en la primera cita al retirar el espéculo también introdujo sus dedos en mi vagina haciendo el comentario "así se siente más".

**Respuestas:** El Movilh brindó asesoría jurídica a la afectada y reportó los hechos antes la gerencia general del recinto médico a objeto de que se iniciara una investigación, tras lo cual el agresor fue amonestado.

#### Clasificación: Homofobia

## Femenina

## Fecha: 22 de marzo

**Hecho:** Una mujer trans, de Castro, denunció a funcionarios/a del Ministerio de Salud (Minsal) por no respetar su nombre y sexo social en momentos cuando acudió al Polideportivo de la mencionada ciudad, recinto dispuesto para la vacunación del Covid-19.

"Se ocuparon pronombres que no son los que le corresponden y también fue llamada con su nombre en desuso (...) Recibió burlas, miradas, malos tratos", relató la activista Amelia Jara (El Insular, 24 de marzo 2021).

Añadió que en medio de ello "se reunió un comité improvisado para hablar de esta situación, donde se expuso el nombre en desuso de la compañera, su situación con respecto a los años que ella lleva transitando, independiente de si eso importa o no, la información se comparte con un gran número de personas".

"Finalmente el Comité decide vacunarla, pero en su carnet sanitario ponen su nombre muerto, en desuso, al lado de su nombre social, no resguardando la dignidad ni identidad de la usuaria", apuntó.

Este relato suma tres episodios de discriminación.

## Respuesta:

El 24 de marzo el Movilh pidió al Minsal encomendar el más estricto respeto a la identidad de género en todos los procesos médicos, en especial en los referentes a la prevención del Covid–19.

Clasificación: Transfobia

#### Mal parido

#### Fecha: 31 de marzo

**Hecho:** Una dirigente comunal, A.C.S (27) denunció a funcionarios de la municipalidad de Colina por discriminarla en razón de su identidad de género.

Entre otros, la dirigente identificó como responsable al supervisor V.G.S y a C.S, quienes en diferentes ocasiones la ridiculizaron con gestos y voces femeninas, además de tratarla de "maricón y mal parido", y negarse en todo momento a respetar su identidad de género y amenazarla con golpearla.

Algunos de los abusos fueron denunciados por la afectada el 30 de marzo en la Octava Comisaría de Colina.

Los hechos ocurrieron el 23 de febrero y 22 y 23 de marzo.

**Respuestas:** El Movilh brindó orientación jurídica a la afectada, envió una carta de reclamo al municipio La abogada, Mónica Arias, y el dirigente del Movilh, , Rolando Jiménez, se reunieron además con la administración del municipio. Uno de los agresores fue desvinculado y el municipio capacitó a sus funcionarios/as en temas de diversidad.

#### Clasificación: Transfobia

## Humillación

## Fecha: 2 de abril

**Hecho:** Un joven trans, Fernando Ojeda, denunció que una enfermera de la Clínica Bupa de Santiago, se negó a respetar su identidad de género, llamándolo frente a terceros por el nombre asignado al nacer, aún cuando le explicó que era una persona trans.

La funcionaria llegó más lejos al entregar al joven un brazalete con el nombre asignado al nacer. Solo tras nuevos reclamos, y debiendo firmar un documento donde autorizaba ser llamado por su nombre social, respetaron su identidad de género.

Este caso suma dos episodios de discriminación.

Respuestas: OTD brindó orientación jurídica al afectado.

Clasificación: Transfobia

## Golpiza reiteradas

Fecha: 6 y 29 de abril

Hecho: Una pareja gay, M.F.M.C (26) y M.D.M.M (33) denunció que sufrió un violento ataque homofóbico en manos de un dentista, al que identificaron como Christian Alonso Rubio Gaibor, y de un segundo sujeto.

Los atropellos iniciaron el 6 de abril cuando en compañía de su pareja el joven M.F.M.C acudió a la "Estética Dental Quilicura", ubicada en Av. Lo Marcoleta 0374, en busca de un presupuesto para una prótesis.

La recepcionista, Génesis Vera, pretendió entregar un presupuesto por otro motivo, lo cual derivó en una discusión con M.F.M,C quien habla en tono elevado debido a su discapacidad auditiva.

En esos momentos salió de la consulta Christián Rubio y al instante la recepcionista acusó que la estaban gritando. Solo este hecho, denunciaron los afectados, provocó una serie de abusos homofóbicos.

La pareja relata que la primera reacción del dentista fue decir "no quiero que este par de maricones vengan más a mi consulta, no los atenderemos más".

La pareja se vio en la obligación de retirarse del recinto, sin embargo, el 29 de abril se encontraron en la calle con el dentista y un acompañante; al parecer esposo de la recepcionista, dándose paso a una nueva y más grave agresión homofóbica.

En efecto, mientras estaban afuera de una carnicería, el dentista y su acompañante atacaron por la espalda a la pareja, señalaron los afectados.

Rubio se ensañó especialmente con M.F.M.C propinándole golpes de puño y pies. Le pegó a lo menos 10 patadas en la cara y le fracturó el brazo izquierdo. Entre la golpiza, el audífono de la víctima se desprendió de su oreja y fue aplastado y destrozado por el agresor. Mientras lo golpeaba le decía: "púdrete maricón culiao, quiero que te mueras".

Por su lado, la supuesta pareja de la recepcionista atacó a M.D.M.M con golpes de puño y pies. Le ocasionó fractura de nariz y mandíbula; también le rompió los lentes ópticos.

Una vez que estaban ambos sangrando en el suelo, intervinieron transeúntes a favor de la pareja gay y los agresores se retiraron del lugar.

Junto con llamar a Carabineros, la pareja y sus familiares se dirigieron a la "Estética Dental Quilicura" para identificar a los responsables y presentar un reclamo. Ahí, relatan, se encontraron con el dentista con una pala en la mano, tras lo cual sacó un arma de fuego y apuntó a las víctimas, amenazando con atacarlas nuevamente. Aunque Carabineros tomó la denuncia, no se llevó detenidos a los agresores.

Seguridad Municipal, por su lado, llamó a una ambulancia que trasladó a la pareja al Sapu Rodrigo Rojas Denegri de Quilicura, donde constataron lesiones.

Mientras M.D.M.M fue dado de alta al día siguiente, M.F.M.C debió estar hospitalizado hasta el 11 de mayo debido a las lesiones y fracturas de su brazo izquierdo, el cual debió ser operado.

El Servicio de Salud Metropolitano Norte certificó "múltiples traumas contusos, hematomas y equimosis en rostro" en el caso de M.D.M.M. En tanto, en relación a M.F.M.C se constató "deformidad a nivel de antebrazo distal izquierdo y acortamiento de extremidad, además de múltiples contusiones y equimosis a nivel facial".

La pareja denunció posteriormente los hechos en la 49 Comisaría de Quilicura.

Conocido el grave incidente a través del Movilh, el Colegio de Cirujanos Dentistas de Chile señaló que "lamentamos y condenamos profundamente el ataque homofóbico a dos personas que fue denunciado en una querella presentada contra un cirujano dentista. Rechazamos y condenamos todo tipo de violencia de género".

"Nuestro Código de Ética, que guía el comportamiento de nuestros colegiados y colegiadas, establece que "constituyen graves faltas a la ética segregar o discriminar, en función de credos religiosos, ideas políticas, etnia, nivel socioeconómico, orientación sexual, condición física psíquica; a pacientes, a otros profesionales, personal administrativo o de apoyo auxiliar", dijo el 26 de mayo.

"En el caso denunciado, esperamos que la justicia realice la investigación correspondiente y, en caso de darse acreditados los hechos, aplique las sanciones establecidas. Nos comprometemos a seguir trabajando espacios inclusivos y respetuosos para todas y todos".

En tanto dos odontólogos, Renata Novoa y Matías Gaete, ofrecieron servicio gratuito a las víctimas en muestra de solidaridad.

Posteriormente, el dentista persistió con su ofensiva discriminatoria, pues presentó un recurso contra el Movilh por haber difundido en su sitio web la denuncia de las víctimas.

Este hecho suma al menos siete episodios de discriminación.

**Respuesta:** Junto con solidarizar con las víctimas, y denunciar públicamente los hechos, el Movlh presentó una querella por lesiones graves, amenazas simples y tenencia ilegal de armas, solicitado aplicar la agravante contemplada en la Ley Zamudio para los delitos de odio. El caso seguía abierto cierre de este informe.

Clasificación: Homofobia

## A palos

Fecha: 6 de mayo

**Hecho:** Un trabajador de Cobquecura, C.M.A (49) denunció a un mecánico automotriz por negarse a prestarle servicios solo después de enterarse de su orientación sexual.

Los abusos iniciaron el 6 de mayo, cuando delante de otras personas "me dijo que no me atendería porque era un maricón y que merecería que me agarra a palos por eso", denunció el afectado.

Respuestas: El Movilh brindó orientación jurídica al afectado.

## "Uvy"

## Fecha: 11 de mayo

Hecho: Un joven de 25 años, I.A.M.V, fue discriminado en Pirque por el chofer de un bus interurbano de la empresa Cantares de Chile Spa.

"Al pedirle el boleto, me trató de "maricón", me miró en forma despectiva y lanzó sonidos burlescos ("uyyy"). Tuve que bajar de la micro", señaló.

El chofer, que luego fue identificado como Manuel Fernando Urrutia Mondaca, recibió el 19 de mayo una amonestación por parte de la empresa, lo cual quedó establecido en una carta firmada por su representante, Luis Alfredo Merino Figueroa.

"Reprochamos cabalmente su actitud y conducta desplegada. (...) Lo conminamos a tener un trato de respeto cabal con nuestros usuarios, quedando estrictamente prohibida cualquier agresión verbal o física, debiendo abstenerse de realizar comentarios o gestos que impliquen algún de tipo de distinción o exclusión que se funden en motivos de raza, etnia, nacionalidad, sexo, maternidad, orientación sexual, identidad o expresión de género, edad, apariencia personal, etc", señaló la carta que la empresa dirigió al agresor.

De la amonestación se dejó constancia en la Dirección del Trabajo.

Junto con informar de ello, en carta dirigida al Movilh el 24 de mayo, el asesor jurídico de la empresa, Julio César Salvo Ferreira, anunció capacitaciones en derechos humanos y diversidad sexual y de género para sus trabajadores/ as.

**Respuestas:** El Movilh brindó orientación jurídica al afectado y envió un reclamo a la empresa de buses Cantares de Chile.

Clasificación: Homofobia

## ¡Qué asco!

#### Fecha: 25 de mayo

**Hecho:** Una joven lesbiana no binaria, S.B (21) sufrió un grave episodio de discriminación en razón de su expresión de género en el supermercado Tottus, ubicado en Gran Avenida José Miguel Carrera, comuna de El Bosque.

El acoso lesbofóbico tuvo lugar cuando la joven asistió el supermercado junto a su tía y dos primos/as, siendo al instante hostigada por un guardia identificado como Jorge Ignacio Solís Yañez, mientras que un compañero de dicho sujeto incurrió en similar abuso.

"Al entrar al supermercado, el guardia me pidió el permiso. Se quedó por bastante rato mirando el permiso, observándome de pies a cabeza, pero sin mirarme a los ojos. De la nada me dijo "¿Samantha?, ¿Es broma esta hueá?". Le aclaré, "Sí, soy mujer"", señaló la denunciante.

Recordó que el guardia fue persistente en negarse a aceptar o creer su identidad. "No podía creer la burla y humillación que estaba viviendo delante de la gente de la fila y de mi familia. No encontré mejor forma que decirle "¿Qué? ¿Quieres que te muestre las tetas para mostrarte que soy mujer?. Entonces el guardia comenzó a descalificarme a viva voz.

"Qué asco, no, voy a vomitar" recuerdo que dijo", señaló la joven.

En ese momento, el primo de la joven intentó defenderla, a lo que el guardia reaccionó señalando "¿Qué hueá te crees, ahueonao?".

Una situación similar vivió la tía de la joven, quien al preguntar al agresor porque se comportaba así, le contestó "es 2021, si es mujer debe comportarse como mujer".

Otro guardia, lejos de asistir a la joven, se limitó a señalar que le estaban faltando el respeto a su compañero y acto seguido calificó a la víctima de "flaco", además de amenazar con que llamaría a Carabineros.

Mientras la joven, su primo y tía estaban en el supermercado presentando un reclamo por lo sucedido, el guardia se ensañó con la prima de la joven, quien se quedó en la entrada del recinto esperando.

"No importa que sea mujer, igual le pego y agarro a palos", señaló el guardia a la prima.

La joven y su familia, denunciaron luego los hechos a carabineros, logrando gracias a ello obtener en el supermercado el nombre de uno de los agresores.

"El guardia en cuestión, al ver la situación y la gente que venía a pedirle sus datos con Carabineros, se escondió y no quiso salir. Por esto Carabineros tuvo que entrar. El guardia se defendió diciendo que yo me había levantado la polera y le había mostrado las tetas, cosa que nunca fue porque me saqué el polerón para que la gente pudiera ver que tenía tetas. Andaba con una polera blanca y sostenes negros. Mi tía al escuchar esto de parte del Carabinero, lo desmiente, señalando que al revisar cámaras cualquiera podría darse cuenta de que en ningún momento quise mostrarlas ya que para mí no son algo que presumir", señaló.

"Fue tanto que al llegar a mi casa me descompensé y me dio una crisis de pánico, ya que no sé como es posible que en 2021 sigamos viviendo esto. En todo momento me preguntó cómo una persona así puede ser la cara visible de un supermercado si la tolerancia y respeto que tiene a los que somos o sentimos diferentes es totalmente nula. Nadie elije ser como es, sólo se siente, y a mí me costó mucho asumirme y llegar donde estoy para que un "hombre" -porque así se define-, me venga a decir lo que soy y no soy", finalizó.

Tras la denuncias y críticas del Movilh, Tottus ordenó la desvinculación de uno de los responsables y pidió a la empresa de seguridad Incar mejorar y actualizar sus capacitaciones en temas de derechos humanos, entre otras medidas.

Este caso suma 4 episodios de discriminación.

Respuestas: El Movilh medió ante Tottus y brindó orientación jurídica a la afectada.

Clasificación: Homofobia

## "Te llegó el período"

## Fecha: 4 de julio

**Hecho**: Un hombre de 36 años, M.L.P recibió un trato indigno y homofóbico en el Hospital San Pablo de Coquimbo, siendo el principal responsable de la discriminación un técnico en enfermería que se burló brutalmente de su orientación sexual, invadiendo su vida privada.

En medio de un delicado estado de salud, que incluía sangrados, el Tens señaló al paciente que le había llegado "el período" y que le diría a su pareja que le tenía "metido el dedo el hoyo", además de ofrecerle que abrazara una almohada, en vez de a un hombre.

Los atropellos comenzaron cuando un médico decidió dar alta al paciente a menos de 24 horas de una cirugía de alta complejidad y sin revisar previamente el estado de sus heridas.

"Me vestí y salí de mi habitación, pero un técnico en enfermería, identificado como Edward Encina Zamora, de la unidad de emergencia con voz enojada me dijo "¿y tú que haces aquí? Anda a tu sala porque aquí hay pacientes con Covid". Yo le respondí "es que me acaban de dar el alta. Quiero saber si puedo caminar", a lo que me dijo "no, vete a tu cama". Me fui a mi cama", relató el paciente.

Añadió que "siendo exactamente las 14:15 horas empiezo a vestirme para ir a mi hogar. Me dirigí al lobby de cirugía para hablar con mi pareja que venía llegando. Ahí me percaté de que estaba goteando sangre. De inmediato me dirigí al mesón de enfermería donde se encontraba el Tens Encina Zamora. Le pedí que me revisara, pero solo dijo que me fuera a mi habitación y esperara porque la enfermera que me atendía estaba en colación".

"Regresé a la habitación, acostándome nuevamente. Como pasaron 10 minutos Y yo sangraba y no llegaba nadie, salí al lobby nuevamente. Esperé que mi pareja subiera. Él se sorprendió al verme ensangrentado. Nos dirigimos al mesón nuevamente y le pregunté al Tens si podía verme porque estaba sangrando mucho. La respuesta fue la misma: que debía esperar a la enfermera a cargo mío. Me dirigí una vez más a mi habitación y me acosté en la cama ensangrentado y sin ayuda alguna. No aguanté más y toque el botón de pánico. Apareció el Tens. Le dije que estaba sangrando mucho. Al mostrar dónde sangraba me dice a viva voz, en medio de risas y delante de otros pacientes "te llegó el período"", recordó.

Tras eso llegó al lugar la enfermera a cargo del paciente. Al enterarse de lo ocurrido, solicitó ayuda a urgencias. "Se comunicó por celular con el doctor que me dio de alta, señalando que "tengo a un familiar del paciente aquí, ¿qué le digo?". El Tens escuchó eso y, en medio de risas y mientras presionaba mis heridas sostuvo "dile que le tengo metido el dedo en el hoyo"", denunció el paciente.

"Me puse a llorar de impotencia al ver como este sádico apretaba mi herida brutalmente y riéndose. La enfermera le dijo al Tens que necesitaban gasas estériles, a lo cual el funcionario respondió "¿Para qué gasa estéril? No necesita". Yo empecé a tiritar me dieron escalofríos en el cuerpo. El Tens me dijo entonces "¿te dio frío? Toma, ahí tienes la almohada para que la abraces ¿o quieres abrazar a un hombre?"", relató.

Minutos después, el paciente fue cambiado de habitación y abandonado en una cama, donde también instalaron sus bolsos.

"Me dejaron totalmente tirado, como a un perro. Al pasar varios minutos, me levanté para pedir ayuda porque me dolía muchísimo mi herida. En eso llegó una doctora cirujana a examinar, dejándome indicaciones de remedios para el dolor. Sin embargo, después de casi una hora nadie me daba los remedios" dijo el paciente.

"Pasaron 50 minutos. Me levanté y le dije nuevamente a la enfermera que estaba a cargo de si podía darme algo para el dolor. Me dijo que tenía que preparar algo para el dolor , que me acostará nomás. Pasó otra hora, y no me dieron nada para el dolor", finalizó.

El paciente solo recibió medicamentos para aliviar su dolor a las 10:00 P.M, tras el cambio de turno de enfermería y fue dado de alta el 5 de julio.

Tras la denuncia pública de los hechos, el Hospital señaló en un comunicado que "en virtud de los hechos expuestos por el Movimiento de Integración y Liberación Homosexual, Movilh, en relación a los actos discriminatorios denunciados por paciente atendido en nuestro recinto de salud, declara que como comunidad hospitalaria rechazamos categóricamente todo acto de discriminación o violencia que vulnere los derechos de pacientes y funcionarios"

"Acciones de esta índole no representan nuestros valores y misión. Asimismo, manifestamos nuestras más sinceras disculpas hacia el paciente, su entorno cercano y toda persona que se haya visto afectada por estos acontecimientos e informamos que como institución desde el día que ocurrieron los hechos aludidos tomamos acciones reparatorias hacia el paciente, expresándole las disculpas mientras aún se encontraba en el Servicio Clínico; se instruyeron medidas administrativas inmediatas tendientes a esclarecer lo sucedido; determinar responsabilidades y reforzar los protocolos existentes que rigen a nuestro equipo en materia de atención y trato a nuestros usuarios", señaló.

El 15 de julio el director el Hospital, German López Álvarez, señaló al Movilh que tras la denuncia se registró "una anotación de desmérito en la hoja de vida del funcionario" se instruyó "un sumario procesal" para "determinar eventuales responsabilidades administrativas", se ofreció disculpas al afectado, además de garantizarle atención psiquiátrica por el daño causado. A la par, se ordenó la revisión de protocolos sobre atención a pacientes y se elaboró una política antidiscriminatoria y capacitación a funcionarios en temas de no discriminación". La Subsecretaria de Derechos Humanos de Ministerio de Justicia también rechazó lo ocurrido y cursó acciones para que el recinto médico capacitara a sus funcionarios.

Respuesta: El Movilh brindó orientación jurídica a los afectados y presentó reclamos en e Hospital.

#### Amenazas

Fecha: 20 de julio

**Hecho**: Un hombre de 30 años y su amiga, de 25 años, fueron insultados en razón de su orientación sexual e identidad de género, en forma respectiva, por el propietario de un almacén ubicado en Santiago Centro.

Al percatarse el propietario que la mujer era trans, los trató de "sucios" y amenazó con golpearlos con un fierro que tenía a mano si es que no abandonaban el recinto.

Respuesta: El Movilh brindó orientación jurídica a los afectados.

Clasificación: Homo/transfobia

#### Banco

Fecha: 1 de septiembre

**Hecho:** Un lamentable episodio de discriminación vivió un cliente trans de 30 años, B.A.A.M, luego de que el Banco BCI se negara a reconocer en los registros bancarios su nombre y sexo legalmente reconocido tras la rectificación de su partida de nacimiento en el marco de la Ley de Identidad de Género.

El afectado relató que "fui a realizar el cambio de nombre a mi cuenta, presente mi nuevo carnet con mi nombre actual y esta solicitud fue denegada", pues le exigieron con otros métodos probatorios de su identidad.

Añadió que "tuve que explicar en el Servicio al Cliente que yo soy transgénero por lo menos delante de otras 6 personas que estaban ahí, exponiéndome a críticas, miradas juzgadoras y a que todos supieran el trámite que yo estaba haciendo en ese lugar".

"Tampoco pude realizar el cierre de la cuenta", dijo, tras lo cual estampó reclamo formal en el Banco.

Hechos ocurrieron en Santiago.

Respuesta: El Movilh denunció y repudió públicamente lo ocurrido, asesoró al afectado, y medió ante el banco.

El 9 de septiembre el gerente de Experiencia clientes del Banco, Aquiles Lobos Ilabaceta, respondió al Movilh que "tan pronto tomamos comunicación de la situación descrita en su carta, se hicieron las averiguaciones pertinentes y se procedió a dar solución inmediata a lo requerido por nuestro cliente (...) a quien se ofreció la disculpas pertinentes en nombre y representación del banco" además de corregirse "en los sistemas internos del banco los datos respectivos (...) Finalmente se reforzará con nuestros colaboradores los protocolos existentes el respecto".

Clasificación: Transfobia

## Sin ceremonia

#### Fecha: 4 de septiembre

**Hecho:** Una pareja con 20 años de relación, Juana Ibarra y María Flores, denunciaron que un oficial del Registro Civil de Copiapó las discriminó al negarse a unirlas civilmente.

Señalaron que el funcionario simplemente no llegó a la ceremonia que tenían programada a las 15:00 horas del 4 de septiembre. "Yo creo que esta fue una discriminación total, no se lo doy a nadie", señaló Ibarra. (TVN, 6 de septiembre).

La directora del Registro Civil de Atama, Lucy Cepeda, dijo que "lamentablemente hubo un error de coordinación ahí, entre el oficial civil adjunto y la jefa de oficina". Además, anunció "un procedimiento administrativo, una investigación sumaria, y obviamente con las sanciones correspondientes en la hoja de vida de cada uno de los funcionarios, en la medida del grado de responsabilidad que pueda tener cada uno" (TVN, 6 de septiembre).

"Lamentamos profundamente lo sucedido con la pareja que iba a contraer el Acuerdo de Unión Civil. Es primera vez que esto sucede en la región por lo que estamos muy afectados con esta situación y por supuesto se entregaron las disculpas correspondientes a las futuras contrayentes y sus seres queridos", finalizó (Chañarcillo.cl, 7 de septiembre).

Al cierre de este informe se desconocían resultados de la investigación anunciada por el Registro Civil.

Respuestas: Rompiendo El Silencio y Movilh lamentaron por redes sociales lo ocurrido.

Clasificación: Conducta homofóbica

#### Ataque en hotel

Fecha: 17 y 18 de septiembre

**Hecho:** Violentos episodios de discriminación vivió un joven trans B.P.S (20) y su pareja, F.V.F (26), al interior de un hotel ubicado en Moneda 2304, de la comuna de Santiago, donde recibieron insultos en razón de su orientación sexual e identidad género, además de ser golpeados y ser encerrados/as por cuatro administradores/as del recinto.

La pareja había llegado al hotel a las 20:00 horas del 17 de septiembre, procediendo al pago de la habitación por adelantado. El ataque inició a eso de las dos de la madrugada del 18 septiembre cuando B.P.S salió hasta la puerta del hotel para retirar un pedido de sushi.

"Le pedí por favor al guardia, quien estaba con una mujer, que me dejara recibir el pedido. Al instante se puso violento y mediante empujones y contra mi voluntad me llevó hasta la habitación, dándome ahí un combo. Al parecer estaba ebrio", relató.

Añadió que "a mí me encerraron en la habitación. El guardia se ensañó conmigo, golpeándome con una botella en la cara. Me quería cortar el rostro. Luego fue por un palo y siguió pegándome con el objeto, con sus manos y con sus pise. Me mordió un dedo y azotó mi cabeza en el piso".

Mientras le propinaba golpes, el agresor "me decía "voy a matarte maricona, ahora por fin te metiste con un hombre". No pude salir de la habitación hasta que llegaron carabineros", señaló B.P.S.

Al percatarse de lo ocurrido, F.V.F salió de la habitación para estampar un reclamo y pedir por fono ayuda a familiares, sin embargo, la situación no mejoró.

El 21 de septiembre, y tras el reclamo público del Movilh, el Hotel envió una carta a dicho movimiento.

"Lamentamos profundamente los hechos ocurridos durante la jornada del 18 de septiembre en las dependencias del Hotel Samoa, donde en circunstancias que se están investigando pasajeras/os y trabajadores del hotel resultaron con heridas de distinta gravedad. Nos hemos informado a través de las redes sociales que por parte de algunos trabajadores se esgrimieron consignas discriminatorias hacia la identidad de género y orientación sexual de dos clientes. Es por esto que, como administración del Hotel rechazamos toda forma de discriminación y violencia, por esto tomaremos las medidas pertinentes a fin de evitar que estos hechos, que nos parecen gravísimos, se repitan", dijeron.

"Dentro de nuestros valores está el respeto por la intimidad, identidad, orientación sexual de todas las personas, promoviendo el encuentro en un espacio seguro y trabajaremos para que eso sea así. Así, pedimos disculpas a todos quienes puedan haberse sentido vulnerados por estos hechos y nuevamente nos comprometemos a desarrollar protocolos que aseguren la integridad y el respeto por la diversidad de todas y todos nuestras pasajeras y pasajeros.", señalaron.

Tras ello, el Hotel ubicó un cartel gigante en su frontis, donde señalaban "recibimos todo tipo de parejas, sin discriminación".

#### Respuesta:

-Junto con repudiar lo ocurrido, solidarizar con la pareja y brindarle orientación jurídica desde el 18 de septiembre, el Movilh lamentó el proceder de funcionarios de la Tercera Comisaría de Santiago y denunció públicamente el caso.

-El 21 de septiembre OTD repudió el ataque y brindó orientación jurídica a B.P.S.

-El 21 de septiembre personas LGBTIQ+ protestaron en el frontis del hotel.

Clasificación: Homo/transfobia

## Prohibido

Fecha: 9 de octubre

**Hecho:** Una trabajadora de nacionalidad venezolana de 31 años fue instada por la propietaria de una pieza que arrienda en Valparaíso a abandonar el recinto luego de verla despedirse con un beso de su pareja.

."Aquí no están permitidas esas cosa, Sera mejor que se busque arriendo en otro lugar", le dijo.

Respuesta: El Movilh brindó orientación jurídica a la afectada.

#### **Cruz Blanca**

Fecha: 11 de octubre

Hecho: Un grave y doble episodio de discriminación vivió K.E.B, una afiliada de la Isapre Cruz Blanca en Valparaíso.

Por un lado la entidad la trató como "hombre", pese a ser una mujer trans, y de paso le negó cobertura para una cirugía de readecuación corporal, señalando que la transexualidad era una enfermedad pre-existente.

En respuesta a la solicitud de genitoplastia, el gerente general de Cruz Blanca Gonzalo A. Difonso, envió una carta a la mujer que partía con el vocablo "Señor".

Añadió que "nos dirigimos a usted para informarle que luego de analizar su solicitud de bonificación (...) y de acuerdo a las Condiciones Generales de su Contrato y lo dispuesto en el inciso segundo del artículo 190 del D.F.L Número 1 del 2005, del Ministerio de Salud, no corresponde otorgar la bonificación solicitada".

El mencionado artículo permite la exclusión de prestaciones por "Cirugía plástica con fines de embellecimiento u otras prestaciones con el mismo fin" o "Enfermedades o condiciones de salud preexistentes no declaradas", ninguno de los casos aplicables a las personas trans que piden cambio corporal.

Difonso añadió que "según los antecedentes que están en nuestro poder, se plantea una situación que es compatible con lo descrito en el artículo 14, letra f) de las Condiciones Generales del Contrato de Salud Previsional, aprobadas por la Superintendencia de Salud, y que dice relación con la exclusión de beneficios cuando se trata de "Enfermedades o condiciones de Salud, preexistentes o no declaradas, sus complicaciones y secuelas".

La afectada denunció ante el Movilh que "me enviaron una carta de rechazo en bonificar mi reasignación de sexo, ya que no lo informe como una enfermedad preexistente al firmar contrato. Por otro lado, se dirigen a mi como Señor, no respetando mi género. Me tratan en una carta como enferma y hombre, lo cual causa mucho dolor".

Conviene precisar que en 2019 y 2020 el Movilh, en representación de personas trans, logró que diversos tribunales descartaran que la transexualidad era una enfermedad pre-existente, además de obligar a las isapres a otorgar coberturas para el cambio corporal, ambos avances históricos.

En en efecto, el 9 de marzo del 2020 la Tercera Sala de la Corte Suprema rechazó que la transexualidad fuese una enfermedad, acogiendo un recurso que el Movilh había presentado a favor de un hombre trans.

Meses más tarde, 10 de noviembre del 2020, la Tercera Sala Corte Suprema ordenó a la Isapre Colmena garantizar la cobertura para el cambio corporal de una mujer trans<sup>21</sup>.

En el marco de los recursos judiciales que iba ganando el Movilh en fallos de primera instancia, ya el 4 de octubre del 2019 la Superintendencia de Salud había emitido la circular 336<sup>22</sup>, aclarando a las Isapres que la transexualidad no es una enfermedad.

Poniendo todos estos antecedentes sobre la mesa, la Cruz Blanca finalmente debió brindar a K.E.B la cobertura que solicitaba.

Respuesta: El Movilh brindó orientación jurídica a la afectada.

Clasificación: Transfobia.

<sup>[21]</sup> Más antecedentes sobre estos dos históricos fallos en el XIX Informe Anual de los Derechos Humanos de la Diversidad Sexual y de Género, publicado en Movilh.cl

<sup>[22]</sup> Todos los datos sobe la circular en el XIX Informe Anual de los Derechos Humanos de la Diversidad Sexual y de Género, publicado en Movilh.cl

## "Femenino"

## Fecha: 3 de noviembre

Hecho: Un joven gay, N.R.V (22), denunció a un cardiólogo del Hospital Clínico San Borja Arriarán, por discriminarlo por su expresión de género.

"Mantuvo una actitud prepotente y agresiva hacia mí y al emitir una orden indicó que mi género era femenino, cuando yo soy un hombre gay cisgénero", dijo, tras poner un reclamo en el sistema OIRS.

Respuesta: El Movilh brindó orientación general al afectado, a la espera de los resultados de su reclamo ante OIRS.

Clasificación: Conducta homofóbica

## "Hombre"

Fecha: 12 de noviembre

Hecho: Un cliente de 31 años, J.M, denunció que fue discriminado por un trabajador del restaurante La Piccola Italia, ubicado en el Mall Plaza Oeste de Cerrillos.

El conflicto se originó cuando J.M tuvo una discusión con una cajera debido a la vigencia de unos cupones. En medio del conflicto, apareció el otro trabajador quien "en todo momento me preguntó si yo era hombre, en abierta alusión a mi homosexualidad".

Respuesta: El Movilh brindó orientación jurídica al afectado.

Clasificación: Conducta homofóbica

## "Mujer"

Fecha: 16 de diciembre

**Hecho:** J.R.C (65), un alumno de un taller de telar impartido por la Corporación de Cultura y Patrimonio de la Municipalidad de Independencia, fue discriminado por las docentes J.A y J.R.

"En distintas ocasiones J.A se refirió al curso siempre en femenino, obviando que soy hombre. Esto también lo hizo por Whatsapp. En esa oportunidad, escribí un reclamo. La corregí por el uso de artículos. Dije había dos opciones. O el taller lo impartían exclusivamente para mujeres o aprendían a usar un lenguaje respetuoso de todas y todos o inclusivo de todes", señaló el afectado.

"El reclamo fue calificado de "agresivo" por J.R., quien junto J.A crearon en el curso un clima de hostilidad y agresión hacia mi persona", añadió.

Conocidos los hechos, el 21 de diciembre la Directora Ejecutiva de la Corporación de Cultura y Patrimonio de Independencia, Isidora Moulian Munizaga, ofreció disculpas al afectado y comprometió incorporar la denuncia "en la evaluación final que mantendremos con el equipo de talleristas y resto de profesionales, con el fin de generar nuevos protocolos, con mejores estándares, tanto para el área de formación como para las otras acciones que realice la corporación en el futuro".

**Respuesta:** El Movilh solicitó a la Directora Ejecutiva de la Corporación de Cultura y Patrimonio de Independencia, Isidora Moulian Munizaga, que adoptara medidas a favor del afectado y contra la discriminación, lo cual efectivamente ocurrió.

## Hombre eres

Fecha: 27 de diciembre

Hecho: Una joven trans de 23 años fue insultada por un médico de una clínica ubicada en Providencia, negarse a tratarla de acuerdo a su género.

"En tu carnet dices que eres hombre, y hombres eres", le dijo.

Respuesta: El Movilh brindó orientación jurídica a la afectada

Clasificación: Transfobia

# 9. Discriminación comunitaria (familia, vecinos/as, amigos/as)

Un total de 135 denuncias o casos por discriminación ocurrieron en 2021 en el ámbito familiar, de amistad o vecinal, un 46,6% menos que el año precedente.

La merma tiene estrecha vinculación con el términos de la cuarentenas y una menor rigidez en las medidas sanitarias para enfrentar el Covid-19, lo cual permitió a las personas pasar menos tiempo en sus casas o barrios, aminorando así las posibilidades de conflicto en esos espacios.

Pudo haber incidido también en el descenso la suma urgencia dada en junio a la tramitación del matrimonio igualitario, lo cual dio luces concretas de que la ley podría ser aprobada en el breve plazo, en tanto con ello se envío un mensaje claro a todo el país respecto que las relaciones de parejas del mismo sexo ya no serían de segunda categoría frente al Estado.

Al considerar que muchos de estos atropellos ocurren cuando los/as victimarios/as saben o se enteraran de relaciones de sus conocidos/as, familiares o vecinos/as con personas del mismo sexo, es probable que hubiese existido algún impacto positivo con el matrimonio igualitario.

De total de casos de discriminación, 65 afectaron a gays, 56 a lesbianas y 14 a trans (11 a mujeres y 3 a hombres)<sup>23</sup>.

Los atropellos ocurrieron en Arica (2), Iquique (2), Alto Hospicio (2), Calama (1), Antofagasta (2), Copiapó (2), Coquimbo (3), Illapel (1), Concón (2), Los Andes (1), Quillota (1), Reñaca (1), San Antonio (1), Viña del Mar (4), Valparaíso (3), Batuco (1), Buin (2) Cerrillos (1), Colina (3), Conchalí (1), Estación Central (2), Independencia (2), Huechuraba (1), Las Condes (4), La Florida (5), La Pintana (7), La Reina (1), Lo Prado (2), Melipilla (1), Maipú (1), Ñuñoa (1), Pudahuel (2), Puente Alto (5), Quilicura (1), Quinta Normal (2), Renca (2), San Ramón (2), Santiago (5), San Bernardo (4), San Miguel (1), Rancagua (1), San Fernando (2), Talca (4), Rengo (2), Yungay (1), Chiguayante (1), Concepción (7), Hualpén (2), Chillán (1), Linares (2), Los Ángeles (1), Temuco (4), Vilcún (2), Osorno (1), Puerto Montt (2), Puerto Varas (3), Valdivia (4), Coyhaique (1), Punta Arenas (4) y Redes sociales (3).

2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Total
0	4	2	3	6	2	8	4	11	11	12	17	9	31	56	72	72	167	253	135	875

## Humillaciones

Fecha: Diciembre del 2020 a noviembre del 2021

Hecho: Una pareja; C.P.C.S (42) y S.A.P.V (40); denunció a tres vecinos de Rengo por permanentes hostigamientos en razón de su orientación sexual.

Los agresores; P.P.A, I.P.L y R.P.V; "nos gritan "maricones culiaos (sic) cuando nos ven en la calle. Eso ha ocurrido todo este año. El 10 de diciembre del 2020, nos lanzaron escupos y le dieron golpes de puño a nuestro automóvil, mientras gritaban que nos iban a matar. Por este último hecho hay una denuncia en la Fiscalía", señaló C.P.C.S.

Respuesta: El Movilh brindó orientación jurídica a la pareja.

## Del tercer piso

## Fecha: 16 de enero

**Hecho:** Un hombre de 52 años, J.C.M.R, fue insultado repetidas veces en un grupo de WhatsApp de sus vecinos, en Ñuñoa, hechos de los que tuvo conocimiento el 16 de enero del 2021.

Al tener acceso al grupo de WhatsApp, el afectado supo que lo llamaban como "el maricón del tercer piso" y que además difundían en la misma red social fotos de él y su pareja para burlarse.

El hostigamiento había iniciado días después de que J.C.M.R, presentara un reclamo en una junta de vecinos/as por el mal trato que algunos le daban a dos conserjes del lugar.

Respuestas: El Movilh brindó orientación jurídica al afectado y medió ante la administración del edificio.

Clasificación: Homofobia

#### Amenazas

Fecha: Enero-diciembre

**Hecho:** Una abuela materna amenazó a su hija con que le quitaría la custodia de una niña de 3 años si es que persistía en su relación con otra mujer, en Reñaca.

Respuestas: El Movilh brindó orientación jurídica a la afectada.

Clasificación: Homofobia

## "Acompañante"

Fecha: 2 de enero

**Hecho:** El administrador y habitante de un condominio ubicado en La Florida hostigó a dos vecinas, de 30 y 34 años, solo por la relación que ambas mantienen.

El sujeto "desde hace tiempo nos mira fijamente, pero hoy se acercó a preguntarnos qué éramos. Le dijimos que pareja. Ahí nos dijo "cuando quieran las acompaño". Le señalamos que nos estaba faltando el respeto. Solo respondió "lesbianas culiás" y se fue", recordó una de las mujeres.

Respuestas: El Movilh brindó orientación jurídica a la pareja y medió ante el condominio.

# Agresión física y verbal

#### Fecha: 16 de enero

Hecho: Una mujer de 48 años, G.F.S.C fue agredila física y verbalmente por dos vecinos/as, D.M y E.R, en Colina.

Los hechos, explicó la víctima, ocurrieron a eso de las 20:00 horas cuando "me encontraba regando afuera de mi hogar, ubicado en Lampa, específicamente un espacio de área verde que es propiedad común del condominio donde vivo. Yo, sin intención, salpiqué agua al auto" que es propiedad de D.M y E.R.

En ese momento D.M, "salió del interior de su casa, insultándome y pegándome con un palo de escobillón de madera en mi espalda, brazos y piernas. Luego aparece E.R, quien me agredió con golpes de puños, lo cual provocó que cayera al suelo. Entre los dos me dieron golpes de pies en mi cabeza mientras me encontraba botada en la calle", relató la afectada.

Añadió que "producto de los brutales golpes, perdí la consciencia. Cuando pude retomar el conocimiento, vi a mi pareja, C.G.T, quien fue a auxiliarme y a detener la cruel agresión. Yo solo escuchaba frases lesbofóbicas tales como: "mariconas", "sucias", "cochinas", "vieja culiá maricona", "te vamos a matar", entre otras"

Una vez que los agresores "se retiraron del lugar, mi pareja llamó a Carabineros, quienes no concurrieron; finalmente llegó una ambulancia que me trasladó al SAPU, lugar donde me constataron lesiones", apuntó la mujer para finalizar que "producto de las lesiones actualmente me encuentro imposibilitada de trabajar por estar con licencia médica prescrita por profesional de la salud".

**Respuestas:** El Movilh brindó orientación legal y psicológica a la afectada y presentó una querella en el Juzgado de Garantía de Colina, aún en trámite al cierre del presente informe.

Clasificación: Homofobia

## Inmundicia

Fecha: 23 de enero

**Hecho:** Una mujer de 46 años recibió al menos cuatro cachetadas de su hermano mayor solo porque decidió visitar a la madre de ambos/as junto a su pareja.

"Estúpida, miseria humana, cómo te atreves a esparcir la inmundicia delante de la mamá", señaló el sujeto, de acuerdo al relato de la denunciante.

Tras ello, el hombre propinó las cachetadas a su hermana, en un momento cuando ambos/as estaban solos/as en la cocina de la casa, ubicada en Temuco.

Respuestas: El Movilh brindó orientación jurídica y psicológica a la mujer.

## Tetera caliente

## Fecha: 26 de enero

**Hecho:** Una madre de 48 años lanzó a su hijo de 15 años una tetera con agua caliente, luego de revisar el celular del adolecentes y ver una fotografía donde se besaba con otro chico.

El objeto golpeó el pecho del joven, quien felizmente no resultó con lesiones de gravedad.

"Quizás debí hablar con ella sobre lo que me pasaba, no sé, pero creo que exageró. Me dio susto. Por suerte mi padre me apoya", dijo el joven.

Hechos ocurrieron en Valdivia.

Respuestas: El Movilh brindó orientación psicológica al joven y a su familia.

Clasificación: Homofobia

## ¿Tú eres..?

Fecha: 26 de enero

Hecho: Una mujer de Puente Alto propinó insultos lesbofóbicos a una vecina de 32 años.

La afectada relató que "mi vecina se ofuscó al ver a mi perro en su antejardín. Se acercó a mi casa preguntando de quién era el perro. Respondí que era mío. Comenzó a hablar más fuerte y me dice "¿cuida a tu perro, porque en cualquier momento me lo piteo, y ahí no sé ná" (Sic). Le dije que debería tener más cuidado porque los niños juegan y circulan personas. Me respondió "no me interesa, me piteo a quien sea"".

"Luego me preguntó: "¿tú eres la maricona que vive en esta casa?", ¿tú eres la lesbiana que vive acá? Me sentí brutalmente agredida", finalizó.

Respuestas: El Movilh brindó orientación jurídica a la afectada.

Clasificación: Homofobia

## "Culo abierto"

Fecha: 29 de enero

Hecho: Un vecino agredió física y verbalmente a un joven de 24 años tras enterarse que era homosexual, denunció la hermana del afectado.

"Le dijo "maricón sidoso de culo abierto". Le dio combos en la cara, nariz y boca. Perdió un diente". Junto a mi madre estamos desesperadas, angustiadas", señaló la hermana de la víctima,

Los hechos, que ocurrieron en Pudahuel, se dieron en el contexto de una discusión por la pérdida de una pelota de la víctima.

Respuestas: El Movilh brindó orientación jurídica al joven, a su madre y a su hermana.

#### "Las vamos a matar"

#### Fecha: 5 de febrero

**Hecho:** Una pareja lésbica, N.A.G.C (33) y G.E.C.O 41 (41), fue agredida físicamente e insultada por su orientación sexual y expresión de género por un grupo de seis personas.

Los hechos ocurrieron en la Población Pedro Lira de Puente Alto cuando G.E.C.O estaba conversando con un vecino y, sin mediar razón, se acercaron seis personas, entre hombres y mujeres que con anterioridad ya habían insultado a la pareja con mensajes lesbofóbicos.

Al instante los/as agresores/as comenzaron a "propinar golpes en la espalda y en la oreja de mi pareja dejándola sin audición y sangrando, mientras gritaban "mariconas culias, las vamos a violar para que se les quite lo lesbiana. Deberían morirse, las vamos matar. No deberían existir, ni vivir aquí asquerosas"" (Sic), señaló N.A.G.C.

Añadió que al "salir de la casa para ver qué sucedía, fui golpeada, empujada y pateada en el suelo por personas que no sabemos con exactitud sus nombres, pero sí sabemos que son vecinos y vecinas de alrededor de donde vivimos en comunidad. Todo ocurrió sin ninguna razón, solo esperaron la oportunidad para hacernos esto."

"Nos insultaron respecto a nuestra relación y nuestro corte de pelo, haciendo menciones groseras sobre partes íntimas de nuestro cuerpo, sobre nuestra forma de vivir y expresarnos", dijo N.A.G.C.

Tras el abuso, las mujeres constataron lesiones de Carabineros.

Respuesta: Junto con orientar jurídicamente a las víctimas, el Movilh repudió públicamente el abuso.

Clasificación: Homofobia

## Maricona

Fecha: 5 de febrero

**Hecho:** Con gritos por todo un pasaje una mujer de Conchalí salió a decir que "la hija de mi vecina es una maricona. Cuidado con los niños".

El ataque verbal ocurrió luego de que la madre de una joven de 15 años estacionara su automóvil unos minutos en el frontis del domicilio de la agresora. "Sin discusión previa, ni nada, salió diciendo que mi hija es maricona", denunció la madre de la adolescente.

Respuesta: El Movilh brindó orientación jurídica a la familia afectada.

## Amariconado

#### Fecha: 8 de febrero

**Hecho:** Con agresiones homofóbicas reaccionó una habitante de Chillán, J.G, cuando la gata de un vecino defecó en lugares comunes.

Más aún, con anterioridad la mujer había quitado la vida a una de las mascotas de su vecino, J.A.B (25).

"La vecina mojaba constantemente mis gatas y en una ocasión una apareció ahorcada. El 8 de febrero del 2021, la sorprendí a tomando fotos de las fecas de mi gata sobreviviente para acusar ese hecho en la Junta de Vecinos. Al verla, le dije que porque no hablábamos antes, que se comportaba como un troll. Ahí comenzó a tratarme de "amariconado", diciendo varias veces "se te nota lo maricón". Luego su esposo amenazó con golpearme", denunció el afectado..

Respuesta: El Movilh brindó orientación jurídica al afectado.

Clasificación: Homofobia

## Amenazas

Fecha: 8 de febrero

**Hecho:** Un sujeto de 45 años, D.B, amenazó a un joven de 24 años con agredirlo físicamente, tras conocer que éste pololeaba con su sobrino, en Valparaíso.

"Al momento de saber que yo tenía pareja y que era su sobrino empezaron las amenazas de golpearme. Debido a que el señor es cristiano, y dice que su sobrino no puede ser así, dijo que donde me viera me va a golpear. Ayer me miró de una manera molesta y empezó a gritarme. Luego por WhatsApp me mandó audios, amenazando con golpes si mantenía la relación con su sobrino", denunció el joven.

Respuesta: El Movilh brindó orientación jurídica y psicológica al afectado.

Clasificación: Homofobia

#### Timoteo

Fecha: 14 de febrero

Hecho: Un adolescente de 15 años fue hostigado por un vecino, S.G.I (32), tras enterarse de que el joven era gay.

"Le dijo a mi hijo que era un maricón, un hueco. Luego publicó una foto de mi hijo en Facebook, diciendo que trabaja en el Circo Timoteo, solo con el fin de burlarse de él", denunció la madre del joven.

Los hechos ocurrieron en Pudahuel.

Respuesta: El Movilh brindó orientación jurídica y psicológica a la familia.

## Lo más asqueroso

#### Fecha: 15 de febrero

Hecho: Un joven trans de 19 años denunció a su padre, madre y abuelo por discriminarlo en razón de su identidad de género.

"En familia, mi madre y padre evangélicos. Dicen que yo soy lo más asqueroso del mundo. Hablan de mí de mala manera frente a todos los familiares. Por esto mi fui de mi casa, en Batuco, y busqué ayuda donde mi abuelo, pero él también me discrimina, aunque menos. Paso todo el día llorando y he querido acabar con mi vida", dijo.

Respuesta: El Movilh brindó orientación legal y psicológica al joven.

Clasificación: Transfobia

#### "Maricón"

Fecha: 16 de febrero

**Hecho:** Una madre de 25 años, K.G.H.C, denunció que desde julio del 2020 venía siendo agredida por su ex esposo, con quien tiene un hijo de 4 años. Las agresiones también afectan a la pareja de la madre, otra mujer.

"Él nunca ha aceptado mi orientación sexual y la ocupa como excusa para no dejarme ver a mi hijo. Después de 2 años y medio logré poder ver a mi hijo en el mes de febrero del 2021, pero él me sigue discriminando por mi orientación sexual, insultándome a mí y a mi pareja", dijo.

Añadió que los insultos "son por teléfono y la última vez fue en una plaza, frente a mi madre. Me trató de "maricona culiá y lesbiana" y sobre mi pareja advirtió que "ese maricón no se acerque a mi hijo""

Unas de las agresiones verbales tuvo lugar en Puente Alto y la otra en Las Condes.

Respuesta: El Movilh brindó orientación jurídica a la afectada

Clasificación: Homofobia

## Chistes y golpes

Fecha: 17 de febrero

Hecho: Un joven de 25 años fue atacado física y verbalmente por el pololo de una de sus amigas, en Los Ángeles.

El ataque tuvo lugar luego de que el agresor dijera continuos chistes para reírse de las personas homosexuales, humillando de manera directa al joven.

"En medio de los chistes, me miraba y preguntaba frente a mi amiga si eran verdaderas o falsas algunas "posiciones sexuales de los maracos". Como no le contesté y vio mi molestia, me pegó con su mano en la cabeza, luego pasó a usar los pies para golpearme en distintas partes del cuerpo", denunció al afectado.

"Si no fuera por mi amiga, que logró calmarlo, no sé que hubiera pasado", añadió.

Respuesta: El Movilh brindó orientación jurídica y psicológica al afectado.

## Golpiza

Fecha: 17 de febrero

**Hecho:** Una estudiante universitaria de 20 años recibió agresiones físicas y psicológicas de su madre, quien no tolera la relación de su hija con otra joven de la misma edad.

"Escuché los gritos de mi mamá cuando estaba en mi pieza. Me trató de pecadora y sucia. En un momento abrió la puerta y empezó a gritar más fuerte. Me fui a esconder al baño. Me tomó del pelo, me sacó de ahí con una patada en el trasero y me dio varias cachetadas", denunció la joven, quien vive en Valparaíso.

**Respuesta:** El Movilh brindó orientación jurídica y psicológica a la estudiante.

Clasificación: Homofobia

Sinvergüenza

Fecha: 19 de febrero

Hecho: Un hombre de 70 años, J.A.V.N, denunció que desde el 2019 venía siendo insultado por su hijo, S.L.V.C, en razón de su orientación sexual.

Respaldado por su hija, el afectado precisó que S.L.V.C, lo trata de "un sinvergüenza que se cagó a mi mamá durante años. Más encima con un hombre o varios".

En otra oportunidad, y por redes sociales, S.L.V.C señaló a su padre que "sé hombre para tus cosas. Y no jures por tus hijos. Cara de raja. Llorando que no tenías plata y le arrendabas a tu pareja un departamento Viña del mar".

El mensaje fue acompañado de una fotografía de la pareja de J.A.V.N.

Respuesta: El Movilh brindo orientación jurídica al afectado.

Clasificación: Homofobia

## Tortillera

Fecha 3 de marzo

Hecho: Una joven de 22 años, J.A.V.S, denunció a una vecina, P.T.F, por hostigarla en razón de su orientación sexual en la comuna de Yungay, Región de Ñuble.

"Me trata de tortillera, ha intentando golpearme con un palo. Mismos ataques ha sufrido mi pareja", denunció la joven.

Respuesta: El Movilh brindó orientación jurídica a la afectada.

## Engendro

#### Fecha: 8 de marzo

**Hecho:** Una niña de 14 años fue insultada por su madre luego que otro pariente le contara; sin la autorización de la adolescente; que ésta se declaraba bisexual.

"Le madre le dijo que su comportamiento no era apropiado. Trató de maricona, engendro y una vergüenza a la niña. Ahora por cualquier cosa la madre amenaza a la niña con que le contará todo el padre", denunció la tía abuela de la víctima.

Hechos ocurrieron en Arica.

Respuesta: El Movilh brindó orientación jurídica y psicológica a la tía abuela.

Clasificación: Homofobia

## Violación

Fecha: 16 de marzo

**Hecho:** Una madre de nacionalidad venezolana de 33 años denunció a su ex esposo, A.R.B, por agredirla a ella y a su pareja, violencia cruzada por el rechazo a las relaciones lésbicas.

Los maltratos verbales y físicos iniciaron en Concepción, cuando ambos vivían juntos/as. El sujeto llegó al extremo de romperle el pasaporte para impedir que la mujer saliera del país.

La madre buscó luego refugio en Santiago y en agosto del 2020 se fue a Talca a vivir con su pareja del mismo sexo.

Jamás abandonó sus deberes como madre y visitó a su hija de ocho años en Concepción de manera permanente, aunque siempre con el temor de ser golpeada por su ex esposo.

"En junio del año pasado, en uno de los viajes que realizó para ver a su hija, ella se quedó en el departamento del ex esposo, puesto que las cosas estaban tranquilas; o al menos eso le hizo creer él. Pero solo fue un engaño. Él sacó a la niña del departamento para quedarse a solas con la madre y así logró una de las peores fechorías que un ser humano puede cometer: la violó. Ella se tuvo que callar por miedo a no tener papeles, al desconocimiento de nuestras leyes y por miedo a que la alejara de su hija", denunció la actual pareja de la afectada.

El 12 de marzo del 2021 "fuimos a buscar a la niña a Concepción para que estuviera unos días con nosotras. La niña estaba sola en el departamento. Siempre él la deja sola. La niña nos preguntó si era cierto que su madre y yo nos iríamos al infierno por estar juntas", precisó.

Cuando el sujeto fue encarado por esta situación comenzó a "tratarnos de putas, enfermas, desviadas", añadió.

Este relato suma 4 episodios de discriminación ocurridos en Concepción.

Respuesta: El Movilh brindó orientación jurídica a la pareja afectada.

### Simios

## Fecha: 22 de marzo

**Hecho:** Una mujer, J.A.A (30), recibió insultos lesbofóbicos de una vecina solo porque había cuidado a su hijo, de seis años.

"Discutí con ella porque había dejado solo a su hijo en la casa. Al verlo solo, cuidé de él en mi casa, a la espera de su madre. La vecina llegó enojada, gritándome "lesbiana culiá" (Sic). Los insultos también fueron contra mi pareja", dijo.

Añadió que "complica que me apunten con el dedo por ser lesbiana. En reuniones del comité donde vivimos, la vecina ya me había discriminado por ser lesbiana. Dice que ser lesbiana es como un simio sin cerebro".

Hechos ocurrieron en Alto Hospicio, Región de Tarapacá..

Respuestas: El Movilh brindo orientación jurídica a las afectadas

Clasificación: Homofobia

## Extravagantes

Fecha: 22 de marzo

**Hecho:** Una pareja gay de Puerto Montt, R.G y A.D, denunció que en redes sociales algunos de sus vecinos los tratan de "raritos, extravangantes y maricones".

Precisaron que los insultos se incrementaron en período de cuarentena, en especial "cuando escuchamos música".

Respuestas: El Movilh brindó orientación jurídica a uno de los afectados y medió ante los/as vecinos/as.

Clasificación: Homofobia

## **Empujones e insultos**

Fecha: 24 de marzo

**Hecho:** Una madre de 28 años reportó agresiones psicológicas de parte de su ex esposo, problema iniciado el 25 de diciembre del 2020, cuando el hombre se enteró de la orientación lésbica de la mujer.

"Al enterarse que era lesbiana, no quería entregarme al hijo de ambos, que estaba con él de visita.

Como no lograba dar con mi hijo, llegué a la casa de la hermana de mi ex esposo. Él me vio en el automóvil e intentó agredirme físicamente empujándome en varias ocasiones e insultándome cada vez que podía por mi orientación sexual. Su hermana al ver que él trato de agredirme me hizo entrega de mi hijo. Me dirigí a la comisaría a poner una denuncia por maltrato psicológico y físico. Se emitió una orden de alejamiento", dijo.

Sin embargo, "y por el miedo que me causó su conducta, decidí cambiarme de ciudad", finalizó.

Los abusos ocurrieron en Los Andes

Respuestas: El Movilh brindó orientación jurídica a la afectada

#### Piedrazos

#### Fecha: 28 de marzo

**Hecho:** Una mujer de 29 años, M.B.A, denunció a dos vecinos, D.G.V y J.C,V, por ofenderla a ella y a su pareja en razón de su orientación sexual.

Los atropellos, que incluyen insultos como "vecina maricona", se arrastran desde marzo del 2020 en Coquimbo.

"Llevo un año soportando los abusos. Nos han golpeado el vehículo en reiteradas ocasiones. Una vez pincharon el neumático. Otras veces nos lanzan piedras desde un cerro o nos ponen piedras a la salida de nuestra casa. Además han intentado espiarnos", señaló una de las afectadas.

**Respuestas:** El Movilh brindó asesoría jurídica a las afectadas, las orientó para denunciar los hechos en la fiscalía y derivó los antecedentes del caso a la Municipalidad de Coquimbo.

Clasificación: Homofobia

#### Amenazas

Fecha: 31 de marzo

**Hecho:** Una mujer de Puente Alto, C.M.B.B, trató de "maricón y sucio" a un vecino, solo porque éste la había increpado por maltratar a una niña.

"Ella insultó a una sobrina menor de edad. Le llamé la atención, diciéndole que no tenía derecho a insultarla. Entonces empezó a insultarme fuertemente por mi orientación sexual y me amenazó de muerte delante de los vecinos, señalando que me iba a mandar a matar y a desfigurar mi rostro", dijo al afectado, de 60 años.

**Respuestas:** El Movilh orientó al afectado en la confección de un relato de lo ocurrido para que estampara una denuncia en la fiscalía.

Clasificación: Homofobia

## Femenina

Fecha: 1 de abril

**Hecho:** Un sujeto agredió verbalmente al sobrino de su pareja tratándolo de "maricón" y amenazando con que se quedaría en la calle y solo.

El joven, de 16 años, vive con su tía y su pareja en Independencia, luego de que su madre iniciara un tratamiento médico.

La abuela del adolescente precisó que al agresor ha "deseado la muerte" del joven solo porque rechaza la homosexualidad.

Respuestas: El Movilh brindó orientación jurídica a la abuela del joven.

## Botella y macetero

## Fecha: 2 de abril

Hecho: Cuatro vecinos hostigaron a un joven trans, I.S.B (26), burlándose de su identidad de género y tratándolo a viva voz como "lesbiana", en Las Condes.

Los sujetos, en estado de ebriedad, llegaron al extremo de amenazar de muerte al joven y de lanzar un macetero y una botella de vidrio sobre su cuerpo. Al día siguiente, uno de los sujetos volvió a burlarse del joven apenas lo vio afuera de su departamento.

Respuestas: El Movilh orientó a los afectados en los datos a recopilar para formalizar una denuncia.

Clasificación: Transfobia

## Infeccioso

Fecha: 5 de abril

**Hecho:** "De maricón infeccioso" trató una vecina a un hombre de 28 años en Osorno, en el marco de una discusión por el uso de un estacionamiento de autos.

"Me estacioné donde siempre, pero a ella le molestó, diciendo que no le dejaba espacio. Como no le respondí, me dijo "maricón infeccioso, por algo la gente desconfía de ustedes. Me impactó. Nunca me había percatado de la homofobia de la vecina", dijo el afectado.

Respuestas: El Movilh brindó orientación jurídica al afectado.

Clasificación: Homofobia

## Quiero una niña

Fecha: 12 de abril

Hecho: Un hombre trans de 31 años fue discriminado por su madre, en Copiapó, luego de comentarle que su identidad de género era masculina.

"Hablé con mi mamá. Le dije que me sentía como chico, le expliqué que quería orientarme o sacarme las dudas que tengo de esto. Mi mamá solo me respondió que "no quiero tener un niño, quiero tener una niña. Por algo Dios me dio una niña". Después me dijo que "no sentiría la misma confianza"", relató.

"Me dolió tanto escuchar esas palabras y más cuando me dijo "tú no tienes nada claro, esto lo estás pensando porque no sabes quien ser". Se me cayó, porque mi mamá era alguien con quien podía confiar y podía decirle las cosas sin ningún problema", finalizó.

Respuestas: El Movilh brindó orientación al afectado

Clasificación: Conducta transfóbica.

#### Cero contacto

## Fecha: 17 de abril

**Hecho:** Un hombre y una mujer despojaron a su hija, una joven de 17 años, de su celular y ordenador, además cortarle internet e impedirle todo contacto con otras personas, luego de enterarse que mantenía una relación a distancia con otra adolescente.

Junto a ello, el padre y la madre, ambos de Coyhaique, obligaron a la joven a cerrar sus redes sociales.

Respuesta: El Movilh brindó orientación y asesoría jurídica a un familiar de la joven.

Clasificación: Homofobia

## Sin apoyo

Fecha: 19 de abril

**Hecho:** Un joven de 20 años, N.C, denunció que su madre, padre y hermano lo hostigan en razón de su orientación sexual, a un punto de negarse a pagar sus estudios de Química y Farmacia.

El conflicto inició en octubre del 2020, cuando el joven visitó a su hermano, en Punta Arenas, donde inició una relación con otro hombre.

"Fue mi hermano quien les contó a mis padres sobre mi relación, pasando por encima de una decisión que me correspondía a mí. Desde ahí mis padres me violentan verbalmente y dejaron de apoyarme económicamente para mis estudios", relató el joven.

Este relato suma dos episodios de discriminación, uno en Punta Arenas y otro Concepción.

Respuesta: El Movilh brindó orientación jurídica al afectado.

Clasificación: Homofobia

## Confusión

Fecha: 19 de abril

**Hecho:** Un padre de 26 años, F.N.S, fue insultado por la madre de un hijo en común, de 8 años, en el marco de un procedimiento judicial para la regulación de visitas.

A objeto de cortar la relación del padre con su hijo, la mujer señaló en un tribunal de Santiago que el padre "tiene VIH" y al vivir con alguien de su mismo sexo "ha provocado confusión y .no es buen ejemplo".

Respuesta: El Movilh brindó orientación jurídica al afectado.

## Abuso sexual

Fecha: 25 de abril

**Hecho:** Un joven de 22 años denunció que su pareja, de 19 años, fue abusada sexualmente por dos de sus hermanos en Quillota. Tras el abuso, la pareja falleció en 2020 en un accidente de tránsito.

Respuesta: El Movilh brindó orientación jurídica al denunciante.

Clasificación: Homofobia

## Insultos

Fecha: 1 de mayo

**Hecho:** Un hombre de 48 años denunció a tres vecinos por molestarlo en razón de su orientación sexual cada vez que lo ven en la calle, en Temuco.

"Me gritan "amariconado", "fleto", mientras se tocan sus genitales. Me tiene muy angustiado esto, no pasa una semana que no reciba insultos", señaló.

Respuesta:. El Movilh brindó orientación jurídica al afectado.

Clasificación: Homofobia

## Hermanos/as agredidos/as

Fecha: 5 de mayo

**Hecho:** Una trabajadora de 35 años denunció que su hermanastro suele visitar un local de comida rápida que ella administra en San Bernardo con el único fin de denigrarla por su orientación sexual.

"Llega al local todos los días para amenazarme y gritarme por mi sexualidad. Mucha gente ha dejado de venir al local ya que él se ha dedicado a decir cosas de mi sexualidad. Me grita "Te paso mi pichula, si eso es lo que quieres tener". Al momento de decirlo él se toca sus genitales. Como mi hermano es gay, también me dice "dile a tu hermano que te pase un vestido para ponértelo"", relató.

Este caso suma dos episodios de discriminación.

**Respuesta:** El Movilh brindó orientación jurídica al afectada y puso los antecedentes a disposición de la Subsecretaría de Prevención del Delito.

#### Degenerada

## Fecha: 11 de mayo

**Hecho:** Una madre de un niño de 4 meses fue denostada en razón de su orientación sexual por su familia luego de enterarse que la mujer había iniciado una relación contra persona de su mismo sexo.

"Mi familia se enteró de nuestra relación por terceras personas y me trataron de lo peor. Mi papá y hermano me dijeron que soy una degenerada de mierda, que no pienso en mi hijo, cuestionaron la clase de vida que le voy a enseñar. Después dijeron que si quiero me puedo ir a vivir con mi pareja, pero que mi hijo debía quedarse con mi mamá. Además le contaron al papá de mi hijo (padre ausente) que estoy con una mujer", denunció la afectada.

Hechos ocurrieron en Punta Arenas.

Respuesta: El Movilh orientó a la afectada sobre los antecedentes a recopilar para formular una denuncia.

Clasificación: Homofobia

## Fracasadas

Fecha: 13 de mayo

**Hecho:** Una pareja lésbica, de 29 y 30 años, denunció a una vecina, F.A.M, por propinarles insultos lesbofóbicos y agresiones físicas, en Concón.

"Al llamarle la atención por comentarios que hacía de nosotras a nuestras espaldas, nos trató de "lesbianas, fracasadas y asquerosas". En ese intercambio ella le pegó un manotazo a mi hombro recién operado, me empujó y me ocasionó una herida en la pierna", señaló una de las afectadas.

Añadió que al lugar de los hechos se apostó carabineros y tomó la denuncia. Luego la agredida físicamente constató lesiones en el Servicio de Salud Viña del Mar Quillota, el cual certificó lesiones en hombro derecho, cabeza y pierna.

Respuesta: El Movilh brindó orientación jurídica a las afectadas.

Clasificación: Homofobia

## Hueco y maricón

Fecha: 22 de mayo

**Hecho:** Un joven, C.P (20), de Hualpén fue insultado por su padrastro en razón de su orientación sexual en una plaza cercana a su domicilio, en momentos cuando paseaba con su perro.

El padrastro le indicó que "por ser un maricón" debía abandonar la casa común, donde vive el joven, su madre y el agresor. "Por hueco y maricón tienes que irte cagando de la casa" (Sic), le dijo.

Respuesta: El Movilh brindó orientación jurídica al afectado.

#### Perra

## Fecha: 29 de mayo

**Hecho:** Un joven de 25 años, M.A.G.G, denunció a un vecino de Antogafasta por hostigarlo en razón de su orientación sexual en diversas ocasiones.

Los atropellos iniciaron en diciembre del 2020 cuando el vecino comenzó "a mirarme feo y a tratarme de "maricón" y "fleto" cuando me ve en las escaleras del edificio. En una ocasión, a comienzos mayo del 2021, junto a su sobrino, patearon la puerta de mi casa. En ese momento, me gritaron "perra cochina" y "maricón culiao", "te gusta por el poto", además de amenazar con golpearme", dijo.

Respuesta: El Movilh brindó orientación jurídica al afectado

Clasificación: Homofobia

## Fracura de nariz

Fecha: 30 de mayo

Hecho: Un sujeto, A.R.R.A, insultó en razón su orientación sexual a un vecino, C.H.A.G, procediendo luego a golpear su rostro con un objeto contundente.

El incidente tuvo lugar el domicilio de la víctima, ubicado en Illapel, donde el agresor llegó con ira porque minutos antes A.R.R.A le había cortado el fono para no escuchar sus insultos homofóbicos.

Las ofendas se dieron luego de que el agresor se quejara por unos ruidos molestos que según él provenían de la casa de la víctima.

"Voh, maricón concha de tu mare, no me vas a venir a cortar el teléfono, maricón culiao, querí que te mate ahora mismo" (Sic), le dijo el agresor, tras lo cual lo arrinconó en un refrigerador y comenzó a golpearlo.

La víctima resultó con "fractura de los huesos de la nariz con desviación del tabique y fractura naso septal", lesiones de carácter grave con un tiempo de sanación de 40 a 45 días, según los certificados médicos.

El cierre de este informe el caso seguía en manos del Juzgado de Garantía de Illapel, luego de que la víctima presentara una querella.

Respuesta: El Movilh recopiló antecedentes de la denuncia para añadirla al presente informe.

Clasificación: Homofobia

## Sidoso

Fecha: 31 de mayo

Hecho: Un hombre de 31 años, G.E.F.R., fue agredido física y verbalmente por su hermano, en Arica.

A raíz de un conflicto doméstico " me dijo "maricón culiao", "sidoso de mierda" y "vergüenza de la familia". Luego comenzó a propinarme golpes de mano en la cabeza. Debí encerrarme en el baño para que no volviera a golpear nuevamente", dijo.

Respuestas: El Movilh brindó orientación jurídica al afectado.

## "Maricona, marimacho"

#### Fecha: Junio a diciembre

**Hecho:** Diversos episodios de discriminación vivió durante medio año una mujer, V.J.S.O, en manos de una vecina, D.A.R.L, y de su hijo, en La Florida.

La víctima precisó que frente a cualquier conflicto la vecina le lanzaba insultos, mientras que el hijo de la victimaria llegó al extremo de golpear su vehículo con un bate de béisbol y amenazar con agredirla físicamente.

"Hace seis mi vecina comenzó a tratarme de "maricona" y "marimacho". Cada vez que paso fuera de su departamento, hace comentarios mal intencionados, como si se refiriera a otra persona. Por ejemplo: "que maricona la huevona que iba en la micro", "que asquerosas son estas huevonas", esto último en referencia a mi pareja", denunció la afectada el 4 de diciembre.

Añadió que "en otra oportunidad estaba lavando mi auto y ella, acusando que mojaba el pasaje, nuevamente me llenó de insultos referentes a mi sexualidad".

El 2 de diciembre, precisó, "vine del trabajo a almorzar a mi casa y dejé mi auto en un estacionamiento compartido, a la sombra. A los 10 minutos la mujer llegó a mi domicilio exigiendo que sacara mi vehículo porque ella quería estacionar ahí. Lo hizo, pese a que había otros lugares disponibles, incluso un lugar al lado de mi auto".

"Al negarme", añadió "el hijo de mi vecina rompió mi auto con un bate. Me amenazó con golpearme. Dijo que sí ya me había roto el auto, nada le costaría mandarme al hospital. Dijo que yo era "una asquerosa chupa choro, una maricona". Que me tenía asco desde que me vio. Que jamás iba a saber lo que era ser madre. Que las marimachos como yo se les trata a combos. Empezó a empujarme. "Pelea maricón culiao" (Sic), me decía".

Debido a los hechos, la víctima llamó a Carabineros. Dado que delante de las policías la agresora continuó con los insultos, fue detenida por 24 horas. Sin embargo, eso no cesó con los acosos.

"El hermano y la cuñada de mi vecina han amenazado con golpearme. Que van a mandar gente. Que ya saben donde trabajo. Temo por mi integridad y la de mi pareja. Ellos tomarán represalias por haberla mandado detenida", denunció la mujer.

Este relato suma al menos tres casos de discriminación.

Respuesta: El Movilh brindó orientación legal y psicológica a la afectada.

Clasificación: Homofobia

## Golpes

## Fecha: 4 de junio

**Hecho:** Un vecino amenazó a una pareja lésbica en Linares. El conflicto partió cuando la pareja le solicitó que mantuviera limpios los espacios comunes.

"Dijo que nosotras nos creíamos hombres. Que él nos enseñaría a ser hombres, presionándonos un cuchillo en el pecho a la altura del corazón. Luego se envolvió un cinturón en su mano para golpear una superficie e indicar que "así pelean los hombres de verdad". Estamos muy asustadas", señaló una de las mujeres.

Cuando las afectadas les exigieron respeto, el sujeto propinó un golpe de puño en la nariz de una de las mujeres y a la otra le quebró los lentes.

Respuesta: El Movilh ofreció orientación jurídica y psicológica a las afectadas.

## Cabeza azotada

## Fecha: 7 de junio

**Hecho:** Violentos ataques transfóbico<sup>24</sup> sufrió una mujer emprendedora, Desthiny Camila Ignacia Cruz Conejeros (26), en manos de tres vecinos/as que le dieron golpes de pies y puños en el suelo, además de romper sus pertenencias.

Los hechos ocurrieron el en el frontis de la casa que Desthiny comparte con su padre y su pareja en la comuna de Vilcún, región de la Araucanía.

La mujer precisó que desde hace meses los/as agresores/as, dos hombres y una mujer, la venían insultado, gritando el nombre que le asignaron al nacer, además de tratarla de "maricón", "sucio" y "bastardo".

Los abusos se incrementaron cuando ella decidió ocupar para su negocio, la "Frutería Ignacia", una parte trasera de su propia casa que antes los agresores/as la tenían arbitrariamente a su disposición.

Si bien Desthiny tenía un quiosco, debido a la crisis económica ocasionada por la pandemia, debió cerrarlo, y comenzar una nueva etapa en su propia casa. Los/s agresores/as le impidieron sistemáticamente seguir con su emprendimiento, atacándola e insultándola por su identidad de género.

La agresión más violenta ocurrió el 7 de junio. Desthiny fue golpeada entre tres personas con pies, puños y palos, rompieron su celular, intentaron azotar su cabeza en una puerta y la arrastraron por el piso. Solo la ayuda de su pareja impidió que la violencia tuviese repercusiones más graves.

Debido a los atropellos, la Fiscalía de Temuco ordenó como medidas de protección rondas periódicas de carabineros en el domicilio de la víctima y contacto telefónico permanente con ella.

Este relato suma a la menos dos casos de discriminación.

**Respuesta:** Junto con denunciar y repudiar públicamente los hechos, el Movilh brindó orientación jurídica a la afectada.

Clasificación: Transfobia

## "Corrección"

Fecha: 11 de junio

**Hecho:** Cuatro hombres agredieron e insultaron en razón de su identidad de género a una adolescente de 14 años, P.R.M, solo porque junto a su madre defendieron a su hermano, a quien los sujetos habían golpeado previamente en las cercanías de su casa, en San Miguel, en momentos cuando fue a comprar alimentos.

P.R.M recibió golpes de pies y puños, así como insultos.

"Me dijeron "maricón culiao" y "te corregiremos a golpes hasta que guste la zorra" entre otros insultos. Luego comenzaron a agredirme físicamente", relató la joven, quien con el apoyo de su madre constató lesiones en carabineros.

El hermano de la joven había sido golpeado por negarse a entregar a los sujetos mercadería que había comprado en las cercanías de su casa.

Respuesta: El Movilh brindó orientación jurídica a la adolescente y a su madre.

Clasificación: Transfobia

<sup>[24]</sup> https://www.youtube.com/watch?v=ucSQAdNXNg0

## Tercera vacuna

## Fecha: 19 de junio

**Hecho:** Un hombre de 33 años fue insultado por dos conocidos, quienes al enterarse que se había vacunado de Covid se burlaron en razón de la orientación sexual, en San Fernando.

"Se rieron y me dijeron que hacía falta una tercera vacuna, haciendo referencia a una penetración anal. Cuando les pedí respeto, volvieron a reírse con gestos afeminados".

Respuestas: El Movilh brindó asesoría psicológica a afectado.

Clasificación: Homofobia

Naturaleza

Fecha: 20 de junio

**Hecho:** Una mujer de 31 años denunció a su pareja por discriminarla e insultarla cuando decidió iniciar un proceso de cambio corporal acorde a su identidad de género.

Hechos ocurrieron en Valdivia.

Respuestas: El Movilh brindó orientación jurídica a la afectada.

Clasificación: Transfobia

## Ofensas

Fecha: 22 de junio

**Hecho:** Una pareja gay, de 63 y 59 años, denunció a un vecino de Lo Prado, por ofenderlos en reiteradas ocasiones por su orientación sexual, tratándolos frente a terceros de "maricones" y lanzándoles basura en su antejardín.

Respuesta: El Movilh brindó orientación jurídica a uno de los afectados.

Clasificación: Homofobia

# Amenazas de muerte

Fecha: 24 de junio

Hecho: Un joven de 27 años, H.E.E.A, denunció a un ex amigo M.B.C.G, por discriminarlo en razón de su identidad de género, llegando al extremo de amenazarlo de muerte.

Hechos ocurrieron en Temuco.

Respuesta: El Movilh brindó orientación jurídica al afectado.

Clasificación: Transfobia

## Degenerada y pervertida

#### Fecha: 1 de julio

**Hecho:** Una joven de 23 años, N.C.L.V, fue hostigada por la madre y la hermana de su pareja (22) solo porque no toleran las relaciones lésbicas.

"Ambas llegaron a la puerta de mi casa, en Cerrillos. Yo las dejé pasar. Delante de mi padre y mi madrastra me acusaron en reiteradas ocasiones de haber "pervertido" a mi pareja, de haberle "perturbado la mente". Me preguntaron a cuántas otras mujeres había pervertido. La tía dijo que yo era "enferma, desviada y degenerada". La madre dijo que yo les daba asco, que cómo era posible que mi familia pudiera aceptar que yo fuera "degenerada", relató la joven.

Tras la visita, donde la familia de N.C.L.V intentó sin éxito hacer entrar en razón a las agresoras, la madre y la tía impidieron a la joven acercarse a su pareja.

Respuesta: El Movilh brindó orientación jurídica a la afectada.

Clasificación: Homofobia

### Abuso

Fecha: 3 de julio

**Hecho:** Una mujer, F.A.P.R (29) intentó prohibir que su ex cuñado, F.A.E.N (37) viera o conversara con su sobrino de 5 años solo por su orientación sexual, llegando al extremo de asociar a la homosexualidad con el abusos de menores.

Al ser notificada por el padre del niño que F.A.E.N, haría una pijamada con su sobrino en Viña del Mar, la madre reaccionó señalando que "esto a mí me incomoda, no me importa si quedó de mal pensada o lo que sea"

Luego, relató el afectado, "ella me pidió directamente que no viera a mi sobrino. Esto se suma a mensajes de diciembre del 2020 donde me negaba incluso la posibilidad de dialogar con mi sobrino"

Respuesta: El Movilh brindó orientación jurídica al afectado.

Clasificación: Homofobia

#### Robo

Fecha: 10 de julio

**Hecho:** Una pareja gay denunció a dos vecinos de su departamento, ubicado en Santiago, por lanzarles garabatos y ofensas en razón de su orientación sexual.

"Hoy además nos quitaron un alfombra que tenía dibujada la bandera gay. La sacaron de la entrada de nuestra puerta. Puse una queja en la administración, pero no hicieron nada".

Respuesta: El Movilh medió ante la administración del recinto, tras lo cual cesaron los hostigamientos.

## Hueco

Fecha: 17 de julio

Hecho: La presidenta de un Comité de Vecinos, identificada con las siglas V.V.P, fue denunciada por un habitante de su misma comunidad por homofobia.

"Me trató de maricón y dio instrucciones a otras personas para que también me insultaran diciéndome "hueco"", señaló al afectado junto con explicar que los incidentes habían iniciado solo porque una de sus mascotas se había acercado a la mujer, en la comuna de Independencia.

Respuesta: El Movilh brindó orientación jurídica al afectado.

Clasificación: Homofobia

## "Compañero"

Fecha: 22 de julio

**Hecho:** Un hombre de 58 años, G.C.A, fue agredido por su compañero de departamento, en Estación Central, luego de enterarse el último sobre la orientación sexual homosexual del primero.

"Partió por negarse a costear los gastos comunes y cuando se los cobraba fue radicalizando sus malos tratos verbales: "maricón culiado", "niñita", y "viejo maraco", son algunos de sus insultos" (Sic), dijo.

Respuesta: El Movilh brindó orientación legal y psicológica al afectado.

Clasificación: Homofobia

## Burlas

Fecha: 23 de julio

Hecho: Tres vecinos/as de Iquique fueron denunciados por discriminar a una pareja lésbica.

"No podemos salir ni quieren a comprar el pan porque apenas nos ven nos gritan "tortillas asquerosas". A veces cuando andamos cada una sola, también nos insultan", señaló una de las afectadas, de 35 años.

Respuesta: El Movilh brindó orientación jurídica a la pareja.

Clasificación: Homofobia

## Burlas y golpes

Fecha: 23 de julio

Hecho: Un hombre de 57 años denunció a dos vecinos de Antofagasta por agredirlo e insultarlo entre abril y julio solo por ser gay.

"Sufro de hostigamiento diario en la puerta de mi departamento, al salir me insultan con gritos vejatorios de grueso calibre", dijo.

En una oportunidad "yo estaba dejando a un amigo fuera del departamentos y los vecinos me dijeron cosas como "maricón culiao, te gusta que te vengan a meter el pico, te vamos a matar"" (Sic).

Respuesta: El Movilh brindó orientación jurídica al afectado.

## Arrepentido

## Fecha: 31 de julio

**Hecho:** Graves episodios de discriminación comenzó a vivir el propietario de un cibercafé de La Reina con la llegada en mayo del 2021 de nuevos vecinos: un padre, una madre y de sus dos hijos, quienes instalaron una tienda de abarrotes.

"Desde los primeros días que estos nuevos vecinos comenzaron con bromas de mal gusto, luego con insultos y posteriormente con amenazas directas. Durante todo ese tiempo no hice caso de sus palabras, hasta que pasaron a las amenazas de muerte", denunció en agosto el trabajador de 47 años.

"Al comienzo me decían insultos como "llegó el maricón arrepentido" o "tú que disfrutas por atrás". Al no hacer caso a sus palabras comenzaron con las amenazas: "te vamos a funar por maricón", "vamos hacer que te vayas" o "conocemos mucha gente en muchas partes y vamos a traer unos locos para que no te dejen trabajar tranquilo". Luego comenzaron a tratarme de pedófilos" recordó.

La homofobia se desencadenó luego de que la víctima ofreciera a un amigo que vendiera algunos de sus abarrotes en su local, como una forma de ayudarlo, pues había quebrado. Esto fue interpretado como "competencia" por los agresores.

Respuesta: El Movilh brindó orientación jurídica al afectado.

Clasificación: Homofobia

## Empujón

Fecha: 31 de julio

**Hecho:** Un vecino atacó a un joven de 24 años debido a que éste le reclamó por lanzar bromas referentes a su orientación sexual con gestos y voces afeminadas.

"Me dio un empujón, me lanzó al suelo y pateó el cuerpo", dijo.

Hechos suman dos episodios de discriminación y ocurrieron en Valdivia.

Respuesta: El Movilh ofreció orientación jurídica al afectado.

Clasificación: Homofobia

#### Amariconados

Fecha: 2 de agosto

Hecho: Una pareja gay, de 18 y 20 años, fue insultada por un vecino en la comuna de Punta Arenas.

"En la calle se refirió a nosotros como "amariconados y maricones", dijo que no éramos hombres y amenazó con golpearnos", denunciaron.

Los insultos tuvieron lugar luego de que el mismo sujeto agrediera verbalmente a la madre de uno de los jóvenes y ambos salieran a defenderla.

Respuesta: El Movilh brindó orientación jurídica a los afectados

## Insultos y golpes

## Fecha: 1 de agosto

Hecho: Una pareja de Quinta Normal denunció a un matrimonio vecino por hostigarlos en razón de su orientación sexual.

Los acosos iniciaron cuando un miembro de la pareja, un estilista, no pudo por tiempo atender a una clienta, tras lo cual vinieron las ofensas

"Nos trata de "maricones culiaos" y "huecos de mierda" (Sic). Ella vive al lado nuestro, y junto a su marido incluso no ha amenazado con golpearnos por cualquier ruido o cosa que les parece molesto. Una vez iba bajando la escalera de nuestro edificio y el marido me dio una patada por la espalda. Solo porque me afirmé no caí al suelo", precisó R.A.D.T (41), uno de los afectados.

Respuesta: El Movilh brindó orientación jurídica a la pareja.

Clasificación: Homofobia

## Abuso

Fecha: 5 de agosto

Hecho: Un repartidor de gas insultó a una mujer de 32 años en Maipú, acosándola solo por ser lesbiana.

"Era amigo mí, pero me alejé de él hace tres años ya que era obsesivo conmigo, en especial desde cuando inició una relación con una mujer. Hoy, durante su horario de trabajo y junto a su polola, rayó mi automóvil con spray negro y pegó una hoja en la ventana donde decía "Soy puta. Cobro Luca. Me gustan las mujeres"" (Sic), señaló la afectada con fotografías que demostraban su denuncia.

Dado que el ataque ocurrió en horario laboral del agresor y mientras éste transitaba en un camión distribuidor de gas, la afectada presentó un reclamo ante los superiores del sujeto, pero éstos le restaron relevancia a lo ocurrido, señalando que no era de su responsabilidad.

Respuesta: El Movilh orientó a la afectada para que denunciara los hechos en la policía y en fiscalía.

Clasificación: Homofobia

"Lesbiana"

Fecha: 10 de agosto

Hecho: Un joven trans (25) denunció a un vecino de Rancagua por insultarlo en razón de su identidad de género.

"Me dice cosas a mí y a mi papá. Dicen que soy lesbiana y usan el término como insulto", señaló.

Respuesta: El Movilh orientó al joven para que formalizara su denuncia

Clasificación: Transfobia.

## Asco

## Fecha: 16 de agosto

**Hecho:** Un joven de 23 años denunció a su cuñado por sin insultarlo y amenazarlo en razón de orientación sexual en reiteradas llamadas telefónicas.

Los acosos iniciaron, luego de que el joven defendiera a su hermana de una agresión verbal propinada por el sujeto, en Copiapó.

Entre otros, el cuñado señaló al joven "maricón y la conchetumare, me das más asco que la cresta, te voy a reventar a vo y a toda tu familia escoria culia. Toi seguro igual pensai en puro pico. La pistola te la voy a meter en la raja a vo y a tu mamá" (Sic).

Respuesta: El Movilh brindó orientación jurídica al afectado.

Clasificación: Homofobia

## Cochina

Fecha: 18 de agosto

**Hecho:** Una madre de 35 años denunció a su ex esposo por impedirle ver a su hija de 11 años solo porque mantiene una relación con alguien de su mismo sexo.

"Me ha dicho que soy "cochina", "chupa zorra" y que no merezco ser madre por ser lesbiana". Mi hija también tiene una orientación lésbica y el padre me culpa a mí por eso", señaló.

Hechos ocurrieron en Calama.

Respuesta: El Movilh brindó orientación jurídica a la afectada.

Clasificación: Homofobia

## Pensamientos

Fecha: 24 de agosto

**Hecho:** Un sujeto hostigó a su esposa luego de que la hija de ambos, de 12 años, comentara que "me gustan los niños y las niñas".

"Lo que me dijo hoy mi hija me dejó pésimo. Ella es mujer. Debe sacarse esa forma de pensar. Espero que no avales esos pensamientos, sería la último. Si los avalas la cosa se va complicar mucho", le dijo el sujeto a su esposa por WhatsApp.

Hechos ocurrieron en Melipilla.

Respuesta: El Movilh brindó orientación legal y psicológica a la madre de la niña.

#### Piedrazos y amenazas

#### Fecha: 23 al 28 de agosto

**Hecho:** Violentos episodios de discriminación sufrió durante una semana una joven trans, C.N.N (27 años) en manos de un vecino, A.P.

El abuso inició el 23 de agosto, cuando el sujeto llegó hasta el domicilio de la víctima, procediendo a patear su puerta y a tratarla de "maricón culiao y caballo (Sic).

Un día más tarde, el agresor propinó un golpe a un amigo de la joven, en momentos cuando lo vio salir de su casa, por lo que ambos/as denunciaron los hechos a carabineros.

La denuncia alteró más al sujeto, quien el 28 de agosto al ver a la joven en la calle la atacó con extrema violencia.

"Cuando salí a comprar comida para mis mascotas comenzó a insultarme porque lo había denunciado. Tomó una piedra y con la misma me empezó a golpear la cabeza. Comencé a correr y sacó un cuchillo. Me persiguió varias cuadras con el cuchillo. Se aprovecha porque vivo sola y por mi condición de mujer trans", relató la afectada.

Con el apoyo del municipio de Buin la afectada volvió a llamar a carabineros, quienes la trasladaron al Hospital San Luis<sup>25</sup>, donde le pusieron cinco puntos en la cabeza.

En el parte médico se constató que la mujer quedó con una lesión contuso-cortante de 4 cm de largo y con sangrado activo.

El Municipio de Buin prestó acompañamiento, ayuda social y orientación judicial a la víctima.

**Respuesta:** El Movilh brindó orientación jurídica y psicológica a la víctima y puso los antecedentes a disposición de la Subsecretaría de la Prevención del Delito

Clasificación: Transfobia

## Sola

Fecha: 27 de agosto

Hecho: Un hombre de 31 años, S.Z, fue discriminado por la arrendataria de un condominio donde atiende un almacén, en Las Condes.

"Procedió a minimizarme verbalmente, en un tono condescendiente, y a decirme que si estaba solo, o si debería llamarme "sola". Me dijo que yo no era un hombre, sino un maricón", señaló.

Respuesta: El Movilh brindó orientación jurídica al afectado

<sup>[25]</sup> https://www.youtube.com/watch?v=-K4XmPqMQP8

## **Golpes e insultos**

#### Fecha: 6 de septiembre

**Hecho:** Vecinos insultaron a un trabajador de 55 años en la comuna de Valparaíso luego de conocer que la persona con quien vivía, otro hombre de 60 años, era su pareja.

"Mi vida privada un rumor que luego corroboraron. El hijo de mi vecina comenzó a caminar como amanerado al lado mío cuando voy a comprar el pan para reírse de mí.. Lo acusé son sus papás, pero ellos me dijeron que yo era un "hueco" y "una mala influencia". La madre me pateó las canillas", señaló.

Este relato suma dos episodios de discriminación.

Respuesta: El Movilh brindó orientación jurídica y psicológica al afectado.

Clasificación: Homofobia

## Agresiones y amenazas

Fecha: 22 de septiembre

**Hecho**: Una pareja lésbica, M.J.Y.C. (39) y T.A.A.C. (45), fue insultada por su orientación sexual y amenazada de muerte por un vecina, A.S.Z, en la comuna de Renca.

"Al ver que junto a mi pareja llegamos a nuestro domicilio, comenzó a gritarme "Ya llegaste maricona culiá. Te voy a enterrar un cuchillo. Cuando te pille sola, te mato" (Sic). Esto solo lo dijo porque ya antes la habíamos denunciado antes en Carabineros por ofendernos por ser lesbianas", dijo una de las afectadas, tres exponer los hechos en la Fiscalía.

Respuesta: El Movilh brindó orientación jurídica a las afectadas.

Clasificación: Homofobia

## Peligro

Fecha: 23 de septiembre

**Hecho:** Una joven cantante de 19 años denunció a otro integrante de su grupo folclórico, ubicado en San Bernardo, de visibilizar sin su consentimiento su orientación sexual entre compañeros/as y familias, calificando a su identidad como un "peligro".

Respuesta: El Movilh brindó orientación jurídica a la afectada.

## "Parecí mujer"

## Fecha: 30 de septiembre

**Hecho:** R.C.M (43); presidente de un condominio ubicado en Hualpén, Región del Biobío; denunció a un vecino (R.M) de insultarlo y agredirlo en razón en su orientación sexual solo por discrepancias relacionadas con la administración del recinto.

"Fui insultado con frases como "maricón de mierda, parecí mujer que no tienes autoridad, como te subes al pico de todos" (Sic) Junto con eso vinieron los empujones y agarrones. Me sacó los lentes para agredirme", dijo la víctima, tras denunciar los hechos en la Cuarta Comisaría de Hualpén.

Respuesta: El Movilh brindó orientación jurídica al afectado.

Clasificación: Homofobia

## Hostigamiento

Fecha: 7 de octubre

Hecho: Una pareja lésbica fue hostigada por dos vecinos, un hombre y una mujer, en Santiago Centro.

"Con mi pareja hemos sufrido, sistemáticamente, el hostigamiento verbal e incluso (el hombre) reventó la puerta de entrada del departamento donde vivíamos. Y digo "vivíamos", porque por esta razón, nos tuvimos que mudar. Lo único que pudimos encontrar, fue un departamento en la torre contigua al edificio donde vivíamos. Sin embargo, seguimos con el hostigamiento y acoso por parte de las mismas personas", señaló.

Respuesta: El Movilh orientó a una de las afectadas en los antecedentes a recopilar para formalizar una denuncia.

Clasificación: Homofobia

## Mordedura humana

Fecha: 11 de octubre

Hecho: Una violenta agresión sufrió una pareja gay, F.S (32), y D.I (30), y sus dos amigos tras ser atacados por un sujeto identificado con las siglas A.G.G.

Los hechos ocurrieron en La Pintana, cuando la pareja compartía en su propia casa con dos amigos, el agresor y la polola de éste último.

"Estábamos reunidos, compartiendo. Al agresor no lo conocíamos. En un momento él comenzó a ofender a su polola, tratándola de "maraca". Luego le dio una patada por debajo de la mesa, lo que todos pudimos ver, pues la cubierta es de vidrio. Entonces comenzamos a defenderla y pedimos a A.G.G que se fuera", señaló D.I.

La defensa de la mujer provocó la irá de A.G.G, quien al instante comenzó a ofender a los dueños de casa y a sus dos amigos en razón de su orientación sexual. El más afectado fue F.S, pues recibió una brutal mordedura en su rostro.

A.G.G "nos trató de "maricones culiaos, fletos de mierda" (Sic). Dijo que le dábamos asco y nos amenazó diciendo que "los voy a reventar a puros balazos". A mi pareja le propinó un mordisco, arrancándole parte de la piel de su rostro. A mi me dio golpes de puño en la cara y cuerpo al igual que a mis amigos. Nos agredió aludiendo siempre a nuestra homosexualidad", señaló D.I.

En el parte médico del Hospital Padre Hurtado, se constató en el caso de F.S "herida en región submaxilar izquierda con pérdida de tejido" producto de "mordedura humana". Las lesiones fueron calificadas como graves.

Este relato suma 4 episodios de discriminación, uno por cada víctima.

**Respuesta:** El Movilh denunció y repudió los hechos, brindó orientación psicológica a los afectados y el 25 de octubre patrocinó la presentación de una querella criminal en el 15 Juzgado de Garantía de Santiago.

Clasificación: Homofobia

## En situación de calle

Fecha: 11 de octubre

**Hecho:** Una mujer trans, M.S (37) en situación de calle denunció ante el albergue que la cobija permanentes abusos de parte de su familia, algunos vinculados con su identidad de género.

"Desde mi niñez he sido victima de discriminación por mi femineidad. También he sufrido violencia física, agresiones y maltratos. Soy también una persona con discapacidad física. Yo me encuentro en un albergue por mi seguridad", señaló.

**Respuesta:** El Movilh orientó a trabajadores/as del albergue en los antecedentes a levantar y recopilar para explorar la posibilidad de acciones legales, al tiempo que recomendó buscar ayuda en el Departamento de Género y Diversidad Sexual del municipio de Quilicura.

Clasificación: Transfobia

# Violación y amenazas.

Fecha: 18 de octubre

**Hecho:** Una mujer de 31 años, M.P.G, denunció a su hermano por ofenderla reiteradamente en los últimos cuatro años, a lo que sumaba un abuso sexual cuando era niña.

"Me envía mensajes amenazando que me va a golpear por ser lesbiana. Lo tenía bloqueado pero se crea otras cuentas y sigue molestándome y acosándome. La verdad es que yo con él no tengo contacto ya que me violó cuando pequeña y es una persona agresiva. Nadie de mi familia tiene contacto con él", relató.

"El último contacto con él fue hace tres meses aproximadamente cuando comenzó acosar a mi sobrina pequeña de 11 años. Ese mismo día, y solo por defender a mi sobrina, recibí una amenaza por Facebook", dijo.

"Ojalá no te vea, porque voy a quebrarte maraca lésbica", señaló la amenaza.

Este relato suma al menos dos episodios de discriminación.

Respuesta: El Movilh brindó orientación jurídica a la afectada

## Palos y cuchillo

#### Fecha: 25 de octubre

**Hecho:** Un habitante de Puerto Varas, L.A.F.G (40), fue insultado por tres vecinos en razón de su orientación sexual, además de ser agredido físicamente y ser apedreada su casa.

"Antes habían dicho gritos homofóbicos contra mi persona por ser gay, como "maricón culiao" (Sic). El 25 de octubre, luego de insultarme, lanzaron piedras hacia mi casa, rompiendo vidrios de la ventana. Luego golpearon distintas partes de mi cuerpo con un palo y me hirieron un dedo con un cuchillo. Me pusieron 7 puntos", dijo, tras denunciar los hechos a la Fiscalía y a la PDI.

Este relato suma al menos tres episodios de discriminación.

Respuesta: El Movih brindó orientación jurídica al afectado.

Clasificación: Homofobia

### Presiones

Fecha: 26 de octubre

Hecho: Un habitante de Santiago presionó a un vecino para que comentara ante terceros su orientación sexual.

"Según él, por el bien de todos yo debía contar mi orientación sexual en una reunión de vecinos. No le contesté, pero en las últimas semanas ha insistido con el tema. Le dice a otros, frente a mí, que tengo algo que contar. Estoy muy angustiado".

Respuesta: El Movilh dialogó con el agresor, tras lo cual cesaron los abusos.

Clasificación: Homofobia

## Golpiza

Fecha: 29 de octubre

Hecho: Un hombre de 35 años fue agredido físicamente en las cercanías de su casa, en Colina.

El agresor, un vecino del sector, había con anterioridad insultado a la víctima por su orientación.

"Te gusta por atrás asqueroso" y "maricón cochino" fueron algunas de las ofensas lanzadas en la vía pública.

El 29 de octubre junto a los insultos, vino una golpiza.

"Con un palo me pegó en la cabeza, en las piernas, en el pecho, en las manos. Salí arrancando. Amanecí todo adolorido y con depresión".

Respuesta: El Movilh brindó orientación psicológica y jurídica a la víctima.

## "Asquerosa"

## Fecha: 2 de noviembre

**Hecho:** Una joven de 25 años, A.O.L, denunció a una conocida, de hostigarla por redes sociales, dando a conocer su orientación sexual y tratándola de "lela" y "asquerosa".

Respuesta: El Movilh brindó orientación a la afectada.

Clasificación: Homofobia

## "Marinconcito"

## Fecha: 16 de noviembre

Hecho: Una madre de un niño de 5 meses, V.C.S.M denunció a un "amigo" de discriminación y de alterar la identidad legal de su hijo sin su consentimiento.

"Compartía departamento con mi amigo en La Condes. Decidí pedirle a que me ayudara con una inseminación casera. Quedé embarazada cuando ya no vivía con él y yo ya compartía un departamento con mi pareja, una mujer. Ahí comenzó a decirme que quería ponerle su apellido al niño cuando naciera, aunque nunca ayudó, ni ha ayudada en nada, ni durante el embarazo, ni después", señaló.

Al comienzo, la madre logró inscribir al niño con su apellido. Días después, sin embargo, el donante, se acercó al Registro Civil y sin autorización de la madre, le puso su apellido como el primero, y como el segundo, el de la mamá.

"Esto lo ha hecho solo por machismo, por homofobia, para jodernos la vida", denunció la mujer de nacionalidad venezolana.

Respuesta: El Movilh brindó orientación jurídica a la afectada

Clasificación: Homofobia

# "Asquerosas"

Fecha: 17 de noviembre

**Hecho:** Repetidos episodios de discriminación vivió durante un año una mujer de 33 años (J.F) en manos de un vecino, R.L.V, en la comuna de San Ramón.

La afectada denunció el 17 de noviembre que las agresiones lesbofóbicas ocurrieron después de que "a mi vecino le molestara la forma de estacionar mi automóvil. Comenzó a decirme cosas como "asquerosa", "maricona". También maltrata a mi pareja, cuando nos grita "asquerosas, váyanse"". Esto no ha parado".

Respuesta: El Movilh brindó orientación jurídica a la pareja.

## Insostenible

## Fecha: 20 de noviembre

Hecho: Un joven de Viña del Mar denunció al conserje de su edificio por ofensas homofóbicas.

"Desde que llegué a vivir al edificio, el conserje me ha faltado el respeto. Cada vez que me ve con mi pareja se burla de nosotros con risa. Ha llegado al punto en que nos pone el pie para que no subamos al ascensor", dijo.

Añadió que "la situación es insostenible ya que cada vez que la veo me duele el estómago porque no sé con que falta de respeto se va a presentar. Nos ha llegado a decir "maricones"", señaló.

**Respuesta:** El Movilh orientó al afectado en los antecedentes a recopilar para que formalizara una denuncia por discriminación.

Clasificación: Homofobia

## "Mal ejemplo"

Fecha: 22 de noviembre

**Hecho:** En el marco de una discusión por una herencia, una mujer comenzó a insultar en razón de su orientación sexual a su hermana, M.B.D (33), en Valparaíso.

Por redes sociales, la agresora trató a su hermana de "maricona". Por Whatsapp le advirtió "no hables con mi hija, eres un mal ejemplo. Sigue juntándote con mariconas, pero con mi hija no".

Respuesta: El Movilh brindó orientación jurídica a la afectada.

Clasificación: Homofobia

## "Contraria a la biología"

Fecha: 25 de noviembre

**Hecho:** Una pareja lésbica M.R (44) y D.D (42) y su hijo de 16 años fueron insultados/as por dos vecinas en La Pintana.

"Siempre nos habían gritado cosas, a nosotras por ser lesbianas y a mi hijo ser gay. Esta vez las encaré en el frontis de mi casa, pidiendo que dejarán de molestar. Se lanzaron sobre mí para golpearme. Me dieron patadas. Mi hijo escuchó la discusión y al salir a ver que pasaba, comenzaron a gritarle "maricón" y "huacho". Al salir mi pareja le dijeron "puta, maraca y maricona, contraria a la biología", señaló M.R.

Este episodio suma tres episodios de discriminación.

Respuesta: El Movilh brindó orientación jurídica a una de las afectadas.

## Maricón

Fecha: 28 de noviembre

Hecho: Un joven de 19 años. J.L.M fue discriminado por un tío, C.Y.M, solo por defender a su abuela de agresiones verbales, en la comuna de San Bernardo.

"Luego de escuchar varios insultos de mi tío hacia mi abuela intervine para apoyarla, pidiendo que dejara de agredirla. Entonces mi tío me amenazó, diciendo que me iba a golpear porque era "un maricón en todos los dados, en todo el sentido de la palabra", en clara referencia a que soy gay. Repitió eso varias veces", señaló el joven.

Respuesta: El Movilh brindó orientación jurídica al afectado.

Clasificación: Homofobia

### Torturas

Fecha: 6 de diciembre

**Hecho:** Una mujer trans de 37 años, C.A.R.V, denunció ser víctima de constantes agresiones físicas y verbales por parte de su ex pareja.

"Hace más de una década conocí a este hombre que me brindó atención, comida y un lugar donde vivir, pero a un costo muy alto. Con el tiempo comenzó a golpearme, cada vez que a él le parecía. Abusa de mí, tanto psicológica como sexualmente. Han sido tantos los golpes que casi he perdido la vida. De todas las veces que me ha golpeado lo más grave fue cuando quebró mi mandíbula desfigurando mi cara. Otra vez me golpeó y atacó con un arma blanca, dejando cortes en mis brazos, piernas y espalda", señaló.

"Por todos esos maltratos decidí dejarlo, pero él me persigue donde vaya. Nadie me ayuda. Me tiene amenazada de muerte y ha destruido mi casa. A veces se presenta de madrugada fuera de mi casa, apedreando y amenazándome a gritos que me matara", añadió.

El 5 de diciembre del 2021 "me volvió a golpear de tal manera que estoy postrada en una cama. Tengo miedo de ir al hospital, por que él puede estar por ahí buscándome. No puedo regresar a mi casa, tengo la cara irreconocible. Siento vergüenza", señaló.

La mujer ha constado en diversas ocasiones las agresiones en Hospital Regional de Talca, en los años 2013, 2015, 2017 y, la más reciente, del 6 de diciembre del 2021. "Traumatismo en la cabeza", fue el último diagnóstico médico.

Este episodio suma a lo menos 4 casos de discriminación.

**Respuesta**: El Movilh brindó orientación a la afectada y gestionó que el Ministerio de la Mujer y Equidad de Género le brindara orientación jurídica y psicológica gratuita.

Clasificación: Transfobia

#### "Maricón"

### Fecha: 16 de diciembre

Hecho: Un hombre de 55 años, J.C.C, denunció que su hermano y su sobrino lo discriminan en razón de su orientación sexual.

"Sin causa alguna, ni provocaciones me tratan de "maricón conchetumadre". Esto viene ocurriendo desde el 2019", señaló la víctima, quien vive en Temuco.

Respuesta: El Movilh brindó orientación jurídica y psicológica al afectado.

Clasificación: Homofobia

## "Mariconcita"

Fecha: 20 de diciembre

Hecho: Un sujeto insultó en dos ocasiones a una de sus vecinas, en la comuna de Estación Central, tratándolo de "mariconcita", "falta de pico" (Sic).

Respuesta: El Movilh brindó orientación jurídica a la afectada.

Clasificación: Homofobia

## Amenazas

Fecha: 19 de diciembre

**Hecho:** Un joven de 21, I.Q. denunció a un conocido, B.P, por insultarlo en razón de su orientación solo porque estaba celebrando en una calle de Chiguayante el triunfo electoral de Gabriel Boric.

"Ando con ganas de pegarle a un maricón del Boric" señaló el agresor para luego añadir que "te voy a mandar los medios balazos".

Respuesta: El Movilh brindó orientación jurídica al afectado.

Clasificación: Homofobia

## Sucia

Fecha: 28 de diciembre

**Hecho:** Una mujer de 30 años acusó al padre de sus dos hijos de insultarla por su orientación sexual cada vez que visita a los niños.

Entre otros, la trata de "sucia" y "peligrosa".

Hechos ocurrieron en San Fernando.

Respuesta: El Movilh brindó orientación jurídica a la madre.

## Marica

Fecha: 29 de diciembre

**Hecho:** El dueño de un almacén ubicado en Huechuraba trató de "maricón" y "marica" a uno de sus vecinos solo porque lo vio en la calle de la mano de un hombre.

Respuesta: El Movilh brindó orientación jurídica al afectado.

Clasificación: Homofobia

# "Suicídate"

Fecha: 31 de diciembre

**Hecho:** Un hombre de 43 años denunció continuos hostigamientos de su cuñada, quien además de tratarlo de "maricón de mierda" y pedirle que se suicide, le impidió que visitara a su hermano para Año Nuevo.

Hechos ocurrieron en San Antonio.

Respuesta: El Movilh brindó orientación jurídica al afectado.

# 10. Declaraciones homofóbicas y transfóbicas

En el año hubo 309 declaraciones de odio, un 47,8% más que el año precedente.

El amplio aumento se debe a un hecho muy puntual que, de no haber ocurrido, se hubiese traducido en un descenso de los discursos de odio en 2021.

En efecto, del total de declaraciones, 149 fueron lanzadas por personas o grupos anti-derechos que de manera inmoral e inescrupulosa trataron de vincular el triste y lamentable crimen de un niño, Emilio Jara, con la causa y el activismo LGBTQA+, canalizando de esa manera su homo/transfobia, en lo que fue una de las acciones más brutales y siniestras contra la diversidad sexual y de género ocurridas en 2021.

Del total de 309 dichos de odio, 1 afectó a lesbianas, y 308 a la población LGBTIQA+ como conjunto.

Los declaraciones ocurrieron en Coquimbo (1), Valparaíso (6), redes sociales (268) y medios nacionales de comunicación (34)

40 declaraciones se relatan en otros capítulos por requerir análisis especiales. Se trata de 29 declaraciones lanzadas contra el matrimonio igualitario<sup>26</sup>; 6 a favor de contenidos homofóbicos en la Armada<sup>27</sup>, 1 contra el derecho de la docente Sandra Pavez a ejercer la docencia<sup>28</sup>, 1 contra la la derogación del divorcio culposo por homosexualidad.<sup>29</sup>

y 3 en el contexto de las elecciones presidenciales<sup>30</sup>.

Además, otras 265 declaraciones se detallan en el ítem "casos especiales" del presente título.

2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Total
9	15	8	19	12	9	9	58	42	57	33	42	80	43	48	166	92	69	209	309	1329

## Desagrado

Fecha: 26 de marzo

**Hecho:** El ex tenista Marcelo Ríos insistió con "justificar" su rechazo a las personas homosexuales, incluso si un hijo suyo fuese gay.

Al ser consultado por el programa "De Tú a tú" de Canal 13 sobre como reaccionaría si tuviese un hijo gay, respondió "¿Qué voy a hacer? (...) Me costaría, no lo niego. No estoy preparado, pero creo que sería lo suficientemente maduro y tratar de entenderlo y de que existe. Existe y le puede tocar a cualquiera y está bien, pero ¿que me guste y me agrade? No me agrada".

"Yo no lo tomo como una enfermedad, pero me costaría aceptarlo, obviamente que me costaría, no es una cosa fácil para mí" sostuvo en declaraciones reproducidas por Radio ADN.

**Respuestas:** El Movilh repudió públicamente sus dichos, así como su persistencia para pronunciarse contra la homosexualidad y la transexualidad.

## Candidatos

#### Fecha: 27 y 29 de abril

**Hecho:** Algunos candidatos a cargos públicos emitieron discursos homofóbicos a través de los medios de comunicación.

Al ser consultado sobre su postura en torno al matrimonio igualitario y la adopción homoparental el candidato a constituyente, Pedro Barraza Cuadra (independiente DC), sostuvo que "yo me rijo por la palabra de Dios y dice: hombre y mujer los creó, no dijo hombre con hombre o mujer con mujer. Ese hombre y mujer los creó, únanse la mujer a su marido y tengan hijos. ¿Cómo van a tener hijos una pareja desigual?".

"Me pongo en el siguiente plan: un niño con dos papás o un niño con dos mamás, ¡¿qué es eso?! No sé si estaré muy equivocado, tan errado en mi forma de pensar, ¿estaré muy viejo?", apuntó el candidato por el distrito 5 de Coquimbo. (CNN Chile, 27 de abril).

El candidato a la Convención Constituyente del Partido Republicano, Cristóbal Orrego, añadió que "el acto homosexual no es correcto y, por tanto, no se debe aprobar. Moralmente no es digno de aprobación (...) Igualdad de derechos entre todas las personas, pero no que la ley apruebe conductas que son inmorales. Tolerancia, puede ser, pero aprobación no". (CNN Chile, 29 de abril).

#### **Respuestas:**

-El Movilh replicó que "los prejuicios e ignorancia de Barraza y Orrego será derrotados por la igualdad.

-En torno a Orrego, Iguales señaló en sus redes "no da lo mismo por quien votar".

Clasificación: Homofobia

#### Terapias

Fecha: 22 de julio

Hecho: La ONG Comunidad y Justicia se pronunció a favor de las terapias reparativas de la homo/bi/transexualidad al negarse que las mismas sean prohibidas por ley.

"Prohibir estas terapias atenta contra la libertad de todas las personas de recibir la terapia profesional que pueda ayudarlos, en conformidad a sus convicciones morales y religiosas", señaló por Twitter.

**Respuesta:** El Movilh recordó que las terapias reparativas están prohibidas por el Ministerio de Salud y que validarlas es promover las torturas contra las personas LGBTIQA+.

# 11. Discriminación en medios, cultura y/o espectáculo

Un 75% disminuyeron las denuncias o casos por discriminación en los medios, la cultura y/o el espectáculo.

Históricamente el número de casos ha sido bajo en este campo, pues la cultura, las artes y/o espectáculo más que ser homo/transfóbicos, mayoritariamente han contribuido a correr las barreras de la desigualdad en Chile.

2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Total
6	5	8	2	1	0	3	3	1	5	2	2	2	2	1	3	2	1	4	1	54

"Pervettido"
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Fecha: 2 de abril

**Hecho:** El comediante Mauricio Palma presentó en Mentiras Verdaderas de La Red una rutina de su personaje "Violento Parra", el cual se caracteriza por denunciar, repudiar o burlarse de quienes abusan de su poder.

Haciendo referencia al cantante Alejandro Sanz y a su canción "Corazón partío", Palma se renombró como "Alejandro Trans" y cambió el título del tema por el de "Pervertido", incluyendo frases transfóbicas.

"Ya no sé en verdad que eres, si hombre o mujer, o alguna otra, qué se yo. Pero mira pues Rodrigo, sácate esa falda que es de tu mamá y te va a pillar, no le va a gustar (..) Y aunque te quede estupenda y hasta te ves linda, o mejor digo lindo, ya no lo sé", cantó.

"¿Quién te va a sacar las extensiones? ¿Qué obispo va a sanar todas tus perversiones? Se te ponen los pezones si hace frío, tienes que entender que eres un pervertido. Que tú naciste hombre y te llamas Rodrigo, que no te llamas Luna eso te lo digo", añadió.

Ante algunas críticas por discriminación en redes sociales, Palma sostuvo en un video que "nuestra intención jamás fue generar esa molestia, ni tampoco dañar la dignidad de nadie. Expresamos nuestras más sinceras disculpas a quienes pudieron sentirse pasados a llevar. (...) De todas formas es importante ir revisando lo que uno hace en términos humorístico. Esto tiene que ver con visibilizar cosas que son dolorosas, para nosotros también, para todos".

**Respuestas:** 

-OTD llamó a terminar con las caricaturas de las personas trans.

-El Movilh instó a usar las parodias "de manera clara y con mucho cuidado", en especial cuando abordan la realidad de grupos discriminados.

-Iguales rechazó la rutina "por menoscabar a la comunidad trans".

Clasificación: Conducta transfóbica

# 12. Casos especiales

Entre los casos del 2021 que requieren análisis especiales se cuentan las discriminaciones que desde diversas instituciones sufrió un conviviente civil tras el fallecimiento de su pareja, llegándose al extremo de impedirle ejercer los derechos de sepultura.

Los ataques y amenazas de muerte por redes sociales contra el movimiento y activistas LGBTIQ+, otros de los abusos descritos en este ítem, fueron crudos y gravísimos en 2021, pues los grupos anti-derechos llegaron al extremo de usar y abusar del asesinato de un niño para canalizar su homo/transfobia.

Finalmente, los abusos ocasionados con motivo de la tramitación de leyes pro-igualdad y/o que tuvieron lugar al interior de las fuerzas armadas, de orden o seguridad, se caracterizaron por expresar múltiples formas de discriminación, solo mencionadas en este capítulo y desarrolladas y analizadas en detalles en otras partes del presente informe, como se apreciará a continuación

# 12.1 Cruzados atropellos contra conviviente civil sobreviviente

Uno de los más crudos y crueles episodios de discriminación vivió un ciudadano argentino, E.G tras el fallecimiento de su pareja M.E, pues la Policía de Investigaciones (PDI), el Ministerio Público y el Cementerio El Manantial desconocieron sus derechos como conviviente civil.

E.G y M.E mantuvieron una relación de 7 años hasta que esté último perdió la vida el 27 de junio, aparentemente por un suicidio ocurrido en el departamento de ambos, en Providencia.

Desconociendo totalmente la calidad de conviviente civil, la Fiscalía de Ñuñoa al intervenir en el caso decidió entregar el cuerpo del fallecido a sus padres, los mismos que no aceptaban la relación de carácter homosexual que su hijo mantenía con E.G.

El daño causado fue tremendo, pues derivó en una seguidilla de otros abusos: el cuerpo fue enterrado en un lugar no consentido por su pareja y donde hasta el cierre de este informe se desconocían sus derechos de conviviente civil y, por consiguiente, de sepultura. El 19 de octubre del Movilh envió una misiva al Fiscal Nacional Jorge Abott para que encomendara una investigación sobre el negligente y homofóbico actuar de uno de los fiscales del Ministerio Público y para que se reconocieran los derechos del conviviente civil.

El Fiscal Nacional se negó inicialmente a ello.

En efecto, el 10 de noviembre la jefa de Gabinete del Fiscal Nacional, Alejandra Seguel, se limitó a señalar al Movilh que pondría el caso a conocimiento de la Fiscalía Regional Metropolitana pues "el Fiscal Nacional se encuentra impedido legalmente para dar instrucciones u ordenar realizar u omitir actuaciones en casos particulares, según lo dispuesto en el artículo 17 letra a) de la Ley 19.640, Orgánica Constitucional del Ministerio Público".

De esa manera, la Fiscalía pasaba por alto que en ningún contexto se le estaba pidiendo intervenir en algún caso que estuviera investigando un fiscal. Solo se exigía que actuara frente a una flagrante discriminación y abuso en razón de la orientación sexual cometida por uno de los funcionarios del Ministerio Público al desconocer arbitrariamente los derechos legales que le compete a un conviviente civil.

Con tal argumentación, el Movilh insistió ante la Fiscalía.

Como resultado, el 19 de noviembre Seguel respondió que "desde la Fiscalía Nacional estamos haciendo las gestiones necesarias para abordar el tema (...) lo que será debidamente informado al afectado y/o a sus representantes legales, a través de la Fiscalía Regional respectiva. Lamentamos si hubiera un mal entendido con la carta previamente enviada".

Por su parte, el Fiscal Regional Metropolitano Oriente, Felipe Sepúlveda Araya, señaló el 2 de diciembre al Movilh que "el procedimiento para investigar una muerte lo inicia la denuncia de la policía con antecedentes que ponen a disposición de la Fiscalía, la que a su vez, mediante oficio, al Servicio Médico Legal pide la autopsia y se entregue al cuerpo a quien acredite tener derechos sobre el mismo"

Añadió que el 19 de julio la Fiscalía aprobó además que E.G fuera parte de la causa "sin que existan requerimientos anteriores en tal sentido, por lo que partir de esa fecha toda la información de la investigación se le ha entregado exclusivamente a él en su calidad de víctima indirecta", con lo cual no asumía ninguna responsabilidad del Ministerio Público en los hechos o en el trato discriminatorio.

"Sin perjuicio de lo anterior, y para que situaciones tan lamentables como la que usted expone

no vuelvan a ocurrir, se revisarán los procedimientos administrativos establecidos en relación con los requerimientos que se efectúan por parte de la Fiscalía al Servicio Médico Legal", apuntó.

Parcialmente distinta, pero no satisfactoria, fue la reacción de la PDI, pues en una reunión con el afectado reconoció su error, le pidió disculpas y accedió a su solicitud de que se le entregaran las cédulas de su pareja que habían sido pasadas inicialmente a los padres del fallecido. Sin embargo, la institución luego envío una carta al Movilh negando la discriminación

En efecto, tras el suicidio el funcionario de la Policía de Investigaciones que intervino en el caso, el Inspector Sebastián Guzmán Díaz, retiró del domicilio de los convivientes civiles dos cédulas de identidad (una de éstas vencida) del fallecido y las entregó a sus padres, no a su pareja.

El 18 de octubre, el Movilh reportó lo sucedido al Director General de la Policía de Investigaciones, Sergio Muñoz Yáñez.

El 4 de noviembre el jefe Nacional Subgerente de Delitos contra las personas, Víctor Ruiz Vallejos, anunció al Movilh que se había instruido una investigación interna. Del mismo modo aclaró que la PDI había intervenido el día del suicido en el caso por instrucción de la fiscal Carmen Quezada Abett de la Torre, de la Fiscalía Metropolitana Oriente

El 11 de noviembre, E.G. se reunió con la Brigada de Homicidios de Ñuñoa, donde le ofrecieron disculpas por lo ocurrido y le hicieron entrega de las dos cédulas de su pareja.

Sin embargo, el 24 de noviembre del 2021 la Jefa Nacional de Delitos contra las Personas, Maricela Gárate Vergara, señaló en una carta enviada al Movilh que "se instruyó una investigación interna, donde se resolvió que no le asiste responsabilidad administrativa a ningún funcionario de la Brigada Especializada ni a otro de nuestra institución, ya que existe un total consenso en todas las declaraciones; tanto del personal policial como del mismo afectado, en que el procedimiento se desarrolló con profesionalismo y buen trato, sin existir discriminación hacia el señor E.G, por el contrario, los funcionarios siempre fueron amables, respetuosos y empáticos en todo momento, incluso le facilitaron los medios para ir a prestar declaración en las dependencias de la unidad precipitada y luego regresar a su domicilio".

Omitía así la PDI, y solo con el fin de que no quera registro escrito de ello, que había ofrecido disculpas al afectado por un acto de discriminación, devolviéndole las cédulas de su pareja que ilegal y arbitrariamente le había usurpado. También omitía, o manipulaba, que el señor E.G fue bien tratado durante las investigaciones de un hecho irregular, pero no al momento de ocurrir el mismo, confundiendo así a la víctima en un momento de estrés respecto a las responsabilidades que le adjudicaba a funcionarios de la institución.

Con todo, al cierre de este informe, no se resolvía el más grave problema ocasionado por la irresponsabilidad y discriminación en que incurrieron los funcionarios de la PDI y de la Fiscalía: la imposibilidad de ejercer los derechos de sepultura.

El Cementerio El Manantial, del Grupo Nuestros Parques, procedió a sepultar el cuerpo, siguiendo exclusivamente el deseo de los padres y demás familiares del difunto, sin verificar el estado civil del difunto.

Tan grave e ilegal fue la situación que en ningún momento el Cementerio pidió al conviviente civil autorización y/o conformidad para proceder con el entierro.

El 7 de octubre de 2021 Grupo Nuestros Parques llegó más lejos, pues su ejecutiva Mónica Huerta, expresó a E.G que el régimen de Acuerdo de Unión Civil, "no otorga más derechos que los patrimoniales hereditarios", afirmando, que en caso de fallecimiento, el conviviente civil sobreviviente, carece de todo derecho sobre el cuerpo del difunto, algo completamente falso.

El 9 de noviembre, el Movilh pidió el Cementerio resolver el problema.

El 23 de noviembre, la entidad negó todo tipo de discriminación, no asumió ningún error y traspasó el problema al Ministerio de Salud.

"En caso de conflictos entre familiares del fallecido (lo cual lamentablemente es bastante habitual) corresponde que se haga solicitud de traslado interno ante la Seremi e Salud", señaló el Gerente de Administración y Finanzas de la entidad, Sergio Cárdenas Toledo.

Debido a todo el impacto emocional generado por el suicidio de su pareja y los abusos institucionales, al cierre de este informe la víctima aún analizaban qué decisiones adoptar para enfrentar los atropellos

Este caso, suma seis episodios de discriminación institucional: dos en Providencia, dos en Santiago y dos en Maipú.

## 12.2. Abusos contra defensores de DDHH LGBTIQA+

Las redes sociales se han convertido en uno de los principales canales de los grupos de odio para lanzarse en picada contra iniciativas antidiscriminatorias y, muy especialmente, contra quienes promueven la igualdad plena de derechos.

Estos atropellos se expresan por diversas redes sociales, aunque con especial virulencia y recurrencia por Twitter<sup>31</sup>.

En 2021, y una vez más, el Movimiento LGBTIQA+ que recibió continuos ataques fue el Movilh, mientras el activista de la diversidad más agredido fue Rolando Jiménez, dada su trayectoria de 30 años de lucha contra la discriminación.

En términos muy similares al 2020, el Movilh y Jiménez fueron etiquetados o mencionados al menos 295 veces en Twitter<sup>32</sup>, recibiendo agresiones verbales y amenazas de muerte. A esto se añade la difusión de fake news y del uso de imágenes; como el logo del Movilh o la fotografías de Jiménez, que son sacadas de contextos para relacionarlas o adjudicarles falsos delitos o declaraciones.

La Brigada del Cibercrimen de la Policía Civil nada ha hecho al respecto, pese a ser advertida hace años sobre estos atropellos.

Los responsables de estos abusos actúan tanto desde cuenta reales, como falsas. Al cierre de este informe muchas de esas cuentas habían sido bloqueadas por Twitter por sus mensajes de odio, pero la mayoría seguían en pleno funcionamiento.

Del total de 295 discursos de odio, 25 afectaron exclusivamente a gays, 5 a trans y 265 a la población LGBTIQA+ como conjunto<sup>33</sup>.

La virulencia del 2021 fue extrema y se explicitó en seis frentes o contextos a saber:

## • El asesinato de un niño en Longaví:

El asesinato del niño Emilio Jara, ocurrido el 29 de abril en Longaví, llevó a los sectores homo/transfóbicos a desarrollar campañas de odio contra las personas LGBTIQA+ solo en virtud de que los imputados por el crimen eran una pareja del mismo sexo, Gerald Repetto Soto (27) y Rubén Soto Guerrero (18).

Los funestos acosos homofóbicos, que violentaron el interés superior del niño y los derechos humanos de los/as activistas LGBTIQA+, se extendieron por unas dos semanas y tuvieron como blanco predilecto al Movilh y a sus dirigentes/as, siendo sus cuentas etiquetadas o mencionadas para relacionarlas con delitos.

La campaña vinculó a la orientación sexual de los victimarios con el atroz, y deleznable crimen que cometieron, presentando a la homosexualidad como la causa del abuso. Más aún, se llegó al extremo de indicar que los asesinos eran activistas del Movilh.

Entre otros, los responsables de estos abusos difundieron las fotos de los imputados junto a otra del líder del Movilh, Rolando Jiménez, o al lado de la bandera LGBTIQA+, vinculando así a la lucha contra la discriminación con el abusos de menores.

Entre otros, la campaña desinformativa indicó que los homicidas "son protegidos del Movilh" y/o que dicha organización los defendía con abogados/a.

A la par, se trató a los/as activistas del Movilh de "enfermos", "degenerados", "asquerosos", "maracos de mierda", "fletos", "malditos", "bastardos", "miserables", "depravados", "colipatos", "invertidos", "pedófilos", "yeguas", "ratas", "criminales", "cómplices", "enfermos" "heterofóbicos" y ,"lacras", además de amenazarlos de muerte y de mutilarlos.

Muchos de los responsables de tales discursos de odio se declaraban seguidores del entonces candidato presidencial José Antonio Kast.

<sup>[31]</sup> Si bien los ataques ocurren en todas las redes sociales, para este informe se considera exclusivamente a Twitter.

<sup>[32]</sup> A esto se suma las amenazas de muerte que vía telefónica recibieron los/as activistas del Movilh a raíz de la aprobación del matrimonio igualitario. Más antecedentes en el segundo título del cuarto capitulo.

<sup>[33]</sup> Los discursos sobre trans y gays se contabilizan como "agresiones verbales" y no como "declaraciones homo/transfóbicas" en tanto se dirigieron contra personas plenamente individualizadas.

## • Agresiones contra la lucha por igualdad legal de niños, niñas y adolescentes LGBTIQA+

La lucha por la derogación del Artículo 365 del Código Penal, y por la plena igualdad legal para niños, niñas y adolescentes (NNA) LGBTIQA+, ha derivado en ataques homo/tranfóbicos contra el Movimiento de la Diversidad, pero también hacia personas o instituciones que han respaldado esta causa, como son la diputada Carolina Marzán y la Defensora de los Derechos de la Niñez, Patricia Muñoz, injustamente insultadas por sectores anti-derechos.

El ataque más recurrente es vincular a quienes lideran esta causa con el abuso de NNA, dañando con ello la dignidad y la honra de quienes defienden los derechos humanos.

## • Agresiones focalizadas en Rolando Jiménez

Dada su larga trayectoria en la lucha contra la discriminación, el histórico dirigente Rolando Jiménez, ha sido durante 30 años el dirigente LGBTIQA+ que más ataques de odio ha recibido, siendo los abusos periódicos.

El dirigente es atacado con muchas fake news. Los grupos homo/transfóbicos le adjudican frases o discursos que nunca ha señalado, sus fotografías se sacan de contexto y se vinculan con delitos, además de difundirse "pantallazos" con falsos tuit que jamás ha escrito, entre otros.

## • Ataques por denunciar abusos homo/transfóbicos o por promover la plena igualdad legal

En algunas ocasiones las agresiones verbales o amenazas demuerte son más coyunturales. Por ejemplo, reacciones a las denuncias por acto/homotransfóbicos o a la lucha por la igualdad legal, que en el año estuvo muy vinculada al matrimonio igualitario.

Estos ataques suelen ser particularmente virulentos cuando el movimiento LGBTIQA+ identifica como responsable de algún atropello a representantes de las iglesias o grupos anti-derechos que gozan de visibilidad publica.

## • Ataques en el Mes del del Orgullo y el aniversario del Movilh

Solo con la intención de perjudicar la conmemoración del Día del Orgullo es lamentablemente común que grupos homofóbicos se lancen cada junio en picada contra el Movilh. La intención es también dañar el festejo del aniversario de dicha organización, que coincide con el Día del Orgullo.

Quienes manejan las cuentas de los ataques en muchas ocasiones se presentan falsamente como LGBTIQA+ y hasta usan en sus perfiles la bandera de la diversidad. Esto con el fin de engañar, confundir y/o levantar la idea de que "el Movilh no me representa" y explicitar así "divisiones" que dañen la conmemoración del 28 de junio.

## • Ataques transfóbicos

Al anunciarse púbicamente que la joven trans Carla González asumiría la vocería de Movilh-Valparaíso, se registraron variados discursos de odio contra su persona.

González ha sido particularmente atacada dado que es hija de la directora del Observatorio Legislativo Cristiano, Marcela Aranda, quien ha liderado diversas ofensivas transfóbicas. A continuación ese reproducen algunos de los discurso de odio emitidos por Twitter en 2021, divididos en las temáticas descritas previamente

## a.- Uso y abuso del asesinato de un niño:

- 11 de mayo: "Justicia para Emilio, violado, torturado y ejecutado por activistas del @Movilh y con la complicidad y normalización de todo el movimiento por la "diversidad sexual"<sup>34</sup>.
- 11 de mayo: "Para esta gente, el sexo con niños no es pedofilia, es una "relación intergeneracional"... O quizás el adulto se identificaba como niño ese día, entonces no hay delito"<sup>35</sup>.
- 11 de mayo: "A pues en eso estamos de acuerdo, pero pedofilia y sodomía no es lo mismo, por eso la aclaración. El Movilh debería desaparecer, sus intenciones son más que claras con el tipo de leyes que han pedido eliminar"<sup>36</sup>.
- 6 de mayo: "Y el @movilh qué opina de estos degenerados colegas suyos?"<sup>37</sup>.
- 6 de mayo: "Los degenerados del @Movilh calladitos"<sup>38</sup>.
- 6 de mayo: "@Movilh se les cayó el internet?"<sup>39</sup>.
- 6 de mayo: ¿Dónde encuentro una neurona de Marta Lagos? No la puedo encontrar.
- ¿Dónde encuentro la declaración del MOVILH respecto del crimen del pequeño Emilio? No la puedo encontrar"<sup>40</sup>.
- 6 de mayo: "¿Y qué dicen los del Movilh de este horrendo crimen?"<sup>41</sup>.

[34] https://twitter.com/El\_Fachocola/status/1392291199596257286 [35] https://twitter.com/Camila66847071/status/1392263413460516871 [36] https://twitter.com/LibertAndree/status/1392228738620866566 [37] https://twitter.com/RGP\_PGR/status/1390305040162689029 [38] https://twitter.com/Addres099400391/status/1390287860192976897 [39] https://twitter.com/METALLECTOR/status/1390278630115323911 [40] https://twitter.com/mauro58VA/status/1390285429530894339 [41] https://twitter.com/adfuentealba/sta-

[41] https://twitter.com/adfuentealba/ tus/1390230441886629889

- 6 de mayo: "@Movilh silencio cómplice @GobiernodeChile @ Camara\_cl @Senado\_Chile"<sup>42</sup>.
- 6 de mayo: "@Movilh calladitos..."43
   Frase acompañada de una foto de Rolando Jiménez al lado de los imputados44.
- 5 de mayo: "Se les cortó el Internet? Cómo 2 maricones que pillaron culiando, mataron a un niñito y ustedes no se han pronunciado"<sup>45</sup>.
- 5 de mayo: "@Movilh nada que decir?"<sup>46</sup>.
- 5 de mayo: "Poco les queda"<sub>47</sub>.
- 5 de mayo: "Estos csm son activistas del Movilh!!, y los xuxesumares callados...si esta noticia es verdad...ojalá maten a esos dos maracos mal nacidos de mierda!!"<sup>48</sup>.
- 5 de mayo; "@rjimenez\_perez @ Movilh Ya pues, pronúnciense ¿O no van a politizar este hecho?"<sup>49</sup>.
- 5 de mayo: "Ustedes que llevan al ámbito de la orientación sexual a todos los lugares, ¿Cuándo se pronunciaran frente a este deleznable hecho?" 50.
- 5 de mayo; "El @Movilh piola.....no ha dicho nada sobre éstos monstruos"<sup>51</sup>.
- 5 de mayo: "De qué se espantan... Para el el Movilh es un negocio, es lobby... Debe estar desesperado con que bajen la edad de consentimiento... Se esconde tras las personas LGTB, la pedofilia es delito"<sup>52</sup>.

[42] https://twitter.com/leorubioMendoza/status/1390214855454568450 [43] https://twitter.com/Rodrigo91392417/status/1390130299082842114 [44] https://twitter.com/Rodrigo91392417/status/1390130299082842114 [45] https://twitter.com/KillCherno/status/1390146274196852736 [46] https://twitter.com/mno\_mari/status/1390116514385350663 [47] https://twitter.com/riveros\_moran/status/1390093364943638530 [48] https://twitter.com/Alexwhitbec/status/1390095538742251520 [49] https://twitter.com/LorenaReyes2005/status/1390095326149758978 [50] https://twitter.com/StevenxBoris/status/1390077788523270147 [51] https://twitter.com/kaempffer\_vika/status/1390064372689653765 [52] https://twitter.com/PaulaVerdad/status/1390078503698173955

- 5 de mayo: "#LosMariconesCalladitos @Movilh"<sup>53</sup>.
- 5 de mayo: "Y los del Movilh están piolitas"<sup>54</sup>.
- 5 de mayo: "@Movilh y cuándo su declaración, hablan cuando les conviene"55.
- 5 de mayo: "Movilh de mierda, HDPs, hipocritas kl son la peor escoria q hay en la sociedad"<sup>56</sup>.
- 5 de mayo: "Qué opina el Movilh Sobre éste macabro crimen de violación y asesinato de un niño. Cometido por sus pares, que ya afortunadamente se encuentran detenidos. Están guardando silencio. Solo salen a dar la cara cuándo supuestamente se sienten "agredidos" no dice nada Rolando Jiménez"<sup>57</sup>.
- 5 de mayo: "@Movilh cuando quiere... cuando les conviene...cuando le Acomoda" Como dijo Jordi Castell, "Maricón no es ser homosexual..."58.
- 5 de mayo: "Se les acabó el Internet a los asquerosos"<sup>59</sup>.
- 5 de mayo: "Malditos maricones y los wecos del @Movilh, están callaitos los fletos de mierda. Ojalá el Covid-19 los ataque por el culo a los criminales"<sup>60</sup>.
- 5 de mayo:" Y donde está el Movilh para también denunciar este crimen? @Movilh. Este par de maricones cortaron el cuerpo del niño y lo dejaron desangrar. Murió por anemia. Lenta y dolorosamente. Estos bastardos salieron buscando matar a un niño. Justicia.Yy la prensa? Muerte a los maricones"<sup>61</sup>.

[53] https://twitter.com/kommander911/status/1390061188550123529

- [54] https://twitter.com/fcavierc/status/1390124358161551365 [55] https://twitter.com/ghalo16/status/1390025300399038468
  - [56] https://twitter.com/FininPapin/status/1390020614946181120 [57] https://twitter.com/ChechaAlexander/sta-
- tus/1390014042262016001

[58] https://twitter.com/Jimena\_1967/status/1390055068393738242

[59] https://twitter.com/rubenhalcon/status/1390011258624163847

[60] https://twitter.com/j\_u\_a\_n\_c\_a\_r\_/status/1389984622113591301

[61] https://twitter.com/vnderthegrave/status/1389982169414635520

- 5 de mayo: "El crimen contra Emilio Jara en Longaví, fue un duro golpe a la agenda de género. Sin perder tiempo la Subsecretaria de Prevención del dDlito sale a prestarle ropa a sus amigos del Movilh El Estado eficiente"<sup>62</sup>.
- 5 de mayo: "Movilh de mierda, HDPs, hipócrita, kl son la peor escoria q hay en la sociedad"<sup>63</sup>.
- 5 de mayo: "Y los maricones del @Movilh qué dicen por la violación y asesinato del niño Emilio? Se quedan calladitos. Así son, enfermos, degenerados asquerosos"<sup>64</sup>.
- 5 de mayo: ¿Y qué ha dicho el Movilh, respecto de violación y homicidio del menor Emilio?<sup>65</sup>.
- 5 de mayo: "El @Movilh calladitos no?"<sup>66</sup>.
- 5 de mayo: Junto a una fotografías de los asesinos se señala "Ahí están los seres de luz de @Movilh"<sup>67</sup>.
- 5 d mayo: "Igual que el silencio del @ Movilh por crimen de niño por parte de asesinos homosexuales. Son basura !"68.
- 5 de mayo: "¿Por qué la prensa en general no dice abiertamente que los asesinos del pequeño Emilio son homosexuales? ¿tendrán instrucciones de la logia blanca acaso? El Movilh en silencio total."<sup>69</sup>.
- 5 de mayo: "Que se sequen en la cárcel maracos de mierda"<sup>70</sup>.
- 5 de mayo: "Oigan, van a hablar en algún momento de los fletos que violaron al niñito?"<sup>71</sup>.
- 5 de mayo: "Qué dicen ahora los wns del Movilh q 2 de sus protegidos cometieron un

[62] https://twitter.com/VuelveLibertad/status/1389972506203807744

<sup>[63]</sup> https://twitter.com/FininPapin/status/1390020614946181120
[64] https://twitter.com/RGP\_PGR/status/1389944992681144323
[65] https://twitter.com/rmabr/status/1389953915190456320
[66] https://twitter.com/jmr1982/status/1389932613905879040
[67] https://twitter.com/tralcal3/status/1389931322311946242
[68] https://twitter.com/monodarwinista/status/1389930031426719744
[69] https://twitter.com/Harryhit2/status/1389918104403288064
[70] https://twitter.com/JuanPinochet6/status/1389920802078924802

<sup>[71]</sup> https://twitter.com/carlos08900599/status/1389804461120442368

crimen atroz? Ahora están calladitos pero si hubiesen atacado a un gay, homosexual, lesbiana, ya estarían en todos los medios pidiendo justicia. Malditos bastardos"<sup>72</sup>.

- 5 de mayo: "El crimen de odio perpetuado por parte de los protegidos del @Movilh hacia Emilio y el silencio de estos imbéciles es aterrador, ni una puta palabra por este crimen de odio que sucedió, lo mataron sólo por ser hétero, #JusticiaParaEmilio"<sup>73</sup>.
- 5 de mayo: "Aún espero que los maricones del Movilh entreguen algún comunicado sobre los weones que mataron Emilio. La izquierda cada día es más miserable"<sup>74</sup>.
- 5 de mayo: "La prensa aborda el crimen sin precisar que los autores son homosexuales, esos cobardes antes de informar, temen que el Movilh y Agenda Lgbt-xyz les caigan encima. No tenemos periodismo"<sup>75</sup>.
- 5 de mayo: "Bueno, y? Alguien de la izquierda o del Movilh se va a pronunciar por la violación y asesinato, de un niño de 12 años, a manos de 2 maracos??? Acaso no se violaron los DD.HH de ese niño? Pena de muerte para los maracos!!"<sup>76</sup>.
- 4 de mayo: "¿Y si se aplicará la pena de muerte, seguramente el Movilh diría que es discriminación<sup>77</sup>.
- 4 de mayo: ¿A qué hora van a intentar linchar a los homosexuales que violaron y mataron a Emilio? ¿El @ Movilh ya se pronunció sobre esto?<sup>78</sup>
- 4 de mayo: "Por qué Rolando Jiménez @ rjimenez\_perez no ha salido a rechazar rotundamente el actuar de los asesinos de Emilio.! Pero agreden a un gay y aparece el @Movilh enseguida"<sup>79</sup>.

- 4 de mayo: "Para variar, un maricón.
   @Movilh ¿supongo que ustedes tienen psicólogos para tratar la salud mental de los homosexuales? caso aislado n° xxxxxx"<sup>80</sup>.
- 4 de mayo: "Es por que está prohibido nombrar a los wekos, son intocables y protegidos por los degenerados del Movilh y contradicen la igualdad de género 2030<sup>81</sup>.
- 4 de mayo: ¿A qué hora van a intentar linchar a los homosexuales que violaron y mataron a Emilio? ¿El @ Movilh ya se pronunció sobre esto?<sup>82</sup>.
- 4 de mayo: "@Movilh y uds que dicen al respecto de estos maricones en toda la dimensión de la palabra. Colectivo de maracos y depravados" <sup>83</sup>.
- 4 de mayo: "¿Y el Movilh tendrá algo que decir del par de maricones asesinos? #CastraciónOParedón"<sup>85</sup>.
- 4 de mayo: "Que se sequen en la cárcel maracos de mierda"<sup>86</sup>.
- 4 de mayo: "Sigo esperando que el Movilh, Defensoría de la Niñez, Jiles, Boric, Jackson, Cariola, Vallejo y muchos otros se pronuncien sobre los maracos que violaron y asesinaron al niño de 12 años!!! Pena de muerte para ellos!!!<sup>87</sup>.
- 4 de mayo: "Ya salió el MOVILH a decir que el asesinato de Emilio fue porque cuando

[81] https://twitter.com/FelipeM33555633/status/1389710981845114886

[84] https://twitter.com/CapIvansotom/status/1389704124111990784

[85] https://twitter.com/valiantduck/status/1389681881105448962

<sup>[72]</sup> https://twitter.com/rossyjfpp/status/1389929533734887424 [73] https://twitter.com/marxunxo/status/1389940512103276549

<sup>[74]</sup> https://twitter.com/f23cabrera/status/1389793291164692484

<sup>[75]</sup> https://twitter.com/jou\_nakamura/status/1389782189278121984

<sup>[76]</sup> https://twitter.com/pierocrovetto/status/1389770116846571523

<sup>[77]</sup> https://twitter.com/IBMSArica/status/1389773356803702784

<sup>[78]</sup> https://twitter.com/SamuelMunozR/status/1389747392199622659

<sup>[79]</sup> https://twitter.com/PemtoFlores/status/1389752979507531778

<sup>[80]</sup> https://twitter.com/BrisasDeChile/status/1389765302448234501

<sup>[82]</sup> https://twitter.com/SamuelMunozR/status/1389747392199622659

<sup>[83]</sup> https://twitter.com/msanchez1024/status/1389722815742586881

<sup>[86]</sup> https://twitter.com/JuanPinochet6/status/1389920802078924802

<sup>[87]</sup> https://twitter.com/pierocrovetto/status/1389680115165110283

vio al par de fletos estos se sintieron violentados porque los pilló sacándose petróleo???? #JusticiaParaEmilio"<sup>88</sup>.

- 4 de mayo: "Ojalá digan lo que nadie quiere decir abiertamente por temor a ser declarados homofóbicos y que el Movilh se les vaya encima. Que un par de homosexuales cometieron un crimen brutal y deben pagar todas las de la ley y más"<sup>89</sup>.
- 4 de mayo: "@Movilh algo qué decir de este par de homosexuales asesinos de un niño... ahora deberían cacarear para ser creíbles.. y no ideologizados izquierdistas"<sup>90</sup>.
- 4 de mayo; "Si son funcionarios del Movilh, claro que debería salir alguien a hablar como lo haría cualquier institución"<sup>91</sup>.
- 4 de mayo: "Y estos 2 asesinos son del Movilh? Son funcionarios o algo así?"<sup>92</sup>.
- 4 de mayo: "Pregunta seria. Movilh, diputada Marzán, Defensoría De La Niñez han hecho algún comunicado condenado el asesinato de Emilio? Sobretodo esta última, ha ofrecido ayuda? Xq la tía del pequeño ha dicho q no"<sup>93</sup>.
- 4 de mayo: "Es verdad que el @ movilh colocó abogados para defender a los asesinos porque son de su comunidad homosexual? Los arrobé, ojalá me respondan esta duda"94.
- 4 de mayo: "Y pensar que el.Movilh utilizó a esta pareja de colipatos para sus propagandas de adopción homoparental"<sup>95</sup>.

 4 de mayo: "Degenerados ctm. Ahí el @Movilh está callado, pero pobre que toquen a uno de esos ctm!"<sup>96</sup>.

- 4 de mayo: "No he leído nada de @ Movilh pronunciándose sobre el par de invertidos que asesinaron al niño. La violencia en estos casos se debe ocultar, solo lloran por las redes cuando alguien les dice degenerados"<sup>97</sup>.
- 4 de mayo: #ContigoCH, ahí están los sodomitas que asesinaron a #EmilioJara, Aaaaa, pero si la víctima hubiese sido uno de ellos, @Movilh estaría con banderas protestando (...), por lo menos pronúnciense"<sup>98</sup>.
- 4 de mayo: "Seguro sale a defender a los asesinos del niño de 12 años en Longaví el Movilh, zurdos ctm"<sup>99</sup>.
- 4 de mayo: "Donde esta el @ Movilh repudiando este crimen !? #JusticiaParaEmilio"<sup>100</sup>.
- 4 de mayo: "El @Movilh aun no menciona que dos homosexuales violaron y asesinaron a un niño inocente en Longavi.. Aun no veo al @inddhh poniendo querellas en contra de los asesinos, aun no veo a @defensorianinez"<sup>101</sup>.
- 3 de mayo: "@Movilh, los defenderán...? Ah"<sup>102</sup>.
- 3 de mayo: "Los periodistas progre callados para no molestar a los depravados del Movilh# JusticiaParaEmilio"<sup>103</sup>.
- 3 de mayo: "Y los #Ctm de @Movilh les tocan a una loca saltan y prenden con agua los reql y se esconden por los maracos que violaron y asesinaron al

[90] https://twitter.com/leorubioMendoza/status/1389623037306228741

[91] https://twitter.com/Nautilus182/status/1389604589402574850

[92] https://twitter.com/Nautilus182/status/1389625137104883714

[93] https://twitter.com/franmartinezch1/status/1389570226065485828

[94] https://twitter.com/Andresinforma2/status/1389589227470479362

[95] https://twitter.com/ClaseMedia12/status/1389593031599398920 tus/1389547884719362054

[98] https://twitter.com/sdurans/status/1389568916511395841 [99] https://twitter.com/el\_pinchadiscos/sta-

tus/1389560457531363336

[100] https://twitter.com/Karate\_Samurai1/status/1389473666254229508

[101] https://twitter.com/CazadorDeLN/status/1389432042576912384

[102] https://twitter.com/erikfernandezzz/status/1389338672932270085

[103] https://twitter.com/Yo21311592/status/1389418297284829189

<sup>[88]</sup> https://twitter.com/payasadico1/status/1389631276207034373

<sup>[89]</sup> https://twitter.com/MarceH\_vari/status/1389570378503184384

<sup>[96]</sup> https://twitter.com/tralcal3/status/1389597178058915847 [97] https://twitter.com/E\_D\_Rojas/sta-

niño de 12 años. La cara de hombre de la Defensoría de la niñez @Pa\_\_\_tty"<sup>104</sup>.

- 3 de mayo: "Asesinados por una pareja de fletoa degenerados como los del movilh<sup>105</sup>.
- 3 de mayo: "El @movilh ya dijo algo con respecto al par de maricones degenerados que asesinaron a #EmilioJara?... Si los asesinados hubieran sido ellos Rolando Jiménez y el Movilh llevarían días alaraqueando #emilio #JusticiaParaEmilio"<sup>106</sup>.
- 3 de mayo: Malditos de mierda..!!!!!<sup>107</sup>.
- 3 de mayo: "Las yeguas que asesinaron al niño deben ser militantes del Movilh. La más probable es que la Rolanda debe estar protegiéndolos y dándoles asesoría legal"<sup>108</sup>.
- 3 de mayo: "Malditos asesinos y sodomitas degenerados, y el viejo estúpido de Ricardo Lagos que derogó la pena de muerte, este caso realmente lo amerita. Es un niño (...) Pucha matan a un gay y @ Movilh salta, y ahora que dicen?" <sup>109</sup>.
- 3 de mayo: "Pienso igual, no importa quien asesina es asesinato. Pero dos alcances, cuando una pareja mata es un agravante porque ello hace sobre seguro aprovechando la relación y la intimidad. Y segundo, cuando matan a un homosexual salta el Movilh acusando homofobia aunque no tenga nada q ver" <sup>110</sup>.
- 3 de mayo: "El @Movilh condenará a estos jiles?"<sup>111</sup>.
- 3 de mayo: "Maricones violando y matando al niño Emilio. Maricones ofreciendo droga a menores de edad. ¿Qué dicen el Movilh

[104] https://twitter.com/Bolsasdetelas/status/1389333185155289092

[105] https://twitter.com/AxelEgana/status/1389390596062711811

[106] https://twitter.com/mleiva795/status/1389311476289134594

[107] https://twitter.com/mleiva795/status/1389311476289134594

[108] https://twitter.com/valiantduck/status/1389254849338957826

us/1389254849338957826

[109] https://twitter.com/sdurans/status/1389249899414396930 [110] https://twitter.com/Roma52735743/sta-

tus/1389240089977442312

[111] https://twitter.com/krozasb/status/1389231885474275333

y las organizaciones LGBT? Quedaron sin internet? Enmudecieron?"<sup>112</sup>.

- 3 de mayo: "Independiente de la condición sexual de los agresores, no se puede permitir que sigan asesinando a nuestros niños. ¿Dónde están los llamados a defenderlos? Me indigna la parcialidad con la que actúan los defensores de minorías (Movilh) y la defensoría de la niñez #ConLosNinosNo"<sup>113</sup>.
- 3 de mayo: "Uno tiene 18 años. Quizás de que edad está con el otro maldito que es mayor. Pena de muerte, par de asesinos, ¿Qué dice la comunidad el Movilh y don Rolando?<sup>114</sup>.
- 3 de mayo: "Les presento al par de hienas homicidas de un niño... Putos e hijos de tal... Y el #Movilh muy bien gracias... Y más encima los defensores de maracos dicen que están enfermos... #PenaDeMuerte ahora!!!<sup>115</sup>.
- 2 de mayo: "Queé dice el @ Movilh ??? @PamJiles"<sup>116</sup>.
- 2 de mayo: "En esta se desaparecen como ratas"<sup>117</sup>.
- 2 de mayo: "No les harán nada por que son fletos y el @Movilh les prestara ropa a esos degenerados asesinos enfermos<sup>118</sup>.
- 2 de mayo: "Cuando asesinan a un homosexual, solo se acusa de homofobia sin llegar al fondo del caso. Movilh levanta banderas enseguida victimizándose diciendo que solo lo mataron por ser homosexual"<sup>119</sup>.
- 2 de mayo: "Pensé exactamente lo mismo (...) La tv prácticamente no ha dicho nada, se han encargado durante años de decirnos que son mejores personas, mentira!! Son personas con defectos y aciertos." Es una

[112] https://twitter.com/Alejand63673466/status/1389227254744498177

[113] https://twitter.com/Amani\_Patri/status/1389226075956420609

[114] https://twitter.com/xcozano/status/1389207807933693955 [115] https://twitter.com/joaquinmanuelg7/sta-

tus/1389199568039026691

[116] https://twitter.com/newegata/status/1389050334711009282 [117] https://twitter.com/cavardel/status/1389040704333230080

[118] https://twitter.com/FelipeM33555633/sta-

tus/1389032937153236995

[119] https://twitter.com/abahamondes25/status/1389029954726338566 discusión que he tenido por mucho con mis hijos lamentable lo sucedido"<sup>120</sup>.

- 2 de mayo: "La omisión del Movilh es darle respaldo a los asesinos"<sup>121</sup>.
- 2 de mayo: "El Movilh otra organización criminal"<sup>122</sup>.
- 2 de mayo: "@LGTBchile wnes pencas... no se van a pronunciar por la muerte del niño de 12 años? #deCartón #populistasllorones cuando les conviene #lo dije y qué"<sup>123</sup>.
- 2 de mayo: "Dónde está la Defensoría de la niñez? Dónde está el Movilh, un defensor de los DDHH? ¿O cuando el asesinato es perpetrado por unos homosexuales, la vida de la víctima no vale? Harto del doble estándar de los zurdos"<sup>124</sup>.
- 2 de mayo: "Así parece, nadie se ha pronunciado, eso confirma que son literalmente, una tropa de maricones"<sup>125</sup>.
- 2 de mayo: "Esta es la única y verdadera cara de la izquierda y el Movilh, escondidos cual "maricones...!!!"<sup>126</sup>.
- 2 de mayo: "En la cárcel se los comerán con pocas fritas!! Asquerosos asesinos!!
   @Movilh algo qué decir ?<sup>127</sup>.
- 2 de mayo: "...Es sorprendente, parece ser que no pueden ser los malos.. solo víctimas" <sup>128</sup>.
- 2 de mayo: "Al estar indicados dos personas homosexuales como autores del asesinato del niño de 12 años, todos los voceros escandalosos del movimiento LGTBI y el Movilh parece ser que se les cayo el Internet... una vergüenza"<sup>129</sup>.

[120] https://twitter.com/crstian1971/status/1389038135833681922

[121] https://twitter.com/PutaNopxcx/status/1389028835736309764

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[122] https://twitter.com/SToribio2/status/1389014371481833474
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- [123] https://twitter.com/Mabelinda/status/1389005138384273408
- [124] https://twitter.com/Christi43884347/sta-
- tus/1389013202537680901

[125] https://twitter.com/Cristyncat/status/1389020548101967877

[126] https://twitter.com/pajipargmailco2/status/1389001172565037062

[127] https://twitter.com/LpontD/status/1389019539954929667 [128] https://twitter.com/AlejandroMery1/sta-

tus/1389005145057513479

[129] https://twitter.com/AlejandroMery1/sta-

- 2 de mayo: "@Movilh algo qué decir?<sup>130</sup>.
- 2 de mayo: "Maricones de mierda<sup>131</sup>.
- 2 de mayo: "@defensorianinez Hasta cuándo veremos morir asesinados a nuestros niños?. El crimen brutal de #marquito Y ahora el crimen de Emilio. Crímenes que pareciera que a nadie le interesa, tal vez porque de estos crímenes no se pueden sacar réditos políticos. @Movilh va a pronunciarse?<sup>132</sup>.
- 2 de mayo: "Solo enfermos mentales llevan a cometer tal atrocidad. El #Movilh debe pronunciarse..."<sup>133</sup>.
- 2 de mayo: "Los populistas con ideologías nefastas que apoyan la destrucción, esos mismos que critican sin asumir su nefasta historia y mezquinos principios. Como siempre ocultos en su pila de caca. Solo aparecen cuando el populismo supuestamente capitalista los mueve @ Pa\_\_tty @defensorianinez @Movilh"<sup>134</sup>.
- 2 de mayo: "Otro niño asesinado, ahora de la mano de unos homosexuales, pena de muerte para estos HDP. Y el MOVILH, en silencio #JusticiaParaEmilio<sup>135</sup>.
- 2 de mayo: "@Movilh, algún comentario señoritas..."<sup>136</sup>.
- 2 de mayo: "Les dije lo mismo a la Rolanda Jimenez y al Movilh. El hueco Jiménez me bloqueó de una y se hicieron los weones.<sup>137</sup>.
- 2 de mayo: "#JusticiaParaEmilio no que los homosexuales, según @Movilh, eran buenas personas y que sólo los heterosexuales eran bestias? Pues no hay asesinos en todos lados sin importar si eres

tus/1389004078957666305 [130] https://twitter.com/VsYeya/status/1389024213294587905 [131] https://twitter.com/MorrisonChileno/status/1389024466450231299 [132] https://twitter.com/Vic\_Vic\_Ram/status/1389038217542963202 [133] https://twitter.com/Katy\_VallejosB/status/1389043193795198976 [134] https://twitter.com/Informacinsoci1/status/1389069742728679425 [135] https://twitter.com/Felipe\_isr/status/1388861489239429121 [136] https://twitter.com/Felipe\_isr/status/1388861489239429121 [137] https://twitter.com/Mal\_Hechor/status/1389055772122882054 hombre o mujer, heterosexual o LGTBI+ , negro o blanco, ojalá se haga justicia<sup>138</sup>.

- 2 de mayo: "El @Movilh siendo cómplices pasivos. Todos estos crímenes deben ser conocidos por ellos, pero los callan."<sup>139</sup>.
- 2 de mayo: "Nadie pide #JusticiaParaEmilio un niño de 12 años, xq los asesinos yvioladores son unos maracos progres de izquierda. El movilh se preocupa de q a esos maracos no le hagan nada"<sup>140</sup>.
- 2 de mayo: "...Depende de donde y con quien quieres satisfacer la calentura. El Movilh quiere legalizar que sea a vista y paciencia de todos y con menores..."<sup>141</sup>.
- 2 de mayo: "Los niños no se tocan enfermos degenerados de mierda Pero demás que saldrá el @Movilh a defender a estas bestias Por eso quieren bajar la edad de consentimiento para tener chipe libre Con los niños no enfermos de mierda #JusticiaParaEmilio"<sup>142</sup>.
- 2 de mayo: "Que dirá ahora el enano del @Movilh, ahora que sus maracos andan de asesinos de niños? Rolando Jiménez estamos atentos a tus comentarios<sup>143</sup>.
- 2 de mayo: "Una fachada de pedófilos y un pedófilo nada dirán sobre el tema"<sup>144</sup>.
- 2 de mayo: "El @Movilh dirá que son "vistimas" y que les fallamos como sociedad, que están traumatizados, que los DD.HH, que la culpa es todos menos de ellos""<sup>145</sup>.
- 2 de mayo: "@Movilh y Rolando Jiménez que dicen sobre la muerte de Emilio a manos de un par de homosexuales por haberlos sorprendido teniendo relaciones? Y después quienes son los intolerantes?

[138] https://twitter.com/nyochile/status/1388957616680968198 [139] https://twitter.com/christian\_67/sta-

tus/1388952656379527168 [140] https://twitter.com/Dracula22302110/sta-

tus/1388981559139651585

[141] https://twitter.com/PomKal/status/1388987440862466055 [142] https://twitter.com/FelipeM33555633/sta-

tus/1388942707385569280 [143] https://twitter.com/emiliacastro007/status/1388950096272891905

[144] https://twitter.com/andresalvar31/status/1388937656114028544

[145] https://twitter.com/Nubas15415361/status/1388925914390609921 Quiénes son los asesinos? Quiénes son los totalitarios? #JusticiaParaEmilio"<sup>146</sup>.

- 2 de mayo: "¿Cierto que nos gustaría saber la opinión del @Movilh acerca del homicidio de un niño de 12 años por parte de una pareja homosexual?"<sup>147</sup>.
- 2 de mayo: "@Movilh, digan algo enfermos de mierda"<sup>148</sup>.
- 2 de mayo: "El Movilh es heterofóbico, por eso calla y no condena la violencia de parte de su comunidad"<sup>149</sup>.
- 2 de mayo: "Que pasa con los del Movilh. Guardando silencio ante tal aberración hecha por gente de su comunidad"<sup>150</sup>.
- 2 de mayo: "Oh no, con el twit que hice del Movilh están apareciendo todos los depravados sexuales enojados"<sup>151</sup>.
- 2 de mayo: "Y el Movilh supongo que ya se pronunció acerca del asesinato del pequeño Emilio a manos de dos homosexuales cierto? O saldrán en su defensa? (No me sorprendería) #JusticiaParaEmilio"<sup>152</sup>.
- 2 de mayo: "Que tampoco lo haga cuando muera un homosexual, ahí saltan de inmediato acusando de intenciones... El Movilh no es mas que activismo político de extrema izquierda...y de paso se llevan sus buenas \$\$\$"<sup>153</sup>.
- 2 de mayo: "Porque los degenerados del Movílh se llenan su hocico con que ellos son los pobres perseguidos, torturados, sanos mentalmente, unas blancas palomas que no hacen daño a nadie... y te das cuenta ahora

[146] https://twitter.com/RepublicanGuy\_/status/1388923750469484548

[147] https://twitter.com/robertops2020/status/1388924350779248643

[148] https://twitter.com/sibarita\_combat/status/1388915681534562312

[149] https://twitter.com/TiberiusK2/status/1388899757939216387

[150] https://twitter.com/ApablazaCueto/status/1388894814092075013

[151] https://twitter.com/PINOCHIKITA/status/1388896592778993667

[152] https://twitter.com/PINOCHIKITA/status/1388891807266877440

[153] https://twitter.com/TiberiusK2/status/1388898760152043520 lo malditos que son! Deben explicaciones por su campaña de pobres seres que son" $_{154}$ .

- 2 de mayo: "#JusticiaParaEmilio Par de huecos asesinos y depravados violaron y asesinaron a un niño de 12 años. La Defensoría de la Niñez, y el Movilh calladitos y el INDH en defensa del par de maricxnes"<sup>155</sup>.
- 2 de mayo: "Asé de degenerados asesinos son los maricons, igual que los del @ Movilh que están más escondidos que @Hugo\_Gutierrez\_ Probablemente el Movilh le ponga abogados para defender a sus colegas huecos. Los gays son ciudadanos de primera clase, porque la #PrensaBasura los esconde"<sup>156</sup>.
- 2 de mayo: "#Alerta Que dirá @movilh por la muerte de este niño en Longavi?<sup>157</sup>.
- 2 de mayo: "Desgraciados... Lo o más probable es que el Movilh les dé protección ... En la cárcel sufrirán o gozarán??<sup>158</sup>.
- 2 de mayo: "¿Qué dice el @Movilh y Rolando Jiménez por la muerte de Emilio? #JusticiaParaEmilio"<sup>159</sup>.
- 2 de mayo: "El Movilh y los progres en general, calladitos por el crimen de Emilio, y además nadie anda diciendo q los homos matan menores por su condición de niño. Sería hora de cuestionar los tópicos que usan los progres.... #JusticiaParaEmilio"<sup>160</sup>.
- 2 de mayo: "Por RRSS, circulan acusaciones sorprendentes sobre los inculpados del homicido del inocente niño de 12 años q sacó a pasear a sus perros en Longaví, ¿q se sabe de aquello?¿q dice Movilh, Defensoría Niñez" <sup>161</sup>.

[154] https://twitter.com/PauliPatriota/status/1388884165018406914

[155] https://twitter.com/apachecazazurdo/status/1388883916338106371

[156] https://twitter.com/marcelo\_v2017/status/1388721621486260224

[157] https://twitter.com/jenitamonktares/status/1388852346797662212

[158] https://twitter.com/Francis92446886/status/1388878636766347276

[159] https://twitter.com/GuerreraJca/status/1388921699387781123

[160] https://twitter.com/Dan\_Rechazo999/status/1388900398493220872

[161] https://twitter.com/gene\_llerena/status/1388902735182012419

- 2 de mayo: "¿Y qué dice el Movilh? El objetivo de este manga de degenerados es legalizar todas sus perversiones, incluida la pedofilia. #JusticiaParaEmilio"<sup>162</sup>.
- 2 de mayo: "El Movilh y la Patty Muñoz no dirán nada, ellos están a favor de este tipo de perversiones, que homosexuales violen y maten niños.<sup>163</sup>.
- 2 de mayo: "Esa desgraciada es igual de enferma que los del Movilh"<sup>164</sup>.
- 2 de mayo: "Que va a decir si la Rola tiene tejado de vidrio con los menores y cómo proveedor los conozco de cerca, son unas mierdas de seres humanos ese nido del Movilh"<sup>165</sup>.
- 2 de mayo: "...Se pide que Movilh se pronuncie así como lo hace cuando atacan a uno de ellos, no olvidar que era un niño de 12 años"<sup>166</sup>.
- 2 de mayo: "No tengo nada en contra de los homosexuales o similares, pero el grupo LGBT y Movilh son unos enfermos que siempre buscan la manera de tener relaciones con menores de edad. Esa es la verdad"<sup>167</sup>.
- 2 de mayo: "Que va a decir estos maracos del Movilh?. Están calladitos como buenos maricones que son"<sup>168</sup>.
- 2 de mayo: "Los que matan se llaman asesinos, por sino sabías. El tema es que el @movilh siempre ha actuado de víctimas, por eso ahora los están webiando, recuerda que siempre han dicho que crían mejor a los niños que los héteros"<sup>169</sup>.

[162] https://twitter.com/Yo21311592/status/1388912140015316994 [163] https://twitter.com/Msolledadd/status/1388903529499316232 [164] https://twitter.com/Catrina\_Paez/status/1388926482739761152 [165] https://twitter.com/MrHumild/status/1388930992686174208 [166] https://twitter.com/YELENAZAPATA1/status/1388932961840635905 [167] https://twitter.com/THECROW26311774/status/1388935757985947648 [168] https://twitter.com/30Erodriguez/status/1389000608057905153 [169] https://twitter.com/emiliacastro007/status/1388951071775674372

- 2 de mayo: "Por que no hay que eliminar el artículo 365 del Código Penal como quiere la izquierda y el @Movilh? Por situaciones como esta.....<sup>170</sup>.
- 2 de mayo: "Nada van a decir !! A ellos les importan los niños para otros fines!!"<sup>171</sup>.
- 2 de mayo: "¿Por qué @meganoticiascl no es capaz de decir que Emilio falleció porque lo mataron 2 GAYS?
   @Movilh no dicen nada?<sup>172</sup>.
- 2 de mayo: "#JusticiaParaEmilio. Malditos y los ctm de Movilh están callados y fondeados como la rata de el fugitivo Gutiérrez"<sup>173</sup>.
- 1 de mayo: "Asquerosos, malditos.<sup>174</sup>.
- 1 de mayo: "Asquerosos hay q mutilarlos<sup>175</sup>.
- 1 de mayo: "Eso se sabe cuando son ellos los que cometen crímenes, siempre se quedan callados..."<sup>176</sup>.
- 1 de mayo: "Así es, y obviamente que el @Movilh guardará silencio porque el cagazo no beneficia su causa"<sup>177</sup>.
- 1 de mayo: "Que doble estándar de esta red social, no es tendencia, pronto saldrá el @Movilh defendiendo a un par de wns que no son capaces DE asumir su condición y matan a un inocente. Que se puede esperar del @inddhh no defenderán a un inocente porque no es parte de su "negocio". Que ironía"<sup>178</sup>.
- 1 de mayo: Infames, asquerosos. Ahí el @Movilh, calladito son una lacra, Ojalá no hubieran derogado la pena de muerte. Que se sequen en la cárcel, Ups cierto que los asesinos y delincuentes

tienen derechos humanos. A ver qué corrupto fiscal o juez los deja libres<sup>1179</sup>.

- 1 de mayo: "Aun no veo ninguna declaración del @movilh por el asesinato de este menor. Menos al Guaripola de los Gay, @rjimenez\_perez"<sup>180</sup>.
- 1 de mayo: "Y que dirán los maricones del @Movilh respecto de este par de fletos asesinos. No harán escándalo los wecos de mierda"<sup>181</sup>.
- 1 de mayo: "Huecos asesinos!!! Qué dicen los de @Movilh? Asco me dan!"<sup>182</sup>.
- 1 de mayo: "Niño encontrado en ribera del Rio Liguay habría sido asesinado por haber sorprendido a pareja teniendo relaciones homosexuales, y uno de los imputados ya tenía una condena por el homicidio. Me imagino que el @ Movilh guradará silencio porque el hecho no le sirve a la causa ¿no?"<sup>183</sup>.
- 1 de mayo:" #DiaDelTrabajador #1demayo2021 Los que asesinaron al niño en Longaví son homosexuales, pedófilos y asesinos. El @Movilh dirá algo al respecto o callarán?<sup>184</sup>

## b.- Agresiones contra la lucha por la igualdad legal de niños, niñas y adolescentes LGBTIQA+:

- 22 de agosto: "El Movilh quiere que se deroguen estos dos artículos para tener libre acceso a los niños"<sup>185</sup>.
- 20 de julio: "Porque esos maricones pedófilos el Movilh tendrán plena

<sup>[170]</sup> https://twitter.com/Rodrigo91392417/status/1388951312667140098

<sup>[171]</sup> https://twitter.com/zalomix/status/1388951789773500418

<sup>[172]</sup> https://twitter.com/ADN\_por\_Chile/status/1388896288373149706

<sup>[173]</sup> https://twitter.com/Bolsasdetelas/status/1389073819629932545

<sup>[174]</sup> https://twitter.com/MaraEugeniaAng3/status/1388684105982910465

<sup>[175]</sup> https://twitter.com/LintzUrsula/status/1388684039465353217

<sup>[176]</sup> https://twitter.com/losrios1994/status/1388655674515722241

<sup>[177]</sup> https://twitter.com/gonza\_klein/sta-

tus/1388655303156174850

<sup>[178]</sup> https://twitter.com/prignra/status/1388631564368625666

<sup>[179]</sup> https://twitter.com/marceesol/status/1388619456704913415 [180] https://twitter.com/Mal\_Hechor/status/1388618282375290885 [181] https://twitter.com/j\_u\_a\_n\_c\_a\_r\_/status/138859358330762240 [182] https://twitter.com/kaempffer\_vika/status/1388591023945826305 [183] https://twitter.com/gonza\_klein/status/1388589091202142209 [184] https://twitter.com/Andresinforma2/status/1388498516109049856 [185] https://twitter.com/PordenoneBudoia/status/129611061779521549

libertad para sodomitas a los niños y no se puede tolerar"<sup>186</sup>.

- 20 de julio: "Garantias/ESI: proyecto q dice que los niños ya no son sujetos de protección, llama a la emancipación temprana de los niños! Movilh chile promueve este proyecto #SOSGarantiasEsPedofilia"<sup>187</sup>.
- 20 de julio: "Así no más con la cultura Islámica. Interesante. Qué más tendrá entre sus normas????"<sup>188</sup>. Esta frase iba acompañas de un pantallazo donde se adjudicaba falsamente al Movilh haber señalado que "los chilenos tenemos que aceptar la tradición de musulmanes de casarse con menores de 10 años, no es pedofilia, es cultura islámica".
- 12 de julio: Legalice la pedofilia también pedazo de mierda! (Aunque para allá vamos con la asquerosidad de Movilh)<sup>189</sup>.
- 30 de junio: "Por qué el Movilh quiere que se deroguen estos 2 artículos que protegen a los niños de la pedofilia?"<sup>190</sup>.
- 30 de junio: "Ambos artículos del código penal protegen a los niños de los pedófilos, el Movilh quiere que se deroguen, por qué?"<sup>191</sup>.
- 30 de junio: @carolamarzan tu proyecto retorcido de mierda permite que se penetre a un menor de edad? Estás apoyando la pedofilia queriendo derogar el Art 365 que no constituirá delito, eres un demonio @Movilh, enfermos pedófilos"<sup>192</sup>.
- 2 de mayo: "No es invención mía. El Movilh fue quien junto a diputados enfermos presentó el proyecto ley para derogar el articulo 365 del código penal. Este articulo impide relaciones homosexuales con

[186] https://twitter.com/NutriaToxica/status/1417530198661140481

[187] https://twitter.com/Sofiohm/status/1417511617319763970 [188] https://twitter.com/nubleregion/sta-

tus/1416953639269187586

[189] https://twitter.com/papalov4/status/1414442357584445440 [190] https://twitter.com/PordenoneBudoia/sta-

tus/1410343351816228874

[191] https://twitter.com/PordenoneBudoia/status/1410339220477067266

[192] https://twitter.com/Patrici68302364/status/1410119066786963457 menores de edad. Tú no lo eres te felicito, pero la cabeza del Movilh son enfermos<sup>"193</sup>.

- 16 de marzo: "El Movilh como siempre tratando de homofóbico a todo el mundo, y por debajo intentan hacer una ley a favor de la pedofilia con el Art. 365"<sup>194</sup>.
- 12 de febrero: "El Movilh quiere legalizar la pedofilia y la Defensora de la Niñez lo apoya"<sup>195</sup>.
- 10 de febrero: "A mí me sorprendió el berrinche de la izquierda, siendo que su ideología es la que quiere bajar la edad de consentimiento, meter la ley ESI y sus tontos útiles del Movilh a la larga abogan por la legalización de la pedofilia. Paradójico a lo menos."<sup>196</sup>.
- 9 de febrero: "Es lo que pide la izquierda a través del Movilh, con su ley "amor es amor" y la derogación del art. 365 del CP, que lo ampara y promueve la "Destructora de la niñez" Patty, Gabriel Boric y Marta Carolina Marzán"<sup>197</sup>.
- 9 de febrero: "Movilh; es pura mierda deconstruida y onunista! Querrán rebajar la edad de consentimiento para todo"<sup>198</sup>.
- 6 de febrero: "La estúpida amiga de los pedófilos del Movilh... Cero credibilidad"<sup>199</sup>. Dichos sobre diputada Carolina Marzán por apoyar la derogación del artículo 365.
- 6 de febrero: "Degenerados del @Movilh"<sup>200</sup>.
- 25 de enero: "Pero si la @defensorianinez no sirve. Le compran drogas a niños y la tipa que dirige esta institución, presentó un proyecto para bajar la

[193] https://twitter.com/THECROW26311774/status/1388940410492436484 [194] https://twitter.com/Gladiador\_CL/status/1371869778525163529 [195] https://twitter.com/Iherreraa/status/1360245092410392579 [196] https://twitter.com/b3agL83U7eGzxv9/status/1359633157650325508 [197] https://twitter.com/Mi\_Morenita\_/status/1359323343019790343 [198] https://twitter.com/MaraGonzalez\_1/status/1359318528256532481 [199] https://twitter.com/UcKeRM/status/1358200094609260544 [200] https://twitter.com/elfachocola/status/1358076002136637440 edad de consentimiento sexual junto a los pedófilos del Movilh"<sup>201</sup>.

- 22 de enero: "Ahí les sirve la biología a los wnes, los del @Movilh se hacen los weones igual. Aunque se disfracen de mujer los hombres serán hombres y vice versa, lo dice la biología"<sup>202</sup>.
- 17 de enero: "La Defensoría de la Niñez, preocupada de acordar con el Movilh cuando sexualizar a los niños. Nada más que agregar"<sup>203</sup>.
- 17 de enero: "#toleranciacero La ofensora de la niñez es la candidata presidencial del FA. Si, esa misma, la que nunca se ha preocupado de los niños. Si, esa misma que, junto con el Movilh, quiere derogar el art. 365 del Código Penal y legalizar la pedofilia"<sup>204</sup>

## c.- Agresiones focalizadas en Rolando Jiménez :

- 20 de julio: "Miren el director del @ movilh abogando por pervertir a los niños disfrazandolo de derechos. Una atrocidad, eso es abuso"<sup>205</sup>. Esta tuit incorporó un pantallazo a falso tuit de Rolando Jiménez, donde se señalaba que él había dicho "no descansaremos hasta que los niños sean libres en sus derechos sexuales. Las relaciones intergeneracionales del menor deben ser un derecho humano y la educación, a través del Estado, debe jugar un papel importante".
- 30 de junio: "Habría que investigar de que vive el "mostacero" Jiménez"<sup>206</sup>.
- 29 de junio: "Empezando por el pelao maraco del movilh"<sup>207</sup>.

[201] https://twitter.com/KillCherno/status/1353674950649982982 [202] https://twitter.com/tunazo/status/1352458114931585025 [203] https://twitter.com/Dannnigomez/status/1350964460383514631/photo/1 [204] https://twitter.com/Iherreraa/status/1350989669421506562 [205] https://twitter.com/nancyespinoza7/status/1417504668754890756 [206] https://twitter.com/Dino86344684/status/1410256616813903874 [207] https://twitter.com/Carlos55842569/sta-

- 29 de junio: "De víctimas ahora son revíctimas. Ese @rjimenez\_perez cada día más loca y con el cu.. más suelto"<sup>208</sup>.
- 29 de junio: "Me refería a la pedofilia y eso no es mundial, solo muy pocos abogan por despenalizarla y dentro de los que pretenden hacerlo está el señor Jiménez del Movilh-Chile."<sup>209</sup>.
- 29 de junio: "Lean un poco de Rolando Jiménez. A quién está vinculado, donde tiene sus platas puestas en EEUU. Investiguen. Es oscuro el camino..."<sup>210</sup>.
- 29 de junio: "Que decencia puede tener una organización dirigida por un pedófilo<sup>211</sup>
- .3 de mayo: "Rolanda Jiménez es un reconocido pedófilo, adivine quien lo avala con dineros<sup>212</sup>.
- 2 de mayo: "La mayoría son sodomitas. Y conozco muchos que son muuuy decentes y odian al Movilh y la Rolanda. Su escudo protector de minoría se les fue a la chucha"<sup>213</sup>.
- 2 de mayo: "Pero si el líder de un organismo LGTB que es el Movilh apoyó a un organismo pedófilo llamado Nambla. O no lo sabias?<sup>214</sup>.
- 1 de mayo: "Rolando Jiménez es lo más asqueroso que hay @Movilh<sup>215</sup>.
- 1 de mayo: "Este señor se metió a dar órdenes al ministerio de educación para sexualizar a los niños desde pre-kinder hacia delante, contando el cuento de nicolás tiene dos papás eso esta sucediendo, revise ud los libros de estudio y lo comprobará."<sup>216</sup>

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tus/1410064292808859651
      [208] https://twitter.com/msanc1024/sta-
tus/1409975096719073287
     [209] https://twitter.com/alorato/status/1409979887461543946
     [210] https://twitter.com/pazcosmica/sta-
tus/1409997321736228871
      [211] https://twitter.com/jagaggero/status/1410044116772196352
      [212] https://twitter.com/0Sacerdotisa2/sta-
tus/1389393676024094721
     [213] https://twitter.com/MrJrSnWF/sta-
tus/1389004945152749571
     [214] https://twitter.com/Andresinforma2/sta-
tus/1388969194050494469
      [215] https://twitter.com/kaempffer_vika/sta-
tus/1388525016778743811
     [216] https://twitter.com/ValenzuelaGeor5/sta-
tus/1388512896099946505
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- 20 de abril: "Aprueben mis más sucios deseos". Frase acompañada con fotografía de Rolando <sup>217</sup>.
- 26 de febrero: "Aquí tenemos... se mueve en el Movilh usa lentes pelado y bigotes. Desesperado por terminar con la ley contra pederastras. Desesperado por niños, y aquí aun le prestan hasta micrófono"<sup>218</sup>.
- 24 de febrero: "@defensorianinez que pasa con esto? Uds. apoyan al @Movilh avalan lo que promueve Rolando?"<sup>219</sup>.
- 9 de febrero: "Comunista acéfala, la pedofilia es repugnante para cualquier ser humano decente. Los socios del @ Movilh y su pederasta jefe la Rolanda, son uds comunistas hijos de puta"<sup>220</sup>.
- 1 de febrero: "Este @rjimenez\_perez del @Movilh es un Degenerado destructivo de la niñez"<sup>221</sup>.
- 1 de febrero: "Es un asqueroso pervertido que va detrás de nuestros niños"<sup>222</sup>.
- 31 de enero: "#Publicaunamierda"<sup>223</sup>. Texto acompañadode foto de Rolando Jiménez.
- 25 de enero: "Buen video. Kinsey, el iniciador de la idea de que los niños son sujetos sexuales, ha sido citado por el presidente del Movilh y lo tiene como referente"<sup>224</sup>.
- 25 de enero: "La princesa de Movilh Asqueroso sorete depravado y degenerado, protegido de los narco progre y comunistas. Otro amigui de Fernando Paulsen"<sup>225</sup>.
- [217] https://twitter.com/joaquinmanuelg7/status/1384483230594879488

[218] https://twitter.com/MAGOWARcl/status/1365517792661889025

[219] https://twitter.com/kim3\_3e/status/1364663431945719811

- [220] https://twitter.com/nacionlibre73/status/1359236332875300865
- [221] https://twitter.com/PablovotaNO/status/1356242532599005188
- [222] https://twitter.com/Gaviotaeverton/status/1356240345596620802
- [223] https://twitter.com/monroeyfrida/status/1356027979441299456

[224] https://twitter.com/PaulHausenth/status/1353908057294692352

[225] https://twitter.com/PaulHausenth/status/1353908057294692352

- 25 de enero: Con imágenes y falsas declaraciones, se acusa a Rolando Jiménez de promover la pedofilia <sup>226</sup>.
- 24 de enero: "Movilh responda, lo defendieron de un joven que lo denunció por pedofilia, y abusó cuando niño. A nadie le sorprendió y mucho menos que lo acallaran rápidamente. Y el Movilh saliera respaldándolo y deslegitimando a la supuesta víctima diciendo que el denunciante era copuchento"<sup>227</sup>.
- 22 de enero: "Pídele al presidente del Movilh que te cuide a tus tres hijos un día entero. A ver si sigues siendo tan progre"<sup>228</sup>.
- 21 de enero: "Nunca me ha gustado el Movilh, por sexista, un autobombo de Rolando Jiménez, que ejerce una forma de "liderazgo" autoritario. No me parece representativo, simplemente buscan mucha prensa y tienen un sesgo al validar las relaciones sexuales con menores"<sup>229</sup>.
- 21 de enero: "A propósito del tweet de @ movilh, me contaron que en Av. Ricardo Cumming esquina Alameda, en el depto 204 vive un tipejo, maduro, gordo, medio pelado, de lentes que se come a un cabro (hoy mayor de edad), desde hace varios años, cuando este tenía menos de 18 años #TrolandoJimenez"<sup>230</sup>

## d.- Ataques por denunciar abusos homo/transfóbicos o por promover la plena igualdad legal

- 20 de septiembre: "Mejor terminemos con el @Movilh que promueve la pedofilia"<sup>231</sup>.
- 19 de septiembre: "El Movilh ya es una secta...."<sup>232</sup>.

[226] https://twitter.com/ferreterobat/status/1353840969691631617 [227] https://twitter.com/lafrontera\_/status/1353267525853863936 [228] https://twitter.com/antimarxis/status/1352806499513475073 [229] https://twitter.com/AnaLlul/status/1352423693952167936 [230] https://twitter.com/medicenelmono73/status/1352378451542634496 [231] https://twitter.com/Sghvoich16/status/1439786895052091395 [232] https://twitter.com/Licanrock/status/1439764813761159172

- 19 de septiembre: "@Movilh, agrupacion dogmatica e intolerante, con la victimización paranoide como mecanismo de acción central"<sup>233</sup>.
- 19 de septiembre: "¿Y a quién le importa lo que opine una minoría insignificante antivalórica, como los es el movilh?"<sup>234</sup>.
- 19 de septiembre: "Lo que diga el movilh es irrelevante. El matrimonio es por definición, origen, historia y tradición, entre un hombre y una mujer"<sup>235</sup>.
- 19 de septiembre: "Movilh, engendros con ojos de pollo al rojo vivo, que desentonan la armonía del ser humano para formar familia"<sup>236</sup>.
- 19 de septiembre: "@Movilh muchos de sus integrantes son pro pedofilia"<sup>237</sup>.
- 19 de septiembre: "el @Movilh es solo un grupo de maricas degenerados, pedofilos como baradit y llorones que se quejan de todo, son asquerosamente sucios en las calles son sus shows que incluyen a niños menores de edad. No tiene importancia alguna lo que digan en Chile.. no existen"<sup>238</sup>.
- 19 de septiembre: "Ser homosexual no es una enfermedad, ser del @Movilh Sí"<sup>239</sup>.
- 19 de septiembre: "Movilh es la asociación que más le ha hecho mal a Chile, espero que cada vez menos se le tome en cuenta su opinión"<sup>240</sup>.
- 19 de septiembre: "El @Movilh es un grupito de activistas extremistas. Los homosexuales no son así. Estas son enfermas profitando de una condición respetable y dando asco por lo sinvergüenzas"<sup>241</sup>.

[233] https://twitter.com/Schopenhauer200/status/1439756159259455489

[234] https://twitter.com/CondorPatriota/status/1439724060909477896

[235] https://twitter.com/ZurdoFacho2/status/1439697558381735938

[236] https://twitter.com/Alejandrinotad1/status/1439679457716056072

[237] https://twitter.com/szamhht/status/1439678716540596225 [238] https://twitter.com/GrupodeOpsC/sta-

tus/1439673260229206017

[239] https://twitter.com/Deepwiise/status/1439669115770257411 [240] https://twitter.com/libzanchea12/status/1439662780106301453

[241] https://twitter.com/malitamalosa/sta-

- 19 de septiembre: "El @Movilh por medio de su vocero dijo que lo dicho por las autoridades católicas y evangélicas en sus respectivos Te Deum es un discurso de odio. Sería bueno que para un debate serio se hablara con la verdad y no con posturas de víctima que a nada conducen"<sup>242</sup>.
- 18 de septiembre: "Me dicen por interno que las empanadas del @Movilh vienen huecas. Felices Fiestas Patrias"<sup>243</sup>.
- 18 de septiembre: "Asquerosos"<sup>244</sup>.
- 18 de septiembre: "Nunca en mi vida he conocido a alguien que se sienta representado por peta o el movilh"<sup>245</sup>.
- 12 de mayo: "Dale con q las gallinas mean! Mira mariconcito, anda al Movilh, ahí encontrarás degenerados como tú, q hablan tu mismo idioma, y le das rienda suelta a tus mugrosas inclinaciones! Deja tranquila a la gente honesta y de trabajo. Anarcos, flojos activistas como tú deben trabajar"<sup>246</sup>.
- 11 de mayo: "Hablas de Nambla con los lazos de @Movilh por parte del PS de chile que prostituye niños para Europa que nunca vuelven y se pierden"<sup>247</sup>.
- 11 de mayo: "Por culpa de silencio de las lacras colectivistas como el Movilh es que la gente termina con adversiones con los gays, un flaco favor hacen estos colectivos políticos, hipócritas de mierda son las fundaciones LGBT"<sup>248</sup>.
- 2 de mayo: "No creo en el argumento de Punta Peuco. Ya hay experiencia, no habría porqué caer en lo mismo. Se consigue el control del estado y se limpia todo...todo.!!! No mas puntapeucos,

tus/1439662406087610388 [242] https://twitter.com/andrs\_cubillos/status/1439562351724929026 [243] https://twitter.com/sebastian\_it/status/1439321683031166981 [244] https://twitter.com/jorge64650040/status/1439204166476476425 [245] https://twitter.com/barometro/status/1439242848667377665 [246] https://twitter.com/CarboniMore/status/1392433310262087683 [247] https://twitter.com/Grifter07544062/status/1392328385750355973 [248] https://twitter.com/El\_Fachocola/status/1392291199596257286 no mas INDHH no mas Redtv, no mas Movilh, no mas inmundicia.!!!!"<sup>249</sup>.

- 23 de abril: "El Movilh, no importa la persona, el amor es amor, Pedófilos"<sup>250</sup>.
- 21 de abril: "Los inmigrantes que no aportan y son un gasto para Chile. -Partido Liberal encabezado por Vlado Mirosevic. Todos los delincuentes . Las ridículas "Tesis"." El INDH. El totalitarismo de las feminazis y el Movilh"<sup>251</sup>.
- 20 de abril: "Atención: los del @Movilh son degenerados, cochinos vulgares, los del @PCdeChile y @PSChile son narcos y terroristas, los del @inddhh son terroristas. Es parodia, no se enojen"<sup>252</sup>.
- 20 de abril: "Además de gustarles la cornetssss, les gusta la del burrín, se les olvida el vuelta y vuelta"<sup>253</sup>.
- 20 de abril: "Fletos enfermos, claro a uds les gustan la peras, manzanas, bananas, bananos, etc., etc., etc. Degenerados"<sup>254</sup>.
- 20 de abril: "En un mes se arrancan como ratas. Movilh, Indh, Micco, Tellier, Vallejos, Cariola. etc. Putin no querrá competencia"<sup>255</sup>.
- 20 de abril: "Movilh una agrupación de degenerados"<sup>256</sup>.
- 20 de abril: "Exactamente, no se puede comparar peras con manzanas. Tampoco se puede comparar a las FFAA con una agrupación de retorcidos pedófilos, buenos para cacarear y victimizarse, con tal de recibir migajas estatales"<sup>257</sup>.

• 20 de abril: "Claro que no. Uds se creen intocables y solo buscan que la pedofilia se legalice"<sup>258</sup>.

- 20 de abril: "De qué se ensalza el movimiento, cuando igual quieren mutilar la inocencia de los niños, siendo que promueven la pedofilia...<sup>259</sup>.
- 20 de abril: "Yo me sigo riendo de los sidosos qls"<sup>260</sup>.
- 20 de abril: "Es que los del Movilh son muy maricones....se enojan por todo"<sup>261</sup>.
- 20 de abril: "Weones, ahora no se puede siquiera decir maricón porque saltan. No se hagan las weonas. Delicadas"<sup>262</sup>.
- 19 de abril: "Movilh Antro De Perversión y Pedófilos. #ChileSinZurdos "<sup>263</sup>.
- 19 de abril: "A uds les gusta la del burro.. y puta que les gusta"<sup>264</sup>.
- 19 de abril: "Movilh es Sodoma y Gomorra, son un Antro de perversión y degeneramiento . #ChileSinZurdos" <sup>265</sup>.
- 19 de abril: "A los del Movilh le gustan las peras y los huevos pegados a la pera. También les gusta echérselo a la raja jajajaj jajaja. ¡ Solo es humor ! Hueco manhueco"<sup>266</sup>.
- 19 de abril: "Maracos y cochinos"<sup>267</sup>.
- 19 de abril: "Lloran pq son mariquitas. Cuando les dicen o hacen algo o piensan distinto a sus perversiones y degeneramientos los mariquitas lloran"<sup>268</sup>.

[249] https://twitter.com/CarOreTap/status/1388964037845823497

[250] https://twitter.com/Luchn4/status/1385791226524340224

[251] https://twitter.com/xcozano/status/1384881649599631365 [252] https://twitter.com/eliomaximod/sta-

tus/1384714142930640910

[253] https://twitter.com/Jorge51947986/status/1384589210930266124

[254] https://twitter.com/CarOreTap/status/1384586701629239300

[255] https://twitter.com/christian\_67/status/1384610912116649999

[256] https://twitter.com/Carlos22710639/status/1384523729078833153

[257] https://twitter.com/b3agL83U7eGzxv9/status/1384480873966456834

[258] https://twitter.com/zalomix/status/1384475990504747009 [259] https://twitter.com/JoyceDelPilar3/status/1384485778177265668 [260] https://twitter.com/cvelocidadgta/status/1384584097528303621 [261] https://twitter.com/OgazAlexis/status/1384461585217990657 [262] https://twitter.com/mcrcastiramos/status/1384375977669705728 [263] https://twitter.com/mpecori/status/1384230601209749504 [264] https://twitter.com/Gilverts/status/1384346071573442560 [265] https://twitter.com/mpecori/status/1384229384744177667 [266] https://twitter.com/Nikoramriv/status/1384304619870777349 [267] https://twitter.com/KillCherno/status/1384303198328954892 [268] https://twitter.com/Msolledadd/status/1384290852583866370

- 19 de abril: "Por qué no pueden hacer humor con degenerados como ustedes? Si solos va de payasos por la vida. Eso sí, del circo Timoteo, los más bizarros<sup>269</sup>.
- 19 de abril: "Jajajaja, verdad que a ustedes les gustan más los plátanos"<sup>270</sup>.
- 19 de abril: "jajajaj, putos maricones"<sup>271</sup>.
- 19 de abril: "¿Peras con manzanas? Aquí no se está mezclando nada, es la realidad inconsecuente del discurso. Movilh no es más q un antro de perversión. Basta ver sus referentes.. Alfred Kinsey, pedófilo que confeccionó tablas mostrando cuántos orgasmos tiene un bebé. Pero ahí no hay alboroto"<sup>272</sup>.
- 18 de abril: "¿Qué pasaría si en un canal se burlaran del Movilh y la comunidad LGBT? Obvio!!! Demanda!!! ¿Qué pasa si un programa se burla de las FFAA? Nada, es "libertad de expresión"<sup>273</sup>.
- 4 de abril: "Pero en ninguna parte van a encontrar más huevitos de pascua que en la sede del Movilh" <sup>274</sup>.
- 28 de febrero: "El Movilh en Chile, estos depravados no pueden seguir libres"<sup>275</sup>.
- 26 de febrero: "Hasta cuándo el Movilh, en mi opinión existen solo dos sexos, los cuales se necesitan para reproducirse"<sup>276</sup>.
- 12 de febrero: "Éste es el tipo de noticias que Chile necesita y de las cuales debemos aprender para frenar en seco las pretensiones pervertidas como las de ciertos personajes o movimientos tipo @Movilh"<sup>277</sup>.

- 10 de febrero: "El mismo guatón (INDH), Branislav Marelic que representó al Movilh y demandá a Chile el 2012, hoy quiere ver a un carabinero inocente tras las rejas. Estas basuras del INDH solo defiende delincuentes, y comunistas, son un asco!! @anzunza<sup>"278</sup>.
- 10 de febrero: "Tanto blabla, nadie hace nada contra los Movilh, esos también son un peligro y de seguro toleran está desviación."<sup>279</sup>.
- 10 de febrero: "Bastante parecido a tus amigos degenerados del movilh"<sup>280</sup>.
- 30 de enero: "Último minuto! @ Movilh cambia sus oficinas a China. Será el descueve!"<sup>281</sup>- Esto relación a una noticia sobre la aplicación en China test rectal del Covid-19.
- 25 de enero: "Jajajajaja… Cuidado, recuerda que las locas del Movilh andan sensibles"<sup>282</sup>.
- 21 de enero: "Háganse un candado manga de maricones"<sup>283</sup>.
- 21 de enero: "Yo tengo amigos gay y los amo. Pero ellos son un encanto de personas van con la frente en alto y no hacen mariconadas ni cobardías como esta que lo único que pretende es invitar al odio y después preguntan porque no los apoyan, porque son la peor publicidad"<sup>284</sup>.
- 21 de enero: "Ustedes solo son basura acomodaticia ... solo piensan en el pico"<sup>285</sup>.

[271] https://twitter.com/kommander911/status/1384285071276797961

[272] https://twitter.com/FrankoRosetti/status/1384216943800950791

[273] https://twitter.com/PaulaAmaChile/status/1383950105196130315

[274] https://twitter.com/LaEufe/status/1378664097559031817 [275] https://twitter.com/SToribio2/sta-

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- [276] https://twitter.com/ucourbis1/status/1365644790755393541
- [277] https://twitter.com/Fabiola84029886/status/1360370879696408579

[278] https://twitter.com/Osvaldo42204661/status/1359649424461430784 [279] https://twitter.com/piston\_bikers/status/1359566791983382544 [280] https://twitter.com/SoyMinarquista/status/1359392175587475457 [281] https://twitter.com/Wolf\_Viva\_Chile/status/1355580100876640258 [282] https://twitter.com/juliolg2022/status/1353665115422392323 [283] https://twitter.com/Patriota\_Drax/status/1352275490388774921 [284] https://twitter.com/malymorales/status/1352290870209478658 [285] https://twitter.com/LipezSud/status/1352230790093012993

<sup>[269]</sup> https://twitter.com/msanchez1024/status/1384228785281593345

<sup>[270]</sup> https://twitter.com/LilloRomy/status/1384289589968261121

## e.- Ataques en el Mes del del Orgullo y el aniversario del Movilh

- 30 de junio: "Podrán casarse, vestir de novia, maquillarse si quieren pero jamás serán normales!!"<sup>286</sup>.
- 30 de junio: "El @movilh siendo el Movilh... y después uno se pregunta por qué el Che Guevara los fusilaba"<sup>287</sup>.
- 30 de junio: "Degenerados"<sup>288</sup>.
- 30 de junio: "Cada vez que el Movilh sube una foto diciendo que le han pegado a una persona por ser gay este se hace viral. Pero no dicen que le pegaron por sacoweas no por ser gay"<sup>289</sup>.
- 30 de junio: "Son pervertidos, hablan de ser discriminados pero ellos no se aceptan como son, miran sus cuerpos al espejo y se aborrecen por tener el sexo que tienen, no respetan la naturaleza menos van a respetar a los demás, están llenos de engaño y fraude<sup>290</sup>.
- 30 de junio: "LGBTQ+ no es problema, que se amén menos, ni la bandera ... El problema en el Movilh es que tiene su descarada forma de apuntar y creerse representantes absolutos, son un nido ideologizado de izquierda, solo observar como responde el comuntimanager de sus redes es una vergüenza<sup>291</sup>.
- 30 de junio: La... histérica reacción del Movilh es patético...y mentiroso..!!!<sup>292</sup>.
- 30 de junio: "Métete el dedo en la raja enfermo de mierda!!!<sup>293</sup>.
- 30 de junio: "Entiende amiga que la historia de la humanidad se termina con

[286] https://twitter.com/AZNATAM/status/1410258362441375747

[287] https://twitter.com/yiltricox/status/1410290802316787713

[288] https://twitter.com/franmartinezch1

[289] https://twitter.com/Clintjoselint/status/1410219420828549121

[290] https://twitter.com/MauricioClaros9/status/1410207239273598987

[291] https://twitter.com/Abelardo\_cl/status/1410289942253744134

[292] https://twitter.com/FelixSaffie/status/1410237810980933632

[293] https://twitter.com/luis\_fuerza/status/1/10086888111853571 los homosexuales. No más hijos, al menos sanos. La población disminuirá. Está el consuelo de que hay algunos que no comparten las ideas zurdas y del Movilh."<sup>294</sup>.

- 30 de junio: "El @Movilh solo un trampolín político. Jamás ha luchado por la diversidad, pues dentro de su institución te discriminan por tu postura política, donde sólo debería importar tu orientación o condición sexual. Son una molécula más de la izquierda progresista y comunista"<sup>295</sup>.
- 29 de junio: "Claro no representan a las personas decentes e íntegras Operadores políticos comunistas y defensores de la pedofilia"<sup>296</sup>.
- 29 de junio: Yo creo que ese movimiento es un negocio que permite que un grupo viva bien sin trabajar ¿Cuánto ganarán sus directivos,? ¿Para ser gay tienen que ser de izquierda?<sup>297</sup>.
- 29 de junio: "Tropa de maracos pedofílicos"<sup>298</sup>.
- 29 de junio: "Para los maraquitos tragasables que piden respeto a la perversión disfrazada de "diversidad""<sup>299</sup>.
- 29 de junio: "Movilh sacos de degenerados, pedófilos. Solo usan a los weones cagones para sus fines. Si un gallo bien gallo (como este chico del Twitt) les demuestra inteligencia, decencia y educación (no sesgo ideológico como lo tienen uds) de inmediato lo discriminan. Cínicos, inconsecuentes"<sup>300</sup>.
- 29 de junio: "Porque no llevamos a todos los del @movilh al sur y les mandamos al negro del WhatsApp? Y después los comandos... Sería un gran país si pudiéramos hacerlo pero, estos hijos de quién sabe qué, como

[294] https://twitter.com/luisborgna/status/1410074633659944961 [295] https://twitter.com/1971\_enfermero/status/1410073748741541888 [296] https://twitter.com/pcanahan/status/1410098025578512386 [297] https://twitter.com/digno\_el/status/1410078851238141954 [298] https://twitter.com/gamboamiguel/status/1410073503001419778 [299] https://twitter.com/PattyArriaza1/status/1410063246946676738 [300] https://twitter.com/PauliPatriota/status/1410062238145261568 seres vivos merecen vivir al igual que los perros, los gatos, las garrapatas"<sup>301</sup>.

- 29 de junio: "Los gays del LGBT en Chile son muy rascas @Movilh" 302.
- 29 de junio: "Así lo estableció Yayo hace tiempo: no son gays, son unos negros putos de mierda"<sup>303</sup>.
- 29 de junio: "Pero que ellos, en especial, los zurdos adoctrinados del @movilh, aprendan a respetar a aquellos que no comulgamos con sus ideas e imposiciones de agendas ideológicas."<sup>304</sup>.
- 29 de junio: "No parecen, son degenerados"<sup>305</sup>.
- 29 de junio: "Degenerados"<sup>306</sup>.
- 29 de junio: "Pico para los @movilh. Se les hizo agua la boca a las wnas...."<sup>307</sup>.
- 29 de junio: "Así de maricones son los huecarelis del Movilh"<sup>308</sup>.
- 29 de junio: "No se trata de ser homófobos, tampoco xenófobos, no se trata de desigualdad ni falta de oportunidades, se trata de lo que el comunismo en manos de movimientos como el @movilh que agrupa a una manga de desadaptados e ignorantes. Exacerban dichos, conceptos, dejando una pura opción, el rechazo"<sup>309</sup>.
- 29 de junio: "...@Movilh, los mismos pervertidos que quieren bajar la edad de consentimiento. Los mismos que luego marchan en contra de cualquier manifestación de odio..."<sup>310</sup>.

[301] https://twitter.com/luisborgna/status/1410057868796125185

> [302] https://twitter.com/Nac332/status/1410056609842204672 [303] https://twitter.com/Shatov /status/1410058515415240706

[304] https://twitter.com/ChumaKramer/sta-

tus/1410039567533682688

[305] https://twitter.com/mvfrioli/status/1410034663071141894 [306] https://twitter.com/CHILE25102020/sta-

tus/1410034515435823110

[307] https://twitter.com/LOLO67627599/status/1410033459452592132

[308] https://twitter.com/heinzbk1979/status/1410033369413406726

[309] https://twitter.com/IDD CG/sta-

tus/1410030950289915907

- 29 de junio: "Esto es de lo que se sienten orgullosos estos degenerados, el orgullo de ser una asociación de asquerosos"<sup>311</sup>.
- 29 de junio: "Deberían preocuparse de evitar exponer a los niños a conductas sexualizadas en tv abierta. Bueno qué les importa a ustedes, si junto a los pedófilos del Movilh están desesperados por bajar la edad de consentimiento"<sup>312</sup>.
- 29 de junio: "Representan al ojete no más"<sup>313</sup>.
- 29 de junio: "Movilh Chile debe desaparecer"<sup>314</sup>.
- 29 de junio: "Movilh, guarida de degenerados mentales, pobre tipos"<sup>315</sup>.
- 29 de junio: "Yo creo que hay muchos homosexuales y lesbianas que no los representan los degenerados del Movilh. Hay que respetar a todos menos a los que no respetan"<sup>316</sup>.
- 29 de junio: "Movilh, el club de pedófilos de Chile, acusando a una institución que tiene más aprobación ciudadana que uds. Las sandías con mas pepas…"<sup>317</sup>.
- 29 de junio: "Oigan energúmenos, se los pueden meter donde ustedes ya saben payasos Rodando por el suelo de risa"<sup>318</sup>.
- 29 de junio: "Movilh es un negocio tanto desde el punto de vista económico como desde la óptica de la rentabilidad del mal. Para ésta trabajan. Y lo asumen. ¿Puede esperarse otro resultado de una instancia así, con un "líder" expulsado del PC por su incapacidad en el dominio sus pasiones? No"<sup>319</sup>.

[311] https://twitter.com/sigfrido21/status/1410010831656456195 [312] https://twitter.com/KillCherno/status/1409994914285359104 [313] https://twitter.com/Pablo\_SS82/status/1409958105677504525 [314] https://twitter.com/Netstormm/status/1409934686068092930 [315] https://twitter.com/BerlinParacacho/status/1409902856396750849 [316] https://twitter.com/micamus13/status/1410065696256577537 [317] https://twitter.com/AndresF38610397/status/1409981007307186178 [318] https://twitter.com/angelitho\_z/status/1410061469354496006 [319] https://twitter.com/edmundojrojasr/sta-

<sup>[310]</sup> https://twitter.com/MissVitt/status/1410017724001103880

- 29 de junio: "Esto es más miserable! Se sienten orgullosos de que les rompan el orto? Ahora: Lemebel era otro sodomita asqueroso, masturba perros"<sup>320</sup>.
- 29 de junio: "Ese weon (pedro lemebel) ya murió y de cáncer de laringe. Por donde pecas, pagas"<sup>321</sup>.
- 29 de junio: "Pasao a sida"<sup>322</sup>.
- 29 de junio: "@Movilh váyanse a la CSM maracos indecentes, ya se les va a acabar la fiesta"<sup>323</sup>.

## f.- Ataques transfóbicos contra Carla González

- 21 de abril: "Aguante carlitos!!!!"<sup>324</sup>.
- 19 de abril: "Pobre chico, es joven aún y le queda tiempo para enmendar el camino"<sup>325</sup>.
- 19 de abril: "Bien por Carlitos... tiene cojones el muchacho"<sup>326</sup>.
- 19 de abril: "Wena Carlos!!"<sup>327</sup>.
- 19 de abril: "Ese es un Hombre disfrazado de mujer.<sup>328</sup>

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      [320] https://twitter.com/MrJrSnWF/sta-
tus/1410019414221623296
      [321] https://twitter.com/Serguei_y_punto/sta-
tus/1409892097080152072
      [322] https://twitter.com/LibertadnChile2/sta-
tus/1409947756563767298
      [323] https://twitter.com/patrianueva2020/sta-
tus/1409947532990550017
      [324] https://twitter.com/1973Ciudadano/sta-
tus/1384881914985725952
     [325] https://twitter.com/marcelocabrerac/sta-
tus/1384205240849690627
     [326] https://twitter.com/Rodrigo80966906/sta-
tus/1384191207308357639
     [327] https://twitter.com/Claudio62043646/sta-
tus/1384185677487632393
     [328] https://twitter.com/Luis06260837/sta-
tus/1384190468028731392
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# • 12.3.- Casos donde confluyen diversas categorías de discriminación

#### Contra el matrimonio igualitario

#### Fecha: Enero a diciembre

**Hecho:** En el marco de la discusión por el matrimonio igualitario se registraron al menos 299 episodios de discriminación, 264 de tipo institucional; 29 de declaraciones y 5 movilizaciones y 1 ataque verbal con amenaza de muerte.

De los 264 casos de discriminación institucional, 247 corresponde a votaciones contra el proyecto de ley y a la presentación o defensa de indicaciones de odio para restar derechos a la iniciativa legal.

Del total de abusos, 3 ocurrieron en Santiago, 28 en medios de comunicación o redes sociales y 268 en Valparaíso.

Fueron responsables de estos abusos los/as senadores/as UDI Claudio Alvarado Andrade, José Miguel Durana Semir, Juan Antonio Coloma, Luz Ebensperger Orrego, Alejandro García Huidobro Sanfuentes, Iván Moreira Barros, David Sandoval Plaza, Jacqueline Van Rysselberghe Herrera, Ena Von Baer Jahn; los/a RN Juan Castro Prieto, Franscisco Chahuán Chahuán, José García Ruminot, Manuel José Ossandón Irarrázabal y los/as independientes de Derecha, Carmen Gloria Aravena Acuña y Kenneth Pugh Olavarría.

También fueron responsables los/as diputados/as DC Jorge Sabag Villalobos; los/as UDI Nino Baltolu Rasera, Ramón Barros Montero, Sergio Bobadilla Muñoz, Juan Fuenzalida Cobo, Juan Antonio Coloma Álamos, Javier Hernández Hernández, María José Hoffmann Opazo, Juan Manuel Masferrer Vidal, Cristhian Moreira Barros, Iván Norambuena Farías, Rolando Rentería Moller, Renzo Trisotti Martínez, Ignacio Urrutia Bonilla, Osvaldo Urrutia Soto, Enrique Van Rysselberghe Herrera y Gastón Von Mühlenbrock Zamora; los RN José Miguel Castro Bascuñán, Catalina Del Real Mihovilovic, Eduardo Durán Salinas, Francisco Eguiguren Correa, Camila Flores Oporto, René Manuel García García, Harry Jürgensen Rundshagen, Carlos Kuschel Silva, Karin Luck Urban, Miguel Mellado Suazo, Francesca Muñoz González, Ximena Ossandón Irarrázabal, Luis Pardo Sáinz, Leopoldo Pérez Lahsen, Guillermo Ramírez Diez, Jorge Rathgeb Schifferli, Leonidas Romero Sáez, Frank Sauerbaum Muñoz y Diego Schalper Sepúlveda; el PR Cristóbal Urruticoechea Ríos y el PRSD José Pérez Arriagada.

Los/as ministros/as de la Mujer y la Equidad de Género, Mónica Zalaquett y de Bienes Nacionales, Julio Isamit; el Subsecretario del Ministerio General de la Presidencia, Máximo Pavez (UDI); el presidente de la UDI, Javier Macaya, los (pre) candidatos presidenciales Joaquín Lavín y José Antonio Kast: el abogado de la Fundación Jaime Guzmán, Emiliano García; el director ejecutivo del Instituto de Estudios de la Sociedad, Claudio Alvarado; el Decano de la Facultad de Derecho de la Universidad Católica, Gabriel Bocksang; los/as profesores/as de la Universidad de Los Andes, María Rodríguez y Joaquín García–Huidobro y de la Pontificia Universidad Católica de Chile, Carolina Salinas, Mario Correa Manríquez y Felipe Widow Lira; el director ejecutivo de la Corporación Comunidad y Justicia, Álvaro Ferrer; el Comité Permanente de la Conferencia Episcopal; el arzobispo católico Celestino Arós y el presidente de la Coordinadora de Unidades Pastorales Evangélicas de Chile (Cupech), Héctor Cancino y los abogados Jorge Reyes, Gonzalo Ibáñez Santa María fueron otros de los responsables.

Todos los detalles de estos casos de discriminación se encuentran en el segundo título del cuarto capitulo.

**Respuesta:** El Movilh reaccionó a cada de uno de los abusos con denuncias y repudios públicos, manifestaciones y el desarrollo de iniciativas a favor del matrimonio igualitario.

Clasificación: Homofobia

#### Armada y Gendarmería

#### Fecha: Enero a diciembre

**Hecho:** Diversos atropellos contra los derechos humanos de las personas LGBTIQA+ se registraron al interior de la Armada y Gendarmería.

En el primer caso hubo 7 atropellos, uno de tipo institucional y seis declaraciones, ocurridas estas últimas en Valparaíso.

Responsables de estos abusos fueron la Armada, su Academia de Guerra Naval y Revista Marina, el Comandante en Jefe de la Armada, Juan Andrés De La Maza, el Almirante y ex comandante en Jefe de la Armada, Miguel Vergara Villalobos, y los lectores o columnistas Adolfo Paul Latorre, Alejandro Niklitschek, Pablo Weiss, Nicolás Kipreos Almallotis y Gonzalo Ibáñez Santa María.

En tanto, los atropellos de gendarmes contra internos/as LGBTIQA+ persistieron y llevaron al suicidio de una de las víctimas.

Se trató de 7 abusos institucionales, 5 de los cuales afectaron a personas trans y 2 a internos gay. 4 atropellos ocurrieron en el Complejo Penitenciario de La Serena y 2 en el Centro Penitenciario Acha de Arica y uno Centro de Detención Preventiva (CDP) de Quillota, siendo responsables dichas instituciones.

Los antecedentes de cada uno de estos casos de discriminación se encuentran en el título VII del tercer capítulo.

**Respuesta:** El Movilh denunció todos los abusos y orientó a las victimas

Clasificación: Homo/transfobia

#### Sandra Pavez

#### Fecha: Febrero a diciembre

**Hecho:** En el marco de la audiencia de juicio contra el Estado de Chile por discriminar a la docente Sandra Pavez que tuvo lugar en la Corte Interamericana de DDHH, se produjeron a lo menos 22 de casos de discriminación divididos en 19 de tipo institucional, dos campañas y una declaración de odio.329

Las instituciones y personas responsables de los abusos fueron la Cancillería de Chile, el Presidente de la Conferencia Episcopal de Chile, Santiago Silva; el Presidente del Consejo Episcopal Latinoamericano (CELAM), Miguel Cabrejos; el Arzobispo de Santiago de Chile, Cardenal Celestino Aós; el Arzobispo Metropolitano de la Arquidiócesis Ortodoxa de Chile, Sergio Abad; el Presidente de la Mesa Ampliada de la Unión Evangélica Nacional de Chile, Emiliano Soto; el Primado de la Iglesia Anglicana de Chile, Héctor Zavala; el Obispo de San Bernardo y Administrador Apostólico de Rancagua, Juan Ignacio González; el Secretario Ejecutivo de la Mesa Ampliada de Organizaciones Evangélicas UNE Chile, Francisco Javier Rivera; el Presidente del Directorio de la Comunidad Musulmana de Chile, Fuad Musa y el Rabino de la Comunidad Judía de Chile, Eduardo Waingortin.

También fueron responsables el canciller Andrés Allamand, la presidenta de la Confederación de Padres y Apoderados de Colegios Particulares Subvencionados de Chile, Erika Muñoz Bravo; los profesionales chilenos Eduardo Fuentes, Claudio Pierantoni, Fernando Arancibia, Javiera Corvalán y Carlos Casanova y el docente Hernán Corral.

Del mismo modo accionar contra los derechos de Sandra los ex jueces del Tribunal Europeo de Derechos Humanos, Javier Borrego, Giovanni Bonello y Vincent de Gaetano; los abogados con trabajo en Estados Unidos Flavio Allegretti de Campos Cooper, Odacyr Carlos Prigol y Scott E. Isaacson; el docente argentino Juan Navarro Floria; el vicepresidente del Fondo Becket Pro Libertad Religiosa con sede en Washington, Eric Rassbach; las abogadas estadounidenses Angela Wu Howard y Asma Uddin; el Centro Internacional de Derecho y Estudios de la Religión de Estados Unidos (ICLRS, por sus siglas en inglés) y ADF Internacional.

Respuesta: El Movilh denunció y reaccionó a cada caso de discriminación

Clasificación: Homofobia

<sup>[329]</sup> Todos los antecedentes de este caso se encuentran en el segundo título del capitulo VI

#### Divorcio culposo

#### Fecha: Abril a a agosto

**Hecho:** En el marco del debate por la derogación del divorcio culposo por homosexualidad, se registraron 29 episodios de discriminación, 27 de tipo institucional, 1 comunitario y una declaración.

Responsables de estos atropellos fueron los/as magistrados/as del TC Iván Aróstica Maldonado, Juan José Romero Guzmán, José Ignacio Vásquez Márquez, Miguel Ángel Fernández González, los/as senadores/as UDI Jacqueline Van Rysselberghe, Juan Antonio Coloma, José Miguel Durana, Luz Eliana Ebensperger y David Sandoval y los/as diputados/ as RN Eduardo Durán, René Manuel García, Harry Jürgensen, Francesca Muñoz, Leonidas Romero, Ximena Ossandón, Luis Pardo y Leopoldo Pérez así como los PR Cristóbal Urriticoechea, Ignacio Urrutia; los UDI Nino Baltolu y Osvaldo Urrutia; el DC Jorge Sabag y la independiente Virginia Troncoso.

También aparece como responsable el ciudadano Jaime Andrés González Moreno.

Del total, 4 abusos ocurrieron en Santiago, 1 en Santa Cruz y 24 de Valparaíso.

Todos los antecedentes sobre estos casos se encuentran en el sexto título del cuarto capítulo.

Respuesta: El Movilh reaccionó a todas los casos con denuncias públicas, campañas y requerimientos.

Clasificación: Homofobia

### Adopción y filiación homoparental

Fecha: Mayo a septiembre

**Hecho:** En el marco de la tramitación de los proyectos de ley sobre reforma al sistema de adopciones y filiación homoparental se registraron siete episodios de discriminación institucional en el Congreso Nacional de Valparaíso.

Las responsables fueron la senadoras UDI Ena Von Baer y Luz Ebensperger.

Respuesta: El Movilh denunció y criticó públicamente los episodios de discriminación.

Clasificación: Homofobia

### <u>Aborto y hombres trans</u>

#### Fecha: 3 de mayo y 1 de septiembre

**Hecho:** Las diputadas Ximena Ossandón (RN) y Virginia Troncoso (IND) votaron contra un proyecto de ley que permite explícitamente el aborto por tres causales a hombres trans.

A esa votación en la la Comisión de la Mujer y de la Equidad de Género, se sumarn otros 48 pronunciamientos en contra en Sala: Los/as DC Jorge Sabag Villalobos y Miguel Calisto Águila; los/as UDI Jorge Alessandri Vergara, Sandra Amar Mancilla, Nino Baltolu Rasera, Ramón Barros Montero, Sergio Bobadilla Muñoz, Álvaro Carter Fernández, Juan Antonio Coloma Álamos, Juan Fuenzalida Cobo, Sergio Gahona Salazar, Javier Hernández Hernández, Juan Manuel Masferrer Vidal, Cristhian Moreira Barros, Rolando Rentería Moller, Gustavo Sanhueza Dueñas, Renzo Trisotti Martínez, Ignacio Urrutia Bonilla, Osvaldo Urrutia Soto, Enrique Van Rysselberghe Herrera y Gastón Von Mühlenbrock Zamora.

También rechazaron el proyecto los/as RN Bernardo Berger Fett, José Miguel Castro Bascuñán, Jorge Durán Espinoza; Catalina Del Real Mihovilovic, Francisco Eguiguren Correa, Camila Flores Oporto, Tomás Fuentes Barros, René Manuel García García, Ramón Galleguillos Castillo, Harry Jürgensen Rundshagen, Cristian Labbé Martínez, Miguel Mellado Suazo, Camilo Morán Bahamondes, Francesca Muñoz González, Paulina Núñez Urrutia, Luis Pardo Sáinz, Ximena Ossandón Irarrázabal, Pablo Prieto Lorca, Guillermo Ramírez Diez, Jorge Rathgeb Schifferli, Hugo Rey Martínez, Leonidas Romero Sáez, Frank Sauerbaum Muñoz, Diego Schalper Sepúlveda, Sebastián Torrealba Alvarado, el PR Cristóbal Urruticoechea Ríos, el Evópoli Sebastián Álvarez Ramírez y la independiente Virginia Troncoso Hellman.

Los 50 episodios de discriminación institucional ocurrieron en Valparaíso

Respuesta: El Movilh denunció y repudió los votos en contra

Clasificación: Transfobia

Proyectos de odio

Fecha: 26 de mayo y 16 y 17 de junio

**Hecho:** Los diputados RN Harry Jürgensen (RN) y Cristóbal Urriticoechea (PR) presentaron tres proyectos de ley de reforma constitucional y de tipo homo/transfóbico y misógino.

Todos los detalles de estos tres episodios de discriminación institucional de encuentran en el cuarto capítulo.

Respuesta: El Movilh criticó públicamente los proyectos de ley

Clasificación: Homo/tranfobia

#### **Candidatos homófobos**

Fecha: Julio a diciembre

Hecho: En el marco de las elecciones presidenciales, los (pre) candidatos Joaquín Lavín (UDI) y José Antonio Kast (PR) lanzaron repetidos comentarios homofóbicos, al igual que el docente Hernán Corral.

Los casos de este tipo suman 5 episodios de discriminación: dos movilizaciones y al menos tres declaraciones de odio a través de medios de comunicación.

Más antecedentes de estos casos en el tercer título del séptimo capítulo.

Respuesta: El Movilh reaccionó cada uno los atropellos, repudiándolos públicamente

Clasificación: Homofobia

#### Anti familias homoparentales

Fecha: 5 de agosto y 20 de septiembre

**Hecho:** La jueza titular del Juzgado de Familia de Valparaíso, Andrea Cordero Valdés, se negó a reconocer que dos niños tenían dos madres.

La Cuarta Sala de la Corte de Apelaciones de Valparaíso confirmó la sentencia con los votos del magistrado Alejandro German García Silva y del juez suplente Juan Carlos Francisco Maggiolo.

Todos los antecedentes de estos dos casos de discriminación institucional se encuentran en título XII del IV capítulo.

Clasificación: Homofobia

**Respuesta:** El Movilh brindó asesoría jurídica a la pareja

## V.- RANKING ANUAL DE LA HOMOFOBIA Y LA TRANSFOBIA 2021

El Ranking Anual de la Homofobia y Transfobia identifica a las instituciones y personas responsables de los episodios de discriminación de mayor impacto o más graves.

Este registro permite conocer a lo largo del tiempo cuáles son los sectores que más repiten abusos, así como identificar el surgimiento de nuevas voces opositoras a la igualdad o la desaparición de las más antiguas.

El Ranking posibilita al movimiento de la diversidad sexual y de género definir de mejor manera cómo y dónde se requiere de un trabajo más urgente y específico para erradicar la discriminación, con la respectiva elaboración de propuestas o reacciones.

La mención y/o ubicación en el ranking considera diversos elementos a saber:

- 1. El poder o influencia del responsable, pues de ello depende el alcance del hecho.
- 2. El impacto presente, futuro, concreto y simbólico del hecho en las áreas específicas donde intervino y en las más generales donde hubo consecuencias.
- Los alcances individuales, colectivos y/o sociales del hecho.
- La conducta pasada de los responsables y la actitud adoptada frente al caso específico del presente.
- Las transformaciones a favor de la apertura que puedan ir experimentando los responsables.
- 6. El número de episodios discriminatorios de los cuales una persona o institución fue responsable en el plazo de un año.
- El número de episodios discriminatorios de los cuales una persona o institución fue responsable desde el primer ranking, lanzado en 2002.

# Ranking instituciones homofóbicas y transfóbicas 2021

#### Ubicación en años anteriores

2021	Nombre	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002
1	Unión Demócrata Independiente (UDI)	2	3	3	5	1	1	2	2	2	1	1	2				1			
2	Gendarmería de Chile: Complejos Penitenciarios de La Serena y Arica y Centro de Detención Preventiva de Quillota	4	6	2	1	2														
3	Armada de Chile: Academia de Guerra Naval y Revista Marina	5													6					
	Carabineros de Chile: Comisarías de Alto Hospicio, Chañaral, Chillán, Valparaíso y Viña del Mar	5	1	1		6	8	3	5	6		9			2	3		8		
4	Juzgado de Familia de Valparaíso																			
	Cuarta Sala de la Corte de Apelaciones de Valparaíso																			
	Ministerio de Relaciones Exteriores																			
5	Partido Republicano	10	11																	
6	Iglesia Católica: Conferencia Episcopal				5	5		5	5	3	4	3	3		1		4	9	4	*
	Consejo Episcopal Latinoamericano (CELAM)																			
	Coordinadora de Unidades Pastorales Evangélicas de Chile (Cupech)						9													

## Ubicación en años anteriores

2021	Nombre	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002
6	Mesa Ampliada de la Unión Evangélica Nacional						4	5	8	3	5	2	5	2						
	Comunidad Musulmana de Chile																			
	Confederación de Padres y Apoderados de Colegios Particulares Subvencionados de Chile																			
	Centro Internacional de Derecho y Estudios de la Religión (ICLRS, por sus siglas en inglés)																			
	ADF Internacional																			
7	Comunidad Judía de Chile																			
	Iglesia Anglicana de Chile										3									
8	Escuela México de Michoacán de Osorno																			
	Colegio Adventista de Molina																			
9	Cruz Blanca																			
	Cencosud: Santa Isabel y Jumbo	9	14					7												
	Comercial Súper Bodega a Cuenta																			
	Casa de Cambio Sociedad e Inversiones y Rentas Efesis SpA																			
	Empresa Aramark																			
	Sociedad de Servicios Mesut SpA																			

										ncac										
2021	Nombre	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002
9	Grupo Eulén								7											
	Empresa de Seguridad Incar																			
	Consorcio Minero Trébol- Agua Santa LTDA																			
	Empresa Easy Retail SA																			
10	Cementerio El Manantial																			
	Fiscalía Metropolitana Oriente																			
11	Universidad de Los Andes	10	10	7							7		8					10		
	Universidad Católica: Facultad de Derecho			7		5														
12	Estética Dental Quilicura																			
13	Hospital Sótero del Río																			
	Hotel Samoa (Moneda 2304)																			
14	Comunidad y Justicia	10	11	8	11	11	7	11	9											
	Fundación Jaime Guzmán	10		9	13				9			6								
	Instituto de Estudios de la Sociedad				13		7													
15	Canal de YouTube "El Nacional-Libertario"																			

## Ubicación en años anteriores

# Ranking personas homofóbicas y transfóbicas 2021

									Ub	oicad	ción	en a	años	ant	eric	ores				
2021	Nombre	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002
1	F.A.R.D., J.J.A.M (16), Karla Javiera Reyes Sanzana, Cristóbal Peñailillo García y Kimberly Aracely Muñoz Ramírez, F.J.D.S.V																			
	(Asesinos de personas LGBTIQA+)																			
2	Senadores/as UDI																			
	Claudio Alvarado	6																		
	Juan Antonio Coloma	6	4	7	5	2	2	4	2	4	2	3								
	José Durana Semir	6	4	7																
	Luz Ebensperger	6	4	7																
	Alejandro García Huidobro	6	4	7			2	2												
	Iván Moreira Barros	6	4	4	2	2	1	2	4	3	5		6	9						
	Víctor Pérez Varela	6	4	7				4		4		3								
	David Sandoval Plaza	6	4	7				4												
	Jacqueline Van Rysselberghe	6	4	4	5	2	1	2												
	Ena Von Baer Jahn																			
	Senadores/as RN																			
	Juan Castro Prieto	6	4	4	2	4	1													
	Francisco Chahuán Chahuán	6	4	4	5	2		2												
	José García Ruminot	6		7		2	2	2	2	4										
	Manuel José Ossandón Irarrázabal	6	4	7	2	2	2	2	4	2										
	Senadores/as Independientes																			
	Carmen Gloria Aravena	6	4	7																

Т

									Uł	oicad	ción	en a	años	s ant	teric	ores				
2021	Nombre	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002
2	Kenneth Pugh Olavarría	6	4	7																
	Diputados/as UDI																			
	Sandra Amar	7	5	7																
	Nino Baltolu Rasera	7	5	7						3										
	Ramón Barros	7	5	7			2		3	3										
	Sergio Bobadilla Muñoz	7	5	7						3										
	Juan Antonio Coloma Alamos	7		4		2		2												
	Juan Fuenzalida Cobo	7	5	7																
	Javier Hernández Hernández	7	5	7						3								2		
	María José Hoffmann	7	5	4	5					3										
	Javier Macaya	7	5	7						3										
	Juan Manuel Masferrer Vidal	7																		
	Cristhian Moreira Barros	7	5	7																
	Iván Norambuena Farías	7	5	7	5	2	2			3	5									
	Rolando Rentería Molle	7	5	7																
	Gustavo Sanhueza Dueñas	7	5	7																
	Renzo Trisotti Martínez	7	5	7																
	Osvaldo Urrutia Soto	7	5	4	5			2												
	Enrique Van Rysselberghe	7	5			2				3	5									
	Gastón Von Mühlenbrock Zamora	7	5	7						3										
	Diputados/as RN																			
	Bernardo Berger Fett	7	5	7			2													
	José Miguel Castro Bascuñán	7	5	7																

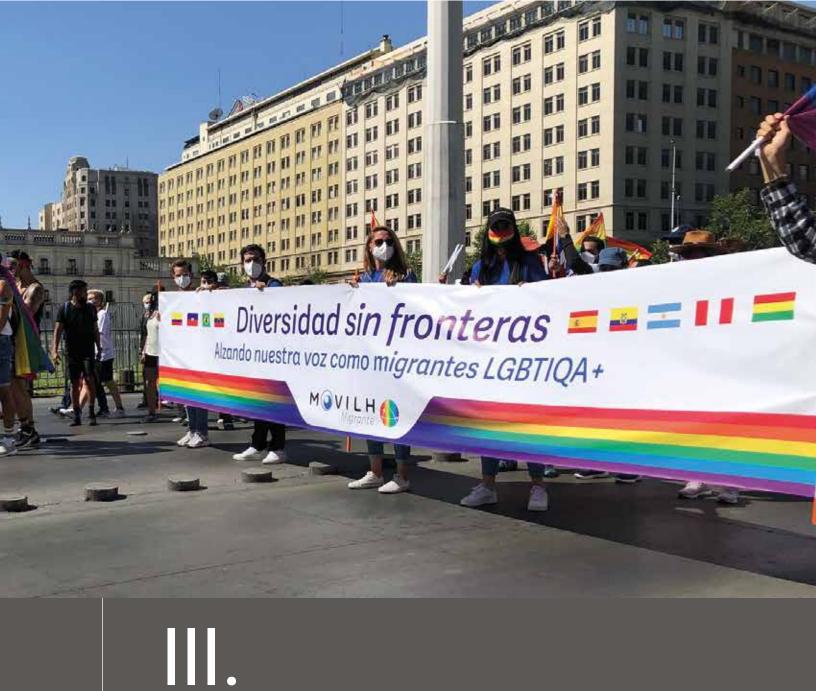
						200       201       2														
2021	Nombre	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002
2	Catalina Del Real Mihovilovic	7	5	7																
	Jorge Durán Espinoza																			
	Eduardo Durán Salinas	7	5	4	5	14		5	6		7	6								
	Francisco Eguiguren Correa	7	5	7																
	Camila Flores Oporto	7	5	7																
	Ramón Galleguillos Castillo	7	5																	
	René Manuel García García	7	5	4	5	2	2	2	2		3									
	Harry Jürgensen Rundshagen	7	5	7																
	Carlos Kuschel Silva	7	5	7				2		4	4									
	Karin Luck Urban	7																		
	Miguel Mellado Suazo	7	5	7																
	Francesca Muñoz González	7	5	4																
	Ximena Ossandón Irarrázabal	7	5	7				11												
	Luis Pardo Sáinz	7	5																	
	Leopoldo Pérez Lahsen	7	5	7		2	2			3		3		9						
	Guillermo Ramírez Diez	7	5	7																
	Jorge Rathgeb Schifferli	7	5	7			2													
	Leonidas Romero Sáez	7	5	4																
	Alejandro Santana		5	7			2			3		3		9						
	Frank Sauerbaum Muñoz	7	5																	
	Diego Schalper Sepúlveda	7	5	7																
	Diputados Partido Republicano	)																		
	Cristóbal Urriticoechea	7	5	4																
	Ignacio Urrutia Bonilla	7	5	4	2		1	2		2										
	Diputados DC																			
	Jorge Sabag	7	5	7		2	2	2		2	5									

									Uł	oica	ción	en a	años	s ant	eric	ores				
2021	Nombre	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002
2	Miguel Calisto Águila																			
	Diputada independiente Virginia Troncoso.			7																
	Dipudado PRSD José Pérez Arriagada																			
3	Ministros/as del Tribunal Cons	stitu	icio	nal																
	Ministro del TC Iván Aróstica Maldonado	4		2				1			8	2	5	2						
	Ministro del TC, Juan Romero Guzmán	4		2																
	Ministro del TC, Cristián Letelier Aguilar	4		2				4	3	5	2									
	Ministro del TC, José Vásquez Márquez	4																		
	Ministro del TC, Miguel Fernández González	4																		
4	Diputados UDI																			
	Diputado Jorge Alessandri	7	5																	
	Diputado Sergio Gahona Salazar																			
	Álvaro Carter Fernández																			
	Diputados/as RN																			
	Sofía Cid		5	7																
	Tomás Fuentes Barros																			
	Cristian Labbé Martínez,																			
	Camilo Morán Bahamondes																			
	Paulina Núñez Urrutia																			
	Pablo Prieto Lorca																			
	Hugo Rey Martínez																			
	Sebastián Torrealba Alvarado																			
	Diputado Evópoli Sebastián Álvarez Ramírez																			

									Ub	oicac	ción	en a	años	ant	eric	ores				
2021	Nombre	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002
5	Ministro de Relaciones Exteriores, Andrés Allamand		4																	
	Comandante en Jefe de la Armada, Juan Andrés De La Maza																			
	Almirante y ex comandante en Jefe de la Armada, Miguel Vergara Villalobos							10							4					
6	Candidato presidencial diputado José Antonio Kast	16	13	8	2	2	1	2	4	2	5		3				3	12		
7	Jueza titular del Juzgado de Familia de Valparaíso, Andrea Cordero Valdés																			
	Magistrados/as de la Cuarta Sala de la Corte de Apelaciones de Valparaíso, Alejandro German García Silva y Juan Carlos Francisco Maggiolo																			
8	Obispo de San Bernardo y administrador Apostólico de Rancagua, Juan Ignacio González.			17	14	13			4	5		5	4	8	1					
	Presidente de la Conferencia Episcopal de Chile, Santiago Silva																			
	Presidente del Consejo Episcopal Latinoamericano (Celam), Miguel Cabrejos																			
	Arzobispo de Santiago de Chile, Cardenal Celestino Aós																			
	Arzobispo Metropolitano de la Arquidiócesis Ortodoxa de Chile, Sergio Abad										8									
	Presidente de la Mesa Ampliada de la Unión Evangélica Nacional de Chile, Emiliano Soto			5	9		5	3	16	12	7	6	8	3					13	

						Ubicación en años autriores         2010       201, 201, 201, 201, 201, 201, 201, 200, 200														
2021	Nombre	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002
8	Primado de la Iglesia Anglicana de Chile, Héctor Zavala										7								13	
	Secretario Ejecutivo de la Mesa Ampliada de Organizaciones Evangélicas UNE Chile, Francisco Javier Rivera																			
	Presidente del Directorio de la Comunidad Musulmana de Chile, Fuad Musa																			
	Rabino Representante de la Comunidad Judía de Chile, Eduardo Waingortin																			
	Presidenta de la Asociación de Padres y Apoderados de Colegios Particulares Subvencionados de Chile, Erika Muñoz Bravo			18	21															
9	Ministra de la Mujer y la Equidad de Género, Mónica Zalaquett																			
	Subsecretario del Ministerio General de la Presidencia, Máximo Pavez																			
	Candidato presidencial Joaquín Lavín																			
	Diputado electo Johannes Kaiser	18																		
	Diputada electa Gloria Naveillán (PR)																			
10	Director ejecutivo del Instituto de Estudios de la Sociedad, Claudio Alvarado Rojas				20															
	Director ejecutivo de la Corporación Comunidad y Justicia, Álvaro Ferrer	19		14	6				11											

				Ubicación en años anteriores																
2021	Nombre	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002
10	Docente de la Universidad de Los Andes, Hernán Corral	18	16	14	24	10	6			14										
	Profesores/as de la Universidad de Los Andes, María Rodríguez	19	16																	
	Docente Joaquín García–Huidobro				24			11												
	Docentes de la Pontificia Universidad Católica de Chile, Carolina Salinas Manríquez, Felipe Widow Lira																			
	Abogado Mario Correa	19								8										
	Profesionales chilenos Eduardo Fuentes, Claudio Pierantoni, Fernando Arancibia, Javiera Corvalán																			
	Abogado Jorge Reyes			14						9	15	14	13							
11	Inspector de la Policía de Investigaciones Sebastián Guzmán Díaz																			
12	Ex tenista Marcelo Ríos	11																		
	Candidato a constituyente Cristóbal Orrego (PR)							9		14										
13	Candidato a constituyente Pedro Barraza Cuadra (independiente DC)																			



# Políticas públicas por la diversidad

XX. Informe Anual de Derechos Humanos de la Diversidad Sexual y de Género en Chile

HECHOS 2021

# I.- INTRODUCCIÓN

En Salud, Educación y Trabajo, sectores claves para el desarrollo humano, ya existen leyes, circulares o resoluciones que garantizan la no discriminación por orientación sexual, identidad o expresión de género, por tanto, toda nueva acción tiende más bien a perfeccionar esas bases o a ampliar su impacto, tal como ocurrió en 2021, aunque exceptuando lo ocurrido en las Fuerzas Armadas, de Orden y Seguridad, pues en vez de perfeccionar los avances, experimentaron graves retrocesos para la igualdad.

Por un lado, la Superintendencia de Educación amplió de 18 a 14 años la autonomía de niños, niñas y adolescentes (NNA) trans para solicitar en sus colegios o liceos el respeto a su identidad de género de manera independiente de sus apoderados. A su vez, los movimientos LGBTIQA+ continuaron capacitando a escuelas, liceos y universidades en la temática y también educando a otros referentes, como el cuerpo de bomberos y centros que trabajan con NNA vulnerables.

En una línea similar, el Servicio Nacional de Menores (Sename) lanzó su primera política para la promoción de los derechos de los/as NNA LGBTIQA+, enmarcándose en lo ya señalado por circulares del Ministerio de Educación y en la Ley de Identidad de Género. Distinto fue lo ocurrido en el Servicio Nacional del Adulto Mayor (Senama) que jamás ha implementado alguna política al respecto, aún cuando en 2021 se retomaron las conversaciones para ello.

El campo de la Salud, en tanto, mantuvo graves deudas, pues no se codificaron los precios de las prestaciones de Fonasa para el cambio corporal de las personas trans, ni tampoco se implementó ninguna medida focalizada en la población LGBTIQA+ para hacer frente al Covid-19. El único cambio en Fonasa fue la habilitación de formularios online que permiten a las personas dar a conocer su nombre social, una medida implementada muy tardíamente, pues es exigible desde el 2012 con la Ley Antidiscriminatoria.

Mientras la Campaña Arcoíris se consolidó en 2021 como un tradicional evento por los derechos LGBTIQA+, en tanto cada vez son más las instituciones que despliegan los colores del arcoíris para apoyar la causa en determinadas coyunturas, las medidas a favor de los/as migrantes de la diversidad sexual y de género experimentaron un aumento con fondos concursables, campañas o la participación del sector por primera vez en la Marcha del Orgullo, aunque la casi totalidad de estas actividades cuentan con nulo apoyo estatal, siendo impulsadas principalmente por la sociedad civil en alianza con organismos internacionales. En el terreno municipal, en tanto, nuevas entidades comunales fueron inauguradas para la promoción de la igualdad, la inclusión y la no discriminación

Finalmente triste fueron los espectáculos en la Armada y Gendarmería. La primera, hizo noticia por enseñar a sus estudiantes que las personas LGBTIQA+ son una "tiranía", una "inmoralidad" y una "actitud sexual depravada" que "desmantela las normas sexuales", sin que al cierre de este informe se sancionaran a los responsables, mientras en Gendarmería continuaron los abusos y torturas contra internos/as, a un punto que uno/a de ellos/as se suicidó debido a los acosos. Ambas instituciones, junto a Carabineros, son así las más peligrosas para las personas LGBTIQA+ en Chile.

## II.- MINEDUC GARANTIZA AUTONOMÍA DE ESTUDIANTES TRANS A PARTIR DE LOS 14 AÑOS

La Superintendencia de Educación, encabezada por Cristian O'Ryan Squella, sustituyó el 21 de diciembre del 2021 la Circular 768<sup>1</sup> sobre derechos de niños, niñas y adolescentes (NNA) trans; dictada en 2017; por la Resolución 812<sup>2</sup>, siendo su principal aporte el reconocimiento de la autonomía progresiva a partir de los 14 años.

En paralelo algunas casas de estudios superiores desarrollaron nuevas iniciativas por la igualdad y la no discriminación, mientras que los movimientos LGBTIQA+ continuaron capacitando a apoderados, docentes, estudiantes y directivos de distintas regiones del país.

#### • La circular 812

La nueva resolución amplía derechos para los/ as NNA trans en función de los principios de la Ley de Identidad de Género 21.120, publicada en 2018.

La actualización era un tarea pendiente del Estado, pues la circular 768 era previa a la Ley de Identidad de Género.

En lo primordial ahora se permite a mayores de 14 años solicitar a los establecimientos educacionales que se respete su sexo y nombre social en forma autónoma a sus apoderados. Antes este derecho era solo para mayores de 18 años. Considerando que muchas familias discriminan o desconocen qué es la identidad de género, dar tal libertad a los mayores de 14 años sin duda tendrá un impacto positivo en su calidad de vida y dignidad.

Entre otras modificaciones, la Resolución 812 añade como principios la integración y la inclusión, con el fin de "eliminar todas las formas de discriminación arbitraria que impidan el aprendizaje y la participación de los y las estudiantes"(página 5).

En el mismo orden, incorpora los principios de la Ley de Identidad de Género, cuales son la no patologización, la confidencialidad, la dignidad en el trato y la autonomía progresiva del/a niño/a. En torno a este último, la Resolución establece que "todo niño, niña o adolescente podrá ejercer sus derechos por sí mismo, en consonancia con la evolución de sus facultades, edad y madurez" (página 6).

Acto seguido se incorpora como derecho del/a NNA el "reconocimiento y protección de su identidad de género, así como a expresar su orientación sexual (...) Toda persona tiene derecho a ser reconocida e individualizada por su identidad y expresión de género en los instrumentos públicos y privados que lo identifiquen. Lo mismo respecto de imágenes, fotografías, soportes digitales, datos informáticos o cualquier otro instrumento en que figure su identidad", señala la resolución (página 6).

Con el fin de hacer respetar sus derechos, los/ as NNA mayores de 14 años podrán actuar de manera independiente de sus apoderados y "solicitar al establecimiento educacional una entrevista para requerir el reconocimiento de su identidad de género, medidas de apoyo y adecuaciones pertinentes a la etapa por la cual transita" (página 7).

Del mismo modo se establece que los/as NNA trans deben ser tratados/as verbalmente por su nombre social "siempre y sin excepción", así como utilizar uniforme y baños acordes a su género.

Si bien en el libro de clases, en el certificado anual de notas y en la licencia de educación media estará el nombre legal, se puede añadir la identidad social.

"Los establecimientos educacionales podrán agregar en el libro de clases el nombre social del niño, niña o adolescente, para facilitar su integración y su uso cotidiano, sin que este hecho constituya infracción a las disposiciones que regulan esta materia. Asimismo se podrá usar el nombre social en todo tipo de documentación afín, tales como informes de personalidad, comunicaciones al apoderado, informes de especialista de la institución, diplomas, listados públicos, entre otros" finaliza la resolución (página 9).

Las circular sobre derechos de niños, niños y adolecentes (NNA) trans surgió en 2017 en el marco del cumplimiento de un Acuerdo de Solución Amistosa que el Estado de Chile y el Movilh firmaron ante la Comisión Interamericana de DDHH (CIDH)<sup>3</sup>.

<sup>[1]</sup> http://www.movilh.cl/wp-content/uploads/2017/04/derechos-de-estudiantes-trans-en-la-educacion.pdf

<sup>[2]</sup> https://www.movilh.cl/wp-content/uploads/2021/12/Resolucion-812-derechos-trans-Superintendencia-Educacion.pdf

<sup>[3]</sup> Más antecedentes sobre la resolución del 2017 se encuentran en el XVI Informe Anual de los Derechos Humanos de la Diversidad Sexual y Género, publicado en movilh.cl

#### • Actividades y capacitaciones

En el año destacaron actividades pro igualdad de la Universidad de Playa (Upla) y de la Universidad de Concepción (UdeC).

La Dirección de Equidad e Igualdad de Género de la Upla publicó el 15 de julio el Decreto 0478/2021 "que reconoce y protege el ejercicio del derecho humano a la identidad de género, autoriza a la utilización del nombre social y prohíbe tratos discriminatorios", con lo cual elevó el rango reglamentario de derechos que la Casa de Estudios venía garantizando desde el 2019.

La UdeC, en tanto, continuó con la segunda fase de la investigación "Protocolo de Actuación para la atención en justicia con enfoque de género y diversidad sexual"<sup>4</sup>, dirigido por la académica Ximena Gauché Marchetti y financiado por el Fondo de Fomento al Desarrollo Científico y Tecnológico de la Comisión Nacional de Investigación Científica y Tecnológica (Conicyt).

En su primera etapa, 2018–2020, la investigación arrojó que el "Poder Judicial de Chile es "una institución que está construida de manera sexista que genera un trato y expectativas distintas para las personas según su sexo o género" y "presenta una visión heteronormativa y cisnormativa que afecta los derechos de las personas LGBTI", mientras que "las situaciones de discriminación, acoso, trato y/o representaciones sexistas y contrarias a las diversidades sexuales son percibidas por las personas usuarias del sistema de justicia como frecuentes y generalizadas en la institución"5.

La segunda etapa del proceso, 2021–2023, busca implementar las diversas recomendaciones del protocolo en al menos 14 tribunales de justicia y 3 Cortes de Apelaciones. Los consejos van desde la incorporación de la perspectiva de género en el quehacer judicial hasta medidas para prevenir la discriminación y cumplir con los compromisos internacionales del Estado en materia de derechos humanos<sup>6</sup>.

En otro ángulo relacionado con la educación formal en temáticas LGBTIQA+, la Universidad de Chilecontinuó en 2021 con su tradicional Curso de Formación General, contando el primer y segundo semestre con clases dictadas por OTD, Mums, Iguales y Movilh, entre otros.

Junto a ello, los movimientos participaron de foros online coordinados por distintas casas de estudios: Mums y OTD expusieron en un conversatorio del Área de Diversidad Sexual y Género de la Universidad de Chile (18 de mayo); OTD, en la Universidad de Chile (9 de septiembre); Rompiendo el Silencio, en la Universidad de Santiago de Chile (2 de septiembre); Mums, en la Facultad de Ciencias Sociales de la Universidad Diego Portales (4 de octubre); la Red Coloride en la Universidad de Magallanes (14 de octubre); Mogaleth, en la Universidad de Los Lagos (16 de noviembre) y Movilh en la Universidad de Aconcagua (14 de diciembre).

A la par, el Movilh capacitó a estudiantes y/o docentes de la carrera de Bioquímica de la Universidad Austral de Chile (9 de junio), del Centro de Formación Técnica de Magallanes (18 de junio), de la Escuela de Enfermería de la Universidad Católica Silva Henríquez (2 de julio) y de la Unidad de Género y Diversidad de la Universidad Central de la Región de Coquimbo (6 y 13 de octubre).

En el campo de la educación media y básica, la Red Coloride y Todo Mejora dictaron en abril una charla para el colegio Libertador Bernardo O'Higgins de Puerto Natales.

Por su lado, el Movilh capacitó a estudiantes, docentes, directivos y/o apoderados del Colegio Master School de Lampa (16 de abril), de la Escuela San Jorge de Colina (29 de mayo), del Liceo Municipal Metropolitano de Adultos (8 de junio), del Liceo Emilia Toro de Balmaceda (11 de junio), del Colegio Santo Domingo de La Reina (2 de julio), del Liceo Maximiliano Salas Marchán de Los Andes (5 de julio, 9 y 23 de septiembre), del Centro Educacional Padre Alberto Hurtado de San Bernardo (5 de julio), del Colegio Emprender (8 y 28 de julio), del Colegio Hispano El Pilar de Rancagua (6 de agosto), del Colegio Alma Mater (13 de agosto), del Liceo Bicentenario Enrique Bernstein Carabantes (17 de agosto), del Liceo Claudina Urrutia de Lavín de Cauquenes (30 de agosto), del Colegio Polivalente Saltairam de Puente Alto (3 de septiembre), del Liceo Juan Rusque Portal de Nogales (6 de octubre), del Liceo Experimental Manuel de Salas (25 de octubre), del Colegio Femenino Madre del Rosario de Antofagasta (27 de octubre), del Colegio Nuestra Señora de Ayquina de Calama (8 de noviembre), del Liceo Rigoberto Fontt Izquierdo (12 de noviembre), del Colegio Latino Cordillera (29 de noviembre), del Liceo Juan Gómez Millas del Bosque (3 de diciembre) y del Liceo José Victorino Lastarria (22 de diciembre).

Finalmente también fueron capacitadas por el Movilh instituciones que trabajan con niños, niñas y adolescentes, como la Fundación Tierra Esperanza (12 de noviembre), la Red Educativa Municipal de El Bosque, (3 de diciembre) y la Corporación de Promoción y Apoyo a la Infancia, ONG Paicabi de La Serena (22 de diciembre).

Si bien no aplica como una institución educativa, destacó especialmente que el 17 de agosto el Movilh capacitara a bomberos/as interesados/as en desarrollar su labor con conocimientos en temáticas LGBTIQA+ a objeto de prevenir la discriminación por orientación sexual o identidad de genero al momento de ocurrir algún siniestro.

<sup>[4]</sup> https://fondefgeneroudec.cl/

<sup>[5]</sup> Datos enviados para este informe por la UdeC.

<sup>[6]</sup> https://protocolo.fondefgeneroudec.cl/

# III.- SENAME PROMUEVE DERECHOS DE NIÑOS/AS LGBTIQA+ Y SENAMA MANTIENE DEUDAS CON ADULTOS MAYORES

El Servicio Nacional de Menores (Sename), dirigido por Rosario Martínez Marín, publicó el 26 de julio del 2021 la "Política para el abordaje de la diversidad sexual y de género en niñas, niños y adolescentes (NNA)"<sup>7</sup> atendidos/as por la institución estatal y sus organismos colaboradores acreditados, a lo cual se añadieron en el año diversas capacitaciones dictadas por el Movimiento LGBTIQA+ al órgano gubernamental.

Muy distinto fue lo ocurrido con el Servicio Nacional del Adulto Mayor (Senama), pues no diseño ninguna medida para las personas LGBTIQA+ mayores de 60 años, aún cuando el Movimiento solicitó expresamente aquello.

#### • Avance en el Sename

La nueva política del Sename tiene como fin central "entregar orientaciones a los equipos e instituciones dedicadas a la intervención con niños, niñas y adolescentes, buscando que las intervenciones con la niñez y adolescencia LGBTIQA+ se base en el respeto y reconocimiento de sus derechos" (páginas 21 y 22), medidas que deben integrar los reglamentos internos y, de no ser adoptadas, pueden derivar en sanciones.

El Sename se hizo cargo de una histórica demanda social que puede contribuir a mejorar la calidad de vida de los NNA LGBTIQA+, en especial de los más vulnerables, como son los de escasos recursos económicos, los/as migrantes, los privados de libertad y quienes tienen capacidades diversas.

Elaborada por el Departamento de Protección de Derechos y de Justicia Juvenil del Sename y el Movilh; con el respaldo de OTD e Iguales; la medida reconoce que "históricamente, las personas LGBTIQA+ se encuentran dentro de los grupos de nuestra sociedad que, debido a la discriminación sistemática que enfrentan, tienen mayores dificultades para el acceso y ejercicio de sus derechos. Desde la perspectiva de la interseccionalidad esta situación puede ser más compleja, dada la combinación de elementos (ser niño/a, LGTBIQ+, migrante), donde tiende a existir una mayor violencia e invisibilización e incluso un mayor rechazo de parte del mundo adulto" (página 4).

Junto a los/as migrantes LGBTIQA+, otra variable de la discriminación interseccional considerada por la nueva política son las capacidades diversas. "La sexualidad es parte fundamental en el desarrollo del ciclo vital de los niños y niñas, sin embargo, es un tema que no se trabaja con la profundidad que requiere cuando presentan discapacidad intelectual o del desarrollo (...) Es por tanto relevante, que en estos casos los equipos que trabajan directamente con niños, niñas y adolescentes con discapacidad intelectual o del desarrollo tengan mayor sensibilidad y dedicación para educar y apoyarlos en el desarrollo de su sexualidad, protegiéndolos con este acto de posibles vulneraciones a su indemnidad sexual", señala la política (páginas 13 y 14).

Acto seguido se recomiendan "capacitaciones a funcionarios y funcionarias del Servicio Nacional de Menores, y a trabajadores y trabajadoras de Organismos Colaboradores Acreditados, respecto a la sexualidad y expresión de género, para incluir estas temáticas en las intervenciones con los niños, niñas y adolescentes en general, dándole un especial foco a aquellos niños con capacidades diferentes" (página 22).

Estas medidas se pusieron en marcha en 2021: el 19 de marzo el Movilh capacitó a funcionarios/as de Sename-Biobío y el 9 de julio a trabajadores/as de todo el país del Departamento de Adopciones del Servicio Nacional de Menores. De igual manera dicho movimiento capacitó el 24 de septiembre a funcionarios/as de las regiones Metropolitana, Valparaíso y O'Higgins de la Fundación Tierra de Esperanza, una de las entidades que atiende NNA y trabaja junto al Sename

Los procesos de intervención, añade la nueva política, deben asegurar "la no discriminación por identidad y/o expresión de género y, por otro lado, garantizar un trato que considere la especial condición de este grupo, en relación con otros" (página 22).

En tal sentido, se exigen "actuaciones oportunas e integrales, en todos los programas de la red Sename, frente a las situaciones y condiciones que obstaculizan o atentan contra el pleno desarrollo de niños, niñas y adolescentes LGBTIQA+, garantizando el ejercicio efectivo de sus derechos" (página 22).

En el caso de NNA trans, la política exige "consultar cómo quiere ser llamado (nombre registral o social), planteando esta pregunta en términos respetuosos, y sin injerencias ni presiones de ningún tipo. Si el nombre entregado no coincide con el nombre de su cédula de identidad, debe primar siempre el nombre social señalado por él o ella, respetando su decisión sobre cómo desea ser llamado o llamada" (página 23).

<sup>[7]</sup> https://www.movilh.cl/wp-content/uploads/2021/07/Sename-Diversidad-Sexual-y-de-genero-Movilh.pdf

A la par, "cuando un niño, niña o adolescente ya está siendo atendido en algún programa o centro de la red Sename y solicita su cambio de identidad de género a un/a determinado/a funcionario/a, se debe acoger este requerimiento y compartirlo con el resto del equipo, asegurando que los procesos internos del centro o programa sean respetuosos con esta decisión y resguardando que sea la niña, niño o adolescente quien decida cuándo, a quiénes y la manera en que desea compartir su identidad de género" (página 23).

En dicho contexto, "se recomienda generar baños unisex, de manera que el niño, niña o adolescente trans, pueda ingresar a estos, a uno de mujeres u hombres, según lo decida. Del mismo modo, el uso de cualquier espacio físico, debe garantizar que esté acorde a la identidad de género niño, niña o adolescente trans" (página 24).

En relación a NNA lesbianas, gays, bi o pansexuales, "en todos los casos se deben aplicar los mismos derechos que a heterosexuales, sin excepciones de ningún tipo, garantizándose la plena igualdad en el trato" señala la política (página 24).

"En ningún caso se deben realizar gestos o expresiones verbales o no verbales, o cualquier tipo de actitud o práctica que pudiesen afectar la dignidad de los niños, niñas y adolescentes LGBTIQA+, como pudiera ser utilizar lenguaje ofensivo, discriminatorio, sesgado o efectuar gestos burlescos, entre otros. Además, se deben permitir las expresiones de género, es decir, su forma de vestir, el habla, comportamiento, o cualquier otro tipo de manifestación externa que sea expresión de su identidad", apunta (página 24).

Añade que "las autoridades y todos/as los adultos/ as que conforman la red de atención del Sename deberán velar por el respeto del derecho a su privacidad, resguardando que sea la niña, niño o adolescente quien decida cuándo, cómo y con quién o quiénes comparte su identidad de género u orientación sexual" (página 25).

"De igual manera, este reconocimiento implica un trabajo especial con sus familias o adultos de referencia, de forma que las posibles presunciones, estereotipos o preferencias culturales respecto a ciertos conceptos tradicionales que puedan estar en su familia sean incorporados en los procesos de intervención respectivos, resguardando el no generar mayores condiciones de vulnerabilidad en la persona atendida. Así, se requiere que se otorgue un espacio contenedor y respetuoso a las familias, de manera de que los adultos puedan aclarar sus dudas, informarse, trabajar sus estereotipos sin temer a ser juzgados, abordar sus temores, y desarrollar o fortalecer sus herramientas de manera que puedan acompañar y resguardar el ejercicio de los derechos de sus niños, niñas y adolescentes", redondea (página 26).

Además "es importante relevar que los programas ambulatorios y de cuidado alternativo residencial o

familiar, deben contemplar dentro de sus modelos de intervención la posibilidad de que ingresen sujetos de atención LGBTIQ+, para lo cual se requiere que los equipos se formen permanentemente en estos temas, incorporen un enfoque de diversidad sexual y de género de manera transversal a la intervención y desarrollen prácticas no discriminatorias y respetuosas, en concordancia con un enfoque de derechos humanos, ajustándose a la normativa descrita en los acápites precedentes" (página 26).

"Para jóvenes en privación de libertad, la designación de dependencias para la habitación considerará la opinión de estos, procurando el respeto por su identidad y expresión de género. Al respecto, deberán primar criterios de seguridad física y psicológica de los y las adolescentes, lo que deberá ser evaluado por los equipos de intervención", apuntó (página 25).

"Los comportamientos discriminatorios y/o maltratantes hacia jóvenes LGBTIQ+, ya sea por parte de funcionarios, trabajadores o pares, deben ser comunicados a la dirección del centro o programa, instancia desde la cual se deberán tomar todas las medidas necesarias para poner fin a los actos de discriminación, y que además propendan a la construcción de un ambiente tolerante y basado en el buen trato. Asimismo, deberán garantizarse las medidas de intervención que tengan por objeto brindar contención a los/las jóvenes que hayan sido víctima de actos discriminatorios", enfatiza la nueva política del Sename (página 24).

Añade que "el incumplimiento de las obligaciones señaladas (...) por parte de funcionarios/as del Servicio Nacional de Menores, podrá constituir una infracción a los deberes funcionarios establecidos en el DFL N°29 que fija el texto refundido, coordinado y sistematizado de la Ley 18.834 sobre Estatuto Administrativo y demás normas vigentes, que será sancionada según el mérito de los antecedentes del caso concreto" (página 32).

"Los Organismos Colaboradores Acreditados deberán contemplar en el Reglamento Interno de Orden Higiene y Seguridad que establezcan para sus empleados, una remisión al cumplimiento de la presente política, y las sanciones que se aplicarán en caso de infringirla, respetando el marco legal establecido en el artículo 154 N°10 del Código del Trabajo", puntualizó el Sename (páginas 33 y 34)<sup>8</sup>.

<sup>[8]</sup> El 21 de septiembre Todo Mejora lanzó su propio "Documento orientador para la protección de derechos y el cuidado alternativo residencial de niñas/os y adolescentes LGBTIQ de poblaciones prioritarias", el cual aporta ideas similares a la política oficial del Sename publicadas meses antes.

#### Deudas con adultos mayores

El director Servicio Nacional del Adulto Mayor (Senama), Octavio Vergara Andueza, se reunió el 12 de agosto con el Movilh para abordar la realidad de las personas lesbianas, gays, bisexuales, trans e intersex mayores de 60 años.

En la ocasión, el Movilh resaltó que la vulnerabilidad de los adultos mayores se ve agudizada cuando sufren discriminación por su orientación sexual o identidad de género, planteando la necesidad de generar medidas focalizadas para este grupo humano. Muchas personas LGBTIQA+ no tienen redes familiares de apoyo y necesitan, en consecuencia, de algún apoyo, respaldo o preocupación estatal, en particular al recordar que los adultos mayores crecieron y se desarrollaron en ambiente hostiles, estando muchos/as de ellos/as aún con miedo a hacer visible su orientación sexual o identidad de género. Cotidianamente se sabe también de adultos mayores LGBTIQA+ en situación de calle, algunos de éstos discriminados y expulsados de sus casas por sus propias familias.

Tras la reunión con Vergara Andueza y posteriores citas con su equipo técnico, el Movilh envió diversas propuestas de inclusión al Senama, ninguna de las cuales fue llevada a la praxis, aún cuando existió el compromiso de al menos implementar una medida antes de finalizar el Gobierno de Sebastián Piñera.

# IV.- LGBTIQA+ Y SALUD: IMPLEMENTACIÓN TARDÍA DE DERECHOS Y NINGÚN NUEVO AVANCE

El sistema de Salud terminó en marzo del 2022 un nuevo ciclo gubernamental sin haber cumplido una de las demandas más repetidas por algunos movimientos LGBTIQA+, cual es la codificación formal de los precios por las prestaciones de Fonasa para el proceso de cambio corporal de las personas trans (asistencia psicológica, endocrinológica y cirugías), a lo que se sumó la carencia de políticas focalizadas para enfrentar el Covid-19.

Desde el 2011 que existe un protocolo de salud nacional que regula el proceso médico para los mayores de 18 años y que exige a todo recinto de salud tratar a las persona trans por su nombre y sexo social<sup>9</sup>, estableciéndose además en 2013 que los gastos pueden hacerse con cargo a Fonasa<sup>10</sup>, tras un trabajo de años que el Movilh desarrolló con el Minsal.

Sin embargo, una década después, ha seguido faltando que Fonasa genere un canasta por las prestaciones para la readecuación corporal, de manera que las personas sepan qué pagan y por qué.

Al cerrar este informe, y al igual como ocurre desde el 2013, la readecuación corporal se puede hacer con cargo a Fonasa, pero el cobro se efectúa por otros ítems no vinculados a la identidad de género, lo cual además de irregular, es una evidente falla del sistema.

La ausencia de códigos con precios relacionados expresamente con el cambio corporal en razón de la identidad de género, es un problema cada más evidente a medida que se suman nuevos centros públicos de salud con programas especiales o focalizados para brindar toda o una parte de la atención que se requiere para dichos procesos.

Son los casos del Equipo de psiquiatría y salud mental ambulatoria (Essma) de Arica, del Hospital Leonardo Guzmán de Antofagasta, del Hospital de La Serena, del Hospital Las Higueras de Talcahuano, del Hospital Clínico Herminda Martin de Chillán, del Hospital Regional Guillermo Grant Benavente de Concepción, del Hospital Hernán Henríquez Aravena de Temuco, del Hospital Base San José de Osorno, del Hospital Base de Valdivia, del Hospital de Puerto Montt, del Hospital de

<sup>[9]</sup> La historia y antecedentes de estos avances se encuentran en el X Informe Anual de los Derechos Humanos de la Diversidad Sexual y de Género, publicado en movilh.cl

<sup>[10]</sup> Más antecedentes en el XII Informe Anual de los Derechos Humanos de la Diversidad Sexual y de Género, publicado en movilh.cl

Castro, del Hospital Carlos Van Buren de Valparaíso, del Hospital San Juan de Dios, del Hospital San Borja Arriarán, del Hospital Sótero del Río, del Hospital El Pino y del Hospital Barros Luco.

El Fondo Nacional de Salud (Fonasa) llegó además tarde a la implementación de medidas para el respeto al sexo y nombre social de las personas trans, derecho estipulado por política pública desde el 2011 y por norma desde la entrada en vigencia de la Ley de Identidad de Género en 2018.

Recién el 27 de julio del 2021 Fonasa anunció la incorporación en la sección "Mis datos personales", de su plataforma online, un botón que permite añadir el nombre social.

La carencia de profesionales o técnicos de la Salud especializados o capacitados en temáticas de identidad y expresión de género es otro de los problemas que lleva a las personas trans a deambular por diversos recintos médicos hasta dar con alguien que pueda atenderlas.

En tal sentido diversos colectivos, como OTD y Colectiva Transforma, lanzaron el 27 de febrero la campaña "Salud Para Trans" que educa e informa por redes sociales sobre la temática y se moviliza por mejorías en el acceso a la salud de las personas con identidad de género diversa.

Asu vez Rompiendo el Silencio capacitó en temáticas LGBTIQA+ al Centro de Salud Familiar (Cesfam) de San Felipe (31 de agosto) y las ONG Transforma y Patagonia Diversa hicieron lo mismo al participar el 2 de diciembre de un conversatorio con funcionarios/as de los Servicios de Salud de Chiloé, Los Lagos, Talcahuano y Aysén.

Por su lado, el Movilh brindó capacitaciones sobre orientación sexual, identidad y expresión de género al Colegio de Cirujanos Dentistas de Concepción (29 de mayo), al Espacio Amigable Hualpén (9 de agosto), al Departamento de Salud de Talca (20 de agosto), al Hospital de Talagante (3 de septiembre) y al Centro Comunitario de Salud Mental Familiar (Cosam) de Estación Central (1 de octubre).

Buscando también la sensiblización y la socialización de mayores conocimiento, el 17 de mayo el Servicio de Salud Talcahuano lanzó el "Concurso Creación Artística de Realidades Disidentes", que invitó personas LGBTIQA+ a enviar relatos, fotografías o ilustraciones con la temática.

Además, y consciente de que los conocimientos sobre la diversidad sexual y de género disponibles en las casas de estudios son entre nulos y escasos; lo cual impacta en el quehacer de los futuros profesionales y técnicos de la salud; el 11 de agosto el Colegio de Dentistas lanzó la denominada "Guía de Recomendaciones para un ambiente universitario inclusivo con enfoque LGTBQ+ en escuelas de salud"11, redactada por la cirujana dentista Alejandra Hasbún y la psicóloga Andrea Cerón.

El texto del Departamento de Género y Salud del Colegio de Dentistas y de la Colectiva Dentista LGBTTTQIA+ recomienda generar oficinas, programa o planes estratégicos antidiscriminatorios, así como incluir la temática de la diversidad y los derechos humanos en el currículum, promover un lenguaje inclusivo y no sexista en el trato verbal y escrito y desarrollar materiales educativos, entre otros.

Otra iniciativa fue lanzada el 27 de diciembre por el Departamento de Género y Salud del Colegio Médico (Colmed). El manual "Conceptos LGBTQIA+: desde un enfoque afirmativo y garante de derechos", aborda aspectos teóricos y prácticos según la opinión de 22 profesionales o estudiantes.

En paralelo, Mums, Acción Gay, Amanda Jofré y Movilh continuaron aplicando durante el año test gratuitos de VIH en diálogo permanente, para tales efectos, con el Centro Regional de Información y Apoyo para la Prevención Social de VIH/SIDA (Criaps). En este campo, las capacitaciones también ocurrieron a la inversa, pues el 9 de abril la Seremi de Salud del Bíobío orientó a voluntarios/as de Movilh-Biobío en la prevención de VIH en poblaciones vulnerables.

Además, y con el apoyo del Ministerio de Salud, el Sindicato Amanda Jofré dictó talleres de prevención de VIH para mujeres privadas de libertad, mientras que el 29 de julio la Fundación Selenna, la Fundación Juntos Contigo y el Movilh debatieron sobre identidad de género y derecho de personas trans con el Servicio Médico Legal.

Por último, y debido a la total carencia de políticas focalizadas para enfrentar el Covid-19 en la diversidad sexual y de género, organizaciones como la Corporación Féminas Diversas en Acción, Modis de Osorno, OTD y el Movilh, continuaron con las campañas de ayuda humanitaria que habían iniciado en 2020, entregando medicamentos y comidas a las poblaciones LGBTIQA+ más vulnerables que vieron empeorada su calidad de vida con la pandemia y las restricciones sanitarias.

<sup>[11]</sup> https://www.movilh.cl/wp-content/uploads/2022/01/guia-recomendaciones-ambiente-universitario-inclusivo-enfoque-lgbtq-escuelas-salud-movilh-colegio-de-dentintas.pdf

# V.- INÉDITAS MEDIDAS DE INCLUSIÓN Y VISIBILIDAD DE MIGRANTES LGBTIQA+

En 2021 se implementaron actividades inéditas para la promoción y protección de los derechos humanos de los/as migrantes LGBTIQA+ en el marco de estrategias impulsadas por la sociedad civil que contaron con el respaldo de la Organización Internacional para las Migraciones (OIM) de Naciones Unidas.

Buena parte de las acciones fueron coordinadas por el Movilh gracias a la decidida colaboración de la Fundación Interamericana (IAF) y a alianzas con el Servicio Jesuita a Migrantes (SJM), con la Asociación Venezolana en Chile (Asoven) y con la OIM.

Para tales efectos, en 2021 el Movilh firmó convenios de colaboración con Asoven (11 de enero), el SJM (24 de abril) y el Gobierno interino de Venezuela (14 de julio), que se sumaron a otros de similares características sellados con la OIM en 2020 y con la IAF, en 2019.

Los resultados más significativos en 2021 fueron el desarrollo de campañas y fondos concursables específicos sobre la materia y la creación de un área de trabajo focalizada en migración al interior del Movimiento que implementó o coordinó asesoría jurídicas, psicológicas, de Salud y ayuda humanitarias.

Además, la temática de las migraciones fue incluida por primera vez en la Marcha del Orgullo y en el Festival de Cine LGBTIQA+ (Cine Movilh).

El proceso estuvo cruzado por un deficiente desempeño de la Cancillería, que mostró nulo interés para ir en ayuda de afganos/as LGBTIQA+ que requieren asilo, y por graves expresiones de xenofobia contra venezolanos/as, en especial en el norte de Chile.

# • Nueva área de trabajo, programas sociales y proyectos

El 3 de mayo el Movilh lanzó con el respaldo de IAF una nueva área de trabajo que es integrada por migrantes LGBTIQA+.

Denominada, Movilh-Migrante, la iniciativa nació para promover y defender de una manera institucionalizada los derechos de los/as extranjeros/as LGBTIQA+ en Chile que ven afectada su calidad de vida en razón de su nacionalidad, orientación sexual, identidad o expresión de género.

En ese contexto unos/as 658 migrantes LGBTIQA+ recibieron orientación jurídica frente a casos de discriminación, asesoría psicológica y ayuda humanitaria, mientras que 80 personas accedieron al test de VIH y a consejerías para la prevención de Infecciones de Transmisión Sexual (ITS) y del Covid. Del total de beneficiados/as, el 92% son venezolanos/as, el 4% colombianos/as; el 2% peruanos/as y el 2% de otra nacionalidades como Bolivia, Brasil, Ecuador, Canadá, Francia y España.

En este plano, las alianzas jugaron un rol fundamental. Para las asesorías en temas de migración, las personas fueron derivadas al SJM, mientras que en torno a la ayuda humanitaria la OIM aportó 50 gift card de alimentos para familias con migrantes LGBTIQA+, más subsidios de arriendo y bonos de transferencia monetaria para quienes están afectados por la pobreza o la cesantía.

A la par, con el financiamiento de la IAF, el Movilh coordinó el "Primer Concurso para Promover los Derechos Humanos de los/as Migrantes LGBTIQ+ en Chile", proceso que contó con la asesoría técnica y la difusión de OIM, Asoven y el SJM

El concurso fue lanzado el 17 de junio, resultando adjudicados el 24 de agosto cinco colectivos.

Una de las entidades ganadoras fue la Fundación Solidaridad Panchito Mandefua Chile, la cual adquirió materiales de cocina; como fogón, congeladora, mesón y estantería; para brindar ayuda humanitaria a unas 300 familias migrantes, de las cuales 40 están compuestas por LGBTIQA+.

La ONG Proyecto Tepuy, otras de las seleccionadas, capacitó en derechos LGBTIQA+ a integrantes de organizaciones que trabajan con migrantes venezolanos/as. En tanto, el conocido artista Daniel Arzola, expuso sus obras sobre migración LGBTIQA+ en la Municipalidad de Pedro Aguirre Cerda y desarrolló videoconferencias sobre arte y derechos humanos.

A su vez, Rumba Action Producciones impartió un taller de sensibilización sobre derechos de venezolanos/

as y otros migrantes LGBTIQA+ y produjo un spot y un cortometraje con la misma temática.

Finalmente, en febrero del 2022 la Fundación Familia Migrante-Infomigra desarrolló, una campaña que incluye mensajes gráficos, lives y un sitio web que educan sobre la materia.

#### Campañas informativas y de visibilidad

Al apoyo directo a personas, familias y organizaciones, se sumaron los procesos informativos, de sensibilización y visibilización de la población migrante LGBTIQA+ en general, como ocurrió con el lanzamiento el 3 de mayo de la primera web especializada en la temática<sup>12</sup>.

El sitio abarca información sobre trámites migratorios, acceso a la salud, el trabajo y la educación, obtención de RUT y Clave Única, más derechos de la población LGBTIQA+ en Chile, entre otros.

El 29 de septiembre fue el turno de la Red Nacional de Refugiados y Migrantes LGBTIQ<sup>13</sup> que lanzó el "Manual para Solicitantes de Refugio y Migrantes LGBTIQ+"<sup>14</sup>, iniciativa respaldada por Acnur que orienta en legislación y conceptos de diversidad sexual y de género.

Con el apoyo de Metro, y en el marco del Día Internacional contra la Homofobia y la Transfobia, el 17 de mayo el Movilh lanzó además la primera campaña que en el espacio público (y no solo virtual) buscó prevenir y erradicar la discriminación a migrantes LGBTIQA+.

La iniciativa consistió en un video que recreó algunos de los episodios más comunes de discriminación que los/as migrantes LGBTIQA+ han denunciado en Chile. El video fue visto por el plazo de un mes en todos los andenes de Metro a través de su señal de TV, mientras que una versión extendida del mismo se colgó en Youtube<sup>15</sup>.

Por su lado, la 13 versión del Festival Internacional de Cine LGBTIQA+, desarrollada entre el 13 y 15 de octubre en el Centro Cultural España, incluyó en su selección al cortometraje "Arepas Quemadas", obra dirigida por Henry Pacheco que trata la homo/transfobia contra migrantes, mientras el Núcleo Diversidad y Género la Universidad de Chile lanzó el 8 de abril el documental "Sexualidades fronterizas: Memorias migrantes LGTB+ en Chile".

Uno de los momentos de mayor visibilidad se alcanzó en la XXI Marcha del Orgullo, desarrollada el 13 de noviembre: por primera vez participó una columna de migrantes LGBTIQA+.

"Diversidad sin fronteras: alzando nuestra voz como migrantes LGBTIQA+", señaló el pasacalle de la pionera columna<sup>16</sup> que avanzó por la Alameda junto a más 150 mil personas, en lo que fue la Marcha del Orgullo más masiva desarrollada hasta ahora en Chile.

Las familias homoparentales migrantes también tuvieron voz y visibilidad el 8 de diciembre en un desayuno efectuado un día después de la aprobación del matrimonio igualitario. En la ocasión Vanessa Solorzano y Joalismir Moreno, una pareja venezolana, contó a los medios de comunicación su experiencia de vida en Chile y la relevancia del matrimonio igualitario para formalizar su vínculo en igualad de derechos y para proteger al hijo de ambas, Erick.

En paralelo, los procesos de capacitación y de intercambio de experiencias; siempre significativos para sensibilizar en temáticas emergentes; se tradujeron en reuniones del Movilh con el coordinador de Programas de la OIM, Félix Martínez (26 de marzo) y con el Jefe del Área Social del Servicio Jesuita a Migrantes, Francisco Carreño, (10 de marzo).

A su vez, el SJM capacitó el 18 de marzo a Movilh en temáticas migratorias, mientras dicho movimiento LGBTIQA+ dictó el 7 de mayo una charla sobre orientación sexual e identidad de género a funcionarios/as de todo el país del Departamento de Extranjería y Migraciones.

A esto se sumó una cita que el 12 de enero sostuvo el Movilh con los/as funcionarios del Servicio Médico Legal (SML), Gabriel Zamora, Marco Mosso, Carola Alvarez y Víctor Vargas, a quienes se solicitó integrar la perspectiva de migración LGBTIQA+ en los protocolos o programas de la entidad.

Finalmente, el Movilh expuso el 15 de octubre sobre la realidad de los/as migrantes LGBTIQA+ en una jornada de diálogo organizada por OIM e inaugurada por su director regional para América del Sur, Marcelo Pisani, y por el jefe de la Misión en Chile, Richard Velásquez.

Junto al Movilh expusieron y participaron de la jornada los colectivos Inmigrante Feliz, Fundación Scalabrini, Proyecto Amar Migrar y el Instituto Católico Chileno de Migración (Incami).

<sup>[12]</sup> https://www.movilh.cl/migracion/

<sup>[13]</sup> Formada en 2020 e integrada por los colectivos chilenos OTD, Mums, el Centro por el Desarrollo Integral de la Salud y la Educación Sexual, Patagonia Diversa, Núcleo de Diversidad y Género de la Universidad de Chile, Círculo de Estudiantes Viviendo con VIH, Fasic. Manifiesta Sin Fronteras, Abofem, Fundación Tiresias Diversidad y Fudavi, más el grupo migrantes Migración Diversa

<sup>[14]</sup> https://www.movilh.cl/wp-content/uploads/2022/01/ Guia-Red-Migrantes-y-Refugiades-LGBTIQA-Movilh.pdf

<sup>[15]</sup> https://www.youtube.com/watch?v=jIJ4ZzXQJh4

<sup>[16]</sup> https://www.movilh.cl/wp-content/uploads/2021/11/migrantes-movilh.jpeg

#### • Entre la xenofobia y la indiferencia

La explosiva llegada de migrantes a Chile, que es encabezada por venezolanos/as, no ha contado en todos los casos con adhesión ciudadana y, por el contrario, han ocurrido lamentables episodios xenófobos, a lo que se agregó en 2021 la indiferencia de la Cancillería para dar respuestas a las necesidades de asilo de afganos/as LGBTIQA+.

Dado que la demanda por ayuda u orientación de migrantes LGBTIQA+ es liderada por venezolanos/as, en julio el Movilh se reunió con la Fundación Reflejos y la Unión Afirmativa de Venezuela para conocer sobre las realidades de la personas de la diversidad sexual y de género que permanecen y han salido de ese país.

Acto seguido, el Movilh difundió el 6 de septiembre en sus plataformas electrónicas un reporte de DDHH que la Fundación Reflejos de Venezuela y la Iniciativa por los Derechos Sexuales entregaron al Consejo de Derechos Humanos de Naciones Unidas, en marco del Examen Periódico Universal.

Tales organizaciones denunciaron la grave situación que atraviesan las personas y activistas LGBTIQA+ en Venezuela, la cual pasa por éxodo de activistas y limitaciones para que las organizaciones independientes al régimen puedan expresarse u obtener personería jurídica.

Con la difusión de estos antecedentes en Chile se pretendía contribuir a visibilizar el drama de la población venezolana en un contexto de marchas y protestas xenófobas en el norte del país contra las migraciones y que, entre otros, en septiembre se expresó en la quema de carpas y pertenencias de extranjeros/as

El 25 de septiembre el Movilh enfatizó en un comunicado "su total repudio a los actos ilegales, y xenófobos que están ocurriendo en Iquique. Expresamos nuestra total solidaridad con cada migrante en nuestro país, en especial con quienes de manera directa o indirecta están siendo afectados/as por una violencia sin precedentes. La dignidad humana está siendo pisoteada".

Al mismo tiempo, el organismo LGBTIQA+ instó "a la Fiscalía de Chile a investigar los hechos ocurridos en Iquique y presentar las respectivas denuncias en tribunales, en tanto estamos en presencia de hechos que vulneran la Ley Zamudio, la cual prohíbe la discriminación por nacionalidad, y la Ley de Migraciones".

Tal petición tuvo lugar después de que el 20 de agosto la Cancillería de Chile se negara a otorgar salvoconductos a personas afganas LGBTIQA+.

El 16 de agosto el Movilh había solicitado al Ministerio de Relaciones Exteriores, encabezado por Andrés Allamand, que extendiera salvoconductos a afganos/as LGBTIQA+, de manera que pudiesen trasladarse desde Afganistán a Chile, en alianza con gobiernos o consulados de otros países.

"El Gobierno de Chile se encuentra monitoreando la situación en Afganistán y en el marco de la protección de los derechos humanos a nivel internacional y de la comunidad LGTBI+ en particular, procurará hacer todos los esfuerzos a su alcance para el debido resguardo de los derechos de aquellos grupos especialmente vulnerables", se limitó a señalar el director de Derechos Humanos de la Cancillería, Jaime Chomalí, sin referirse a los salvoconductos y sin comunicar de ninguna acción concreta al respecto.

Lo anterior, pese a que el vocero del Movilh, Óscar Rementería, se había coordinado con representantes de la Asociación Internacional LGBTIQA+ (ILGA) de Asia para que colaboraran en el proceso de traslado de afganos/as con orientaciones sexuales o identidades de género diversas.

## VI.- TRES MUNICIPIOS INAUGURAN OFICINAS POR LOS DERECHOS LGBTIQA+

Significativos avances ocurrieron en 2021 en el terreno municipal con la inauguración de al menos tres nuevas Oficinas por los Derechos LGBTIQA+, mientras que a comienzos del 2022 Santiago se lució al lanzar la primera Sub-Dirección Municipal de Igualdad de Género, Diversidad Sexual e Inclusión de país.

Todo ocurrió en un contexto donde proliferaron otras muchas gestiones o iniciativas comunales a favor de la igualdad y la no discriminación, siendo Valparaíso la única localidad que literalmente faltó el respeto a la diversidad sexual y de género, en particular a la memoria de las víctimas del incendio de la discoteca Divine que el 4 de septiembre del 1991 cobró la vida a 16 personas.

#### Las oficinas, la Subdirección y otros avances

El 1 de marzo el alcalde de Concepción, Álvaro Ortiz (DC) lanzó la Oficina de la Diversidad para dar respuestas a las necesidades de personas y organizaciones LGBTIQA+ de la comuna.

"Un municipio y una ciudad como Concepción debe tener desde la institucionalidad este espacio para construir un mejor lugar donde vivir, pese a las diferencias, una mejor sociedad donde las nuevas generaciones se sientan seguras. Estamos siendo pioneros a nivel regional y de zona sur en la implementación de esta oficina", señaló el edil al Diario de Concepción.

A cargo del referente, que funciona bajo el alero de la Sub-dirección de Derechos Humanos del municipio, quedó la activista LGBTIQA+ Laura Jerez, quien se reunió con Movilh el 4 de marzo, el mismo que día dicha organización felicitó a Ortiz por el avance.

Entre otras actividades, la Oficina gestionó el retiro de escombros de la sede del Movilh-Biobío y el 22 de octubre desarrolló un foro sobre salud trans donde expusieron OTD y la Colectiva Transforma.

Meses después, el 5 de agosto, fue el turno de la Oficina Municipal de Protección a Personas LGBTIQ+ de Catemu, que encabeza el alcalde Rodrigo Díaz Brito (Ind).

La Oficina fue inaugurada en una ceremonia que incluyó el izamiento de la bandera LGBTIQA+. Junto a Díaz Brito asistieron el diputado Diego Ibáñez (CS); los/ as concejales/as Belén Guerreño (FA), César Brito, (FA) y Claudio Núñez (PPD), el actor Óscar Hernández, la Corporación Féminas Diversas en Acción y el Movilh.

El nuevo referente de la Región de Valparaíso brinda a las personas LGBTIQA+ "asesoría legal, articulación de redes, intervención socioeducativa, capacitación en derechos humanos, y acompañamiento", entre otros servicios, señaló el municipio.

"Fue una gran y hermosa ceremonia de inauguración de la nueva y primera Oficina de la Protección a la Comunidad LGTBQ+ de la comuna de Catemu. Nos hicimos presente en este acto lleno amor y esperanza para cada integrante de esta sociedad tan diversa en la que vivimos", señaló la presidenta de la Corporación Féminas Diversas en Acción, María López, quien desde la sociedad civil impulsó la aprobación de la Oficina con la asesoría del Movilh.

El 15 de octubre, en tanto, vio la luz la Oficina de Apoyo a la Diversidad Sexual e Identidad de Género de Lampa que encabeza el alcalde Jonathan Opazo (Ind). La entidad quedó a cargo de la funcionaria Natalia Molina.

Finalmente, y con la alcaldesa Irací Hassler (PC) a la cabeza, el 26 de enero del 2002 Santiago se convirtió en el primer municipio del país en lanzar una Sub-Dirección de Igualdad de Género, Diversidad Sexual e Inclusión<sup>17</sup>, dando con ello mayor solidez a los esfuerzos comunales antidis-criminatorios.

La iniciativa, que fue aprobada por el Concejo Municipal, espera "transversalizar el enfoque de género en cada uno de los Departamentos y Oficinas municipales", señaló el municipio en un comunicado.

"Mujeres, disidencias, personas que viven con alguna discapacidad y migrantes son población históricamente relegada y discriminada, y el trabajo coordinado y transversal permitirá avanzar en el desafío de una ciudad feminista, donde las mujeres, niñas, y diversidades sexuales puedan sentirse cómodas, seguras y parte de la comunidad", apuntó Hassler.

A las oficinas y la Sub-dirección se sumaron en otros municipios firmas de convenios, conmemoración de fechas simbólicas y reuniones donde se asumieron compromisos por nuevas oficinas de la diversidad u ordenanzas municipales contra la discriminación.

En tal respecto destaca el compromiso que la alcaldesa de Valdivia, Carla Amtmann (RD) firmó con el colectivo Valdiversa "para trabajar en forma conjunta en la construcción de una política comunal intersectorial en favor de la diversidad sexual y de género, con la finalidad de las personas de la comunidad LGBTIQA+ logren vivir

<sup>[17]</sup> Dado que esto hecho ocurrió en el 2022, se sumará como un hito para el próximo Informe Anual de DDHH de la Diversidad Sexual y de Género.

en un territorio más inclusivo y equitativo", señaló el municipio en un comunicado del 3 de agosto.

Meses después, el 23 de octubre, la municipalidad y Valdiversa, convocaron a un foro sobre "Feminismo, Género y Disidencias".

Por su lado, el 9 de julio el municipio de Santiago conmemoró el Día de la Visibilidad Lésbica en un evento donde participaron representantes de Mums, Movilh, Fundación Iguales, Agrupación Lésbica Rompiendo el Silencio y la Oficina de Equidad de Género e Inclusión de la Universidad de Chile. En la ocasión se exhibieron en el Hall Central del Palacio Consistorial recortes de prensa y fotografías de mujeres lesbianas.

Durante todo el año Hassler dio otras señales a favor de los derechos LGBTIQA+. Así es como el 7 de octubre se reunió con representantes del Movilh, acordándose trabajos conjuntos que comenzaron a ver la luz en 2022<sup>18</sup>; y el 28 de diciembre participó en la inauguración de un mural en memoria de Mónica Briones, artista lesbiana asesinada el 9 de julio de 1984 en la intersección de las calles Irene Morales con Merced. La obra, creada por el Colectivo Mónica Briones, fue inaugurada en el Parque Forestal, frente al monumento de la Fuente Alemana.

A su vez, la comuna de Putaendo dio sus primeros pasos a favor de los derechos humanos de las personas LGBTIQA+ al desplegar el 13 de diciembre la bandera del Orgullo y comprometer al alcalde Mauricio Quiroz (IND) con la próxima inauguración de una Oficina por la Diversidad, al tiempo que comenzaron a implementarse las capacitaciones a funcionarios/as municipales en temáticas de orientación sexual e identidad de género.

La bandera fue izada en el frontis del municipio en una ceremonia encabezada por el alcalde Quiroz y por los/as concejales/as Mariana Bravo (IND) y Francisco Casas (IND), contándose con la participación de la Corporación Féminas Diversas en Acción y del Movilh

Similares compromisos asumió el alcalde Manuel Rivera Martínez (UDI), quien el 16 de junio y 6 de octubre se reunió con la Corporación Féminas Diversas en Acción, asistiendo a la segunda cita el Movilh y los/ as concejalas de Los Andes, Mauricio Mura Pineda (PC) y Marianella Benavides Cárdenas (IND/PPD), quienes se comprometieron con el empuje de una Oficina Comunal Pro Diversidad Sexual y de Género.

En tanto, en San Felipe, que ya cuenta con una Oficina por la Diversidad, la concejala Patricia Boffa Casas (RN) se reunió el 9 de febrero con la Corporación Féminas Diversas en Acción, mientras el 6 de agosto dicha organización y el Movilh se dieron cita con los/ as concejales/as de San Felipe; Ricardo Covarrubias Covarrubias (PC), Juan Sabaj Paublo (RN), Rafael Sottolichio Bauer (IND), Guillermo Lillo Vivar (IND) y Boffa. En ese momento, los movimientos LGBTIQA+ solicitaron cambiar el nombre de la Oficina de la Diversidad de la comuna por el de Oficina de Protección LGBTIQ+, lo cual se espera sea considerado en 2022.

Finamente, la alcaldesa de San Felipe, Carmen Castillo Taucher (Ind), comprometió el 6 de octubre a las mismas organizaciones LGBTIQA+ la tramitación de una Ordenanza Municipal contra la Discriminación y el diseño de programas de capacitación en temáticas de diversidad sexual y de género, así como el apoyo para que la Corporación Trans Féminas Diversas en Acción pueda seguir contando con un espacio donde desarrollar sus actividades.

En el campo de las conmemoraciones y capacitaciones, el Municipio de Independencia realizó cada viernes, entre el 18 de junio y el 9 de julio, jornadas de música, fotografía, ilustración y cine con motivo del Mes de la Visibilidad Lésbica y, teniendo como contexto el Mes contra la Homo/Lesbo/Bi/Transfobia, la Municipalidad de Recoleta organizó el 27 de mayo una muestra de películas y un conversatorio LGBTIQA+ online denominado "Cine en recoleta. Historia de Disidencias. Conversatorio + exhibiciones". También en conmemoración del Día de la Visibilidad Lésbica, Maipú, Melipilla y Renca, difundieron en su redes sociales carteles pro derechos LGBTIQA+.

A su vez, el 31 de marzo el Departamento de Inclusión y Género del municipio de Renca conmemoró el Día Internacional de la Visibilidad Trans con mensajes alusivos en sus redes sociales.

El 27 de marzo, en tanto, la Oficina de la Diversidad de La Florida organizó el conversatorio online "A nueve años de la muerte de Daniel Zamudio" y el 30 de agosto Quilpué convocó al encuentro "Niñes y diversidades sexuales", donde expusieron Rompiendo El Silencio, Fundación Acuarela y Mesa Diversidades Marga-Marga.

Por su parte, el 9 de septiembre el Movilh capacitó en temáticas LGBTIQA+ a funcionarios/as de la municipalidad de Chihuayante, mientras que la Dirección Educación de Providencia posibilitó que dicho movimiento diera el 28 de diciembre una charla a la comunidad del Liceo Lastarria.

Finalmente, el 20 de agosto el Movilh se reunió con el director del programa Puente Alto Diversx, Jorge Ovalle, para intercambiar experiencias a favor de la igualdad.

A lo expuesto se añadió la sumatoria de 46 municipios a dos ediciones de la Campaña Arcoíris

<sup>[18]</sup> Detalles serán expuestos en el próximo Informe Anual de DDHH de la Diversidad Sexual y de Género.

desarrolladas en 2021<sup>19</sup>, así como la histórica llegada al sillón edilicio de Melipilla de Lorena Olavarría, la primera alcaldesa abiertamente disidente<sup>20</sup>.

# • Divine y el triste desempeño del municipio de Valparaíso

Con motivo del 28 aniversario del incendio de la discoteca Divine de Valparaíso<sup>21</sup>, el Movilh recordó a las 16 víctimas fatales de la tragedia, además de lamentar que "a casi tres décadas de ocurrido los hechos los responsables aún no pidan perdón".

Junto a ello, el 4 de septiembre el Movilh exigió "a los ex administradores de la Divine, identificados como autores de cuasidelito de homicidio, que pidan perdón por su responsabilidad en los hechos y por haber distorsionado la realidad, levantando el falso mito de un atentando homofóbico para liberarse de culpas".

Pese a ello, el municipio de Valparaíso, encabezado por el alcalde Jorge Sharp, se cuadró en 2021 con la versión de los responsables del incendio de la discoteca Divine contribuyendo a mantener en la impunidad a los identificados como autores de cuasidelito de homicidio.

En efecto, el 4 de septiembre el Municipio y el alcalde usaron sus plataformas comunicacionales para señalar que el incendio fue producto de un atentado homofóbico, en circunstancias que dicha versión fue ideada justamente por los ex propietarios de la Divine para ocultar su responsabilidad en los hechos, distorsionar las investigaciones y demorarlas hasta que las penas prescribieron.

En concreto el Municipio señaló el 4 de septiembre por su Facebook, Instagram y Twitter que: "en memoria de las víctimas del ataque homotransfóbico de la discoteque Divine en Valparaíso" y "Este sábado 4 de septiembre, recordamos y conmemoramos a las víctimas del incendio homotransfóbico de la disco Divine de Valparaíso..." Esta última afirmación fue además retuiteada por Sharp.

En respuesta, el Movilh envió el 5 se septiembre una carta de repudio al alcalde y de alerta a los/as concejales Zuliana Araya, Camila Nieto, Alicia Zúñiga, Thelmo Aguilar, Vladimir Valenzuela, Carla Sánchez, Gilda Llorente, Daniel Morales, Marianela Antonucci y Dante Iturrieta. "Repudiamos que el municipio, sin tener nunca alguna cercanía con las investigaciones del Caso Divine ni tampoco con quienes las cursaron, falte descaradamente a la verdad, dañando la memoria de las víctimas. Repudiamos que bajo la administración de Sharp, el municipio jamás hubiese condenado a los responsables plenamente identificados de una de las peores tragedias vividas por las personas LGBTIQA+, aún cuando anualmente intenta vincularse a la misma. Repudiamos que se usen fondos públicos para transgredir la verdad y dañar la memoria LGBTIQA+", señaló la misiva.

En la carta el Movilh se quejó además porque "nunca este municipio nos ha contactado (quizás porque somos un organismo completamente autónomo e independiente, además de ajeno a las corrientes ideológicas y partidarias que son útiles a la actual administración) para al menos conocer algo sobre la verdad de la Divine y/o recordar a los fallecidos/as, pese a que fuimos el único organismo querellante de este caso y al cual familias de los sobrevivientes entregaron la representatividad para tales efectos".

"Instamos al Municipio a terminar con las funestas prácticas que dañan la verdad del Caso Divine y deshonran a las víctimas. Ahora bien, si el Municipio persiste en seguir cuadrándose con la versión de los verdugos de la Divine, lo instamos a presentar públicamente, con responsabilidad y al instante cualquier mínima prueba que corrobore sus afirmaciones", apuntó el Movilh en su misiva.

El tránsito de 17 años de creer que el incendio de la Divine fue un atentado a comprobar que no lo era se constituyó en una de las experiencias más dolorosas en la historia del Movimiento LGBTIQA+ por todo lo que implicó, y en especial, porque ello liberó de sanciones penales a los verdaderos victimarios, por lo que irresponsabilidad del municipio de Valparaíso resultó ser extrema e insensible.

<sup>[19]</sup> Más datos sobre esta campaña en el título respectivo del presente capítulo

<sup>[20]</sup> Más antecedentes de este hecho y del proceso electoral 2021 en el VII Capítulo.

<sup>[21]</sup> Todos y cada uno de los antecedentes del incendio se encuentran en el Informe "Discoteca Divine, la Verdadera Historia" (Movilh, 2010) http://www.movilh.cl/documentacion/informe-movilh-divine/III-informe-movilh-divine-2010.pdf

# VII. - LA CAMPAÑA ARCOÍRIS SE CONSOLIDA COMO UN TRADICIONAL EVENTO POR LOS DERECHOS LGBTIQA+

Corría el año 2012 y desplegar o usar la bandera LGBTIQA+ era un hazaña que pocos se atrevían a realizar por temor a la impopularidad, por considerarlo irrelevante, porque los únicos símbolos dignos de destacar eran los patrios o, simplemente, por homo/ transfobia.

La Campaña Arcoíris, ideada por el Movilh con motivo del Día Internacional contra la Homo/Transfobia (17 de mayo), contó al inicio solo con la adhesión de la Embajada Británica, la cual se atrevió a desplegar en su frontis una bandera confeccionada por la madre de un activista de la organización.

En ese momento el sueño de la Campaña, también conocida como Banderazo Arcoíris, era que instituciones públicas o privadas conmemorarán el 17 de mayo desplegando las banderas de la diversidad, iluminando sus frontis con los colores LGBTIQA+, pintando el arcoíris en espacios públicos, como pasos peatonales o bancas de plazas, o desarrollando acciones de sensibilización como encuentros o acciones comunicacionales.

Con el correr de los años, todo ello fue ocurriendo, y alcanzó su punto de total expresión en 2015, cuando el Movilh pintó con los colores LGBTIQA+ el paso peatonal de de la Alameda con Ahumada y, muy especialmente en 2016 cuando la entonces presidenta Michelle Bachelet autorizó a dicho movimiento a iluminar La Moneda con los colores del arcoíris y el Mineduc incluyó al 17 de mayo como una de las efemérides del calendario escolar.

En medio de protestas y manifestaciones de grupos homo/transfóbicos o de sectores "progresistas" que criticaban a la iniciativa porque "una bandera no resuelve la discriminación", el banderazo se fue extendiendo por todo el país hasta transformarse en la mayor campaña de visibilidad por los derechos LGBTIQA+ que fue sensibilizando en la no discriminación a personas, instituciones e incluso a autoridades antes reacias al símbolo de la diversidad.

Tanto ha sido el éxito que al 2021 las iluminaciones o izamientos de banderas son comunes y no se limitan solo al 17 de mayo, sino a otras conmemoraciones locales, nacionales o internacionales, encontrando las autoridades y organismos en estos despliegues una manera de comunicarse y decir "sí a la igualdad, no a la discriminación", transformando al banderazo arcoíris en una tradición.

En el marco del Día Internacional contra la Homo/ Transfobia 2021 un total de 74 instituciones, públicas y privadas se sumaron a la Campaña Arcoíris.

Se trató del Senado, presidido por Yasna Provoste (DC), y de 46 municipios, 21 embajadas, el Hospital de Futalefú, el Banco Mundial, las empresas Entel, Metro, Grupo Cetep y el Aeropuerto Nuevo Pudahuel.

De los 46 municipios, 11 son encabezados por ediles de la DC; 10 del PS; 8 de RN; 5 de la UDI, 5 independientes; 2 del PPD; 2 del PRSD; 1 del PC; 1 del PL y 1 del MA.

El despliegue de banderas fue especialmente significativo, pues tuvo lugar un día después de las históricas elecciones del 15 y 16 de mayo.

Izaron o desplegaron la bandera LGBTIQA+ Arica, Iquique, Antofagasta, Coquimbo y La Serena, municipios encabezados por los ediles Gerardo Espíndola (PL), Jorge Soria (IND), Wilson Díaz (PS), Marcelo Pereira (Ind-DC) y Roberto Jacob (PRSD), en forma respectiva. Antofagasta iluminó además su frontis.

En el centro del país desplegaron el símbolo los municipios de Catemu (Boris Luksic, RN),Valparaíso (Jorge Sharp, MA), San Antonio (Omar Vera, PRSD) y El Quisco (Natalia Carrasco Pizarro, DC).

En la Región Metropolitana, lo hicieron Calera de Tango (Erasmo Valenzuela, DC), Cerrillos (Arturo Aguirre Gacitúa, PS), Cerro Navia (Mauro Tamayo, IND), Colina (Mario Olavarría Rodríguez,(UDI), Curacaví (Juan Pablo Barros Basso, IND), Curicó (Javier Muñoz), El Bosque (Sadi Melo, PS), El Monte (Francisco Gómez, (PS), Huechuraba (Carlos Cuadrado, PPD), Independencia (Gonzalo Durán, PS), La Cisterna (Santiago Rebolledo, PPD), La Granja (Felipe Delpin Aguilar, DC), La Pintana (Claudia Pizarro, DC), Las Condes (Joaquín Lavín, UDI), Maipú (Cathy Barriga, IND-UDI), Melipilla (Iván Campos Aravena (RN), Ñuñoa (Andrés Zarhi, IND-RN) y Peñalolén (Carolina Leitao, DC).

Siguieron en la Región Metropolitana las comunas de Peñaflor (Nibaldo Meza Garfia, DC), Providencia (Evelyn Matthei, UDI), Pudahuel (Johnny Carrasco, PS), Quilicura (Juan Carrasco Contreras, IND), Quinta Normal (Carmen Gloria Fernández, DC), Recoleta (Daniel Jadue, PC), Renca (Claudio Castro, DC), San Bernardo (Leonel Cádiz Soto, PS), San Joaquín (Santiago Echeverría (Indp-PS), San Miguel (Luis Sanhueza Bravo, RN), Santiago (Felipe Alessandri, RN) y Vitacura (Raúl Torrealba, RN).

En tanto, en el sur del país se plegaron Linares (Mario Meza Vásquez, RN), Castro, (Juan Vera Sanhueza, UDI), Coyhaique (Alejandro Huala, PS), Punta Arenas (Claudio Radonich Jiménez, (RN), Puerto Mont (Gervoy Paredes, PS) y Rancagua (Eduardo Soto, IND), mientras Concepción (Álvaro Ortiz, DC) se iluminó nuevamente con los colores de la diversidad.

Anivel diplomático adhirieron a la Campaña Arcoíris las embajadas de Alemania (cuyo embajador es Christian Hellbach), Argentina (Rafael Bielsa), Australia (Todd Mercer), Austria (Stephan Vavrik), Bélgica (Geert Crie), Canadá (Patricia Peña), Costa Rica (Adriana Murillo Ruin), Dinamarca (Jens Godtfredsen), Estados Unidos (Baxter Hunt), España (Enrique Ojeda), Finlandia (Eija Rotinen), Francia (Roland Dubertrand), Irlanda (Paul Gleeson), Israel (Marina Rosenberg), México (Francisco Javier Olavarría), Noruega (Jostein Leiro), Perú (Jaime Pomareda), Reino Unido (Louise de Sousa), Reino de los Países Bajos (Harman Idema), Suecia (Oscar Stenström) y la Unión Europea (León de la Torre).

Con motivo de la tramitación del matrimonio igualitario, entre noviembre y diciembre hubo una edición especial de la Campaña Arcoíris, a la cual se plegaron 30 municipios, 9 embajadas, el Gobierno Regional de Magallanes, el Banco Mundial y el Injuv, instancias que apoyaron mediante izamientos y despliegues la aprobación de la ley<sup>22</sup>.

Similares señales se dieron en el transcurso del año en otros contextos.

En el marco del Mes por la despatologización de las identidades de género diversas el municipio de Santiago izó la bandera trans (27 de octubre), al igual que Concepción (28 de octubre), mientras San Antonio desplegó el símbolo con motivo del Día Internacional de la Visibilidad Trans (31 de marzo).

Los municipios de San Felipe (14 de junio) y Viña del Mar (30 de junio) izaron la bandera en el Mes del Orgullo y, en el marco de la misma conmemoración, las embajadas, consulados y misiones de Chile en el exterior cambiaron temporalmente desde el 24 de junio su logo institucional por uno que incorporó los colores LGBTIQA+. Lo mismo hizo la Embajada Británica en Chile, mientras el Metro iluminó el 25 de junio el túnel de la estación Plaza Egaña con los colores LGBTIQA+.

En memoria del incendio de la discoteca Divine (4 de septiembre) los municipios de Viña del Mar y Valparaíso y la Delegación Presidencial Regional de Valparaíso también izaron el símbolo.

En tanto, las municipalidades de Catemu (5 de agosto), Putaendo (13 de diciembre), Lampa (15 de octubre) y Valdivia (30 de noviembre) desplegaron la bandera en el marco de eventos comunales por los derechos LGBTIQA+ coordinados en algunas ocasiones con sus respectivas organizaciones locales, como Valdiversa y la Corporación Féminas Diversas en Acción.

Finalmente, y al cumplirse un mes de la primera sesión de la Convención Constitucional, el Ex Congreso Nacional de Santiago amaneció el 4 de agosto con 27 banderas que representan parte de la diversidad sociocultural del país, entre esas el símbolo LGBTIQA+.

<sup>[22]</sup> Más antecedentes en el segundo título del cuarto capítulo.

# VIII. - LA ARMADA, GENDARMERÍA Y CARABINEROS, INSTITUCIONES PELIGROSAS PARA LOS DERECHOS LGBTIQA+

En términos generales las Fuerzas Armadas, de Orden y Seguridad han sido incapaces de implementar medidas para hacer frente a los abusos en razón de la orientación sexual, identidad o expresión de género cometidos por sus funcionarios/as, en tanto, cuando ocurren atropellos suelen no sancionar a los responsables, mantener en reserva los resultados de las pocas investigaciones que cursan y liberar de toda responsabilidad a los victimarios, bastando para ello solo la versión de los hechos que entregan los propios agresores.

Es efectivo que el panorama ha cambiado radicalmente al compararse con años previos al 2012, fecha hasta cuando existieron reglamentos de las Fuerzas Armadas, de Orden y Seguridad que explícitamente impedían el acceso de LGBTIQA+ en sus filas<sup>23</sup>. Tras la derogación o eliminación de esas normas, las instituciones uniformadas fueron asumiendo, al menos discursivamente desde los Altos Mandos, que la homo/ tranfobia no es aceptable y debe ser erradicada. Y sin bien en el pasado hubo sanciones contra la discriminación, lo cierto es que aún la regla predominante es mantener en la impunidad a quienes persisten en discriminar a la personas LGBTIQA+, siendo en este contexto la Armada, Gendarmería y Carabineros las entidades más atrasadas, como tristemente quedó una vez más el descubierto en 2021.

#### La Armada y sus enseñanzas del odio

La Academia de Guerra Naval, dependiente de la Armada, fue denunciada públicamente el 2 de septiembre por el Movilh por impartir a sus estudiantes contenidos de odio que dañan la dignidad de las personas LGBTIQA+, pues trataban a las orientaciones sexuales o identidades de género diversas como una "tiranía", una "inmoralidad" y una "actitud sexual depravada" que "desmantela las normas sexuales". Los discursos de odio sin precedentes promovían la ignorancia, los prejuicios y contenidos falsos, todo lo cual violentaba de manera descarada los derechos humanos, la legislación y los tratados internacionales ratificados por Chile.

La Armada enseñó y difundió los contenidos en la Revista Marina de la Academia de Guerra Naval, específicamente en un artículo escrito por el almirante y ex comandante en Jefe de la Armada, Miguel Vergara Villalobos, quien recomendó a los estudiantes leer el texto "La revolución sexual global. La destrucción de la libertad en nombre de la libertad" de la socióloga Gabriele Kuby.

Lejos de solo resumir o de llamar a una lectura crítica de dicho libro, la Armada se cuadró con cada uno de sus contenidos.

Para la Academia de Guerra Naval el libro de Gabriele Kuby explica "como el afán de libertad ha redundado en el libertinaje y en la ideología de género, lo que a su vez ha subvertido la sexualidad humana".

"Este libro, fuera de alertarnos, nos plantea una acuciante pregunta: ¿Debemos estar avergonzados y pedir disculpas quienes profesamos la fe católica y postulamos el matrimonio entre un hombre y una mujer, con vistas a la procreación?", señaló Vergara Villalobos.

El polémico artículo apareció publicado en la edición número 974 de la Revista Marina del 2020, además de ser difundido en su web en hasta la denuncia del Movilh.

Es decir, tras Ley Zamudio, el estallido social y todos los cambios que ha experimentado el país a favor de la igualdad, la Armada, con Juan Andrés De La Maza a la cabeza, estaba promoviendo de manera horrorosa la homofobia, tanto en la versión impresa, como digital de su revista, sin que el Ministro de Defensa Nacional, Baldo Prokurica, hubiese prevenido a tiempo el abuso.

Entre otros párrafos del libro de Kuby que difundió la Academia de Guerra Naval, destacan los siguientes:

- "El objetivo del programa cultural revolucionario -manejado por las élites del poder mundial, con la connivencia de las Naciones Unidas (ONU) y la Unión Europea (UE)- es la libertad absoluta, sin restricciones naturales ni morales. Se busca liberarse de la tiranía de la naturaleza. Para ello se intenta desconstruir la sexualidad masculina y femenina promoviendo, entre otras cosas, la equivalencia legal de la relación homosexual con el matrimonio".

-"....Un año después se celebró la Conferencia de Pekín, controlada por feministas radicales. El documento final no respeta la dignidad humana, trata de destruir la familia, minimiza la maternidad, pretende imponer actitudes sexuales depravadas, promueve

<sup>[23]</sup> Más antecedentes sobre este histórico cambio en el XI Informe Anual de los Derechos Humanos de la Diversidad Sexual y de Género, publicado en Movilh.cl

la homosexualidad, el lesbianismo, la promiscuidad sexual, etc. Posteriormente, en la Conferencia de Glen Cover, en New York, los activistas radicales lograron imponer su estrategia, transformando los acuerdos de Pekín en tratados internacionales vinculantes; es decir, crearon una nueva realidad social."

-"La clave es presentar cualquier oposición como un acto de discriminación arbitraria. Se intenta lograr que todos los países del mundo cambien sus constituciones, leyes, instituciones sociales, sistemas educativos y las actitudes básicas de sus ciudadanos, para imponer y obligar legalmente a aceptar y privilegiar la homosexualidad y otras identidades y comportamientos no-heterosexuales"

- "Nos encontramos en "una situación en que una pequeña minoría de la población (LGBTI), cuyas diferencias sexuales difieren de la inmensa mayoría, ha logrado imponer una verdadera revolución". El punto de inflexión ocurrió en 1973, cuando la Asociación Americana de Psiquiatría (APA) "decidió eliminar la homosexualidad de la lista de enfermedades que podían ser tratadas mediante procedimientos terapéuticos", lo que bloqueó todo debate científico de la larga investigación sobre las causas de la homosexualidad. Esta "decisión de la APA no fue producto de un debate científico, sino de la presión política sobre determinadas personas que no pudieron soportarla".

– "Si se consideran los millones de dólares que se orientan a promover la agenda LGTBI y el compromiso de los más altos niveles de la política, se podría pensar que la homosexualidad es un fenómeno masivo. Sin embargo, las encuestas representativas en las sociedades occidentales indican que solo entre el 1 y 3% de la población se identifica como homosexuales. Empero, incluso en altas esferas de gobierno, se "usan cifras variadas y muy exageradas que no provienen de fuentes serias"".

- "Hoy no se puede analizar científicamente la posibilidad de cambiar la condición homosexual de una persona. Quienes se atrevan a infringir esta prohibición son sometidos a una estridente persecución por parte de los grupos de interés LGBTI, que hacen todo lo posible por sacar de la conciencia ciudadana el mensaje de que la orientación homosexual puede cambiar a una heterosexual"

– "Es una contradicción evidente que un movimiento que lucha por la abolición de la heterosexualidad obligatoria haga lo posible por negar que las tendencias homosexuales puedan ser cambiadas. (...). El movimiento homosexual marcha bajo la bandera de la libertad, la tolerancia y la no-discriminación, pero limita la libertad de opinión, la libertad de ciencia y la libertad terapéutica en particular". Junto con exigir al comandante Juan Andrés De La Maza y al Ministerio de Defensa explicaciones por lo sucedido, sanciones contra los responsables y la eliminación inmediata de los contenidos de odio que dañaban la dignidad de LGBTIQA+ y mujeres, vocero del Movilh, Oscar Rementería, denunció los hechos a la Contraloría General de la República, la que el cierre de este informe aún no comunicaba resultados.

En una declaración pública el Ministerio de Defensa respondió el 2 de septiembre que "respecto de la denuncia del Movilh (...) conviene señalar que las afirmaciones corresponden a un análisis del almirante en retiro Miguel Ángel Vergara Villalobos sobre el libro "La revolución sexual global. La destrucción de la libertad en nombre de la libertad", y no representan en forma alguna el pensamiento de la Armada de Chile".

"Queremos afirmar tajantemente que condenamos las descalificaciones emitidas, que no forman parte de los valores que promueven el Gobierno y la Armada de Chile, y lamentamos su publicación (...) Se ha instruido a la institución realizar un sumario administrativo para establecer los hechos y determinar responsabilidades. A su vez se instruyó de inmediato bajar del sitio web institucional dicha información".

Sin embargo, y de una manera paradojal que faltó abiertamente a la verdad, el Ministerio de Defensa añadió que "la Armada de Chile es una institución que no avala prácticas discriminatorias, que se alejan del actuar que siempre ha caracterizado a la institución, guiando su accionar en un estricto apego a la legislación vigente y a las políticas de integración y respeto por todas las personas".

Es decir, se pedía una investigación al hecho, al mismo tiempo que de antemano se negaba que la Armada discriminara, pese al abuso cometido en un medio de comunicacional oficial de la rama.

Por su lado, el vocero de Gobierno, Jaime Bellolio, señaló el mismo día por Twitter que" tras alerta de @ Movilh reafirmamos compromiso del @GobiernodeChile por el respeto absoluto por todas las personas, su integración y valoración en una sociedad amplia y diversa. Rechazaremos siempre cualquier discriminación arbitraria, especialmente cuando se usa para fomentar odio".

Posteriormente, el 22 de septiembre del 2021 el jefe de gabinete (S) del Ministro de Defensa, Patricio Valdés Fuentealba, contestó al Movilh que "las Fuerzas Armadas cuentan con capacitación permanente en materia de derechos humanos, pese a ello se enfatizará en las materias relacionadas con la diversidad sexual".

Del mismo modo, adjuntó un documento del 2 de septiembre mediante el cual trasladaba al Secretario General de la Armada la denuncia del Movilh y se pedía "la instrucción de un sumario administrativo determinado a aclarar la veracidad y gravedad de estos hechos, aplicando a los responsables las sanciones que correspondan", así como adoptar "las medidas necesarias" para que abusos similares no vuelvan a ocurrir.

Sin embargo, al cierre de este informe se desconocía resultados del sumario, así como un pronunciamiento de la Contraloría, mientras que por diversos canales fue el propio autor del odioso artículo el que salió a defenderlo públicamente, con el respaldo de sus seguidores.

El 4 de septiembre Vergara señaló que "me costaría creer que el Gobierno y la Armada avalan la pretensión de imponer -bajo el amparo de destacados organismos internacionales- una verdadera ideología sobre la libertad sexual, incluyendo a los niños, que es lo que el libro denuncia con sólidos argumentos (...) Espero que, por sobre la tiranía de lo políticamente correcto, el sumario confirme que no ha habido intención de ofender a nadie, sino dar a conocer un tema muy sensible para todas las familias" (El Mercurio de Valparaíso).

El mismo día, el abogado Adolfo Paul Latorre, compartió "plenamente los fundamentos morales, filosóficos y antropológicos expuestos en dicho artículo, contrarios a la "ideología de género" y a los postulados de la conocida feminista Simone de Beauvoir, para quien "una no nace, sino que se hace mujer". Por otra parte me preocupa el atentado a la libertad de expresión que encierra la denuncia de Movilh y también me hago la pregunta que el autor formula al final de su escrito: "¿Debemos estar avergonzados y pedir disculpas quienes profesamos la fe católica y postulamos el matrimonio entre un hombre y una mujer?" (El Mercurio de Valparaíso).

"Es realmente insoportable moral y éticamente que el Movilh asuma un rol de censor y juez supremo sobre opiniones que no le son favorables a su modo de entender las relaciones de "integración sexual y homosexualismo" y, al mismo tiempo, no le otorgue a los que no piensan igual los mismos derechos al menos" salió a decir un lector identificado como Alejandro Niklitschek.

"También es curiosa, por decirlo suave, la instantánea reacción del ministro de Defensa, que en vez de defender la libre expresión en un medio de libertad editorial y estricta discusión académica de una prestigiosa institución como la Revista de Marina, se rinda sin más al Movilh, que se destaca por su baja tolerancia a la crítica y a la práctica democrática. El almirante Vergara tiene toda la razón y es de esperar que tanto la Armada como la Contraloría General de la República pongan en su lugar a Óscar Rementería, su Movilh y sus afiebradas acusaciones", añadió (6 de septiembre, El Mercurio de Valparaíso). Otro lector del mismo medio, Pablo Weiss, añadió que "Vergara no ha hecho más que expresar su pensamiento en libertad. Y somos muchos quienes pensamos y sentimos como él. La naturaleza es nuestro bien superior, nos señala el camino hacia la unión natural entre un hombre y una mujer, base de la familia y de la sociedad. Si acaso ahora, en torpe accionar, el Ministerio de Defensa ordena un sumario administrativo, ello no es más que una escapatoria políticamente correcta para superar el temporal,. Repito, somos muchos quienes pensamos, sentimos y actuamos como don Miguel Ángel Vergara" (6 de septiembre El Mercurio de Valparaíso).

Por su lado, el profesional Nicolás Kipreos Almallotis sostuvo que la denuncia del Movilh "resulta inentendible e inaceptable, porque lo que hace el almirante es simplemente comentar el libro "La Revolución Sexual Global", que, por cierto, está disponible en Chile para todos quienes quieran comprarlo".

"El Movilh tiene que entender que no todos tenemos por qué profesar la misma religión, doctrina, creencia o preferencia sexual, y que en la libertad, tolerancia y no discriminación que debe prevalecer, no podemos estar sometidos a un "totalitarismo" en el pensar. Hacerlo es caer en la misma homofobia que dicho movimiento busca anular", dijo (El Mercurio de Valparaíso, 5 de septiembre).

En un columna publicada el mismo día por El Mercurio de Valparaíso, el doctor en Derecho Gonzalo Ibáñez Santa María, añadió que según la ideología de género "cada uno de nosotros se haría varón o mujer de acuerdo a sus propias decisiones. En esta hipótesis, tener relaciones sexuales con una mujer o con un hombre daría exactamente lo mismo, desde luego porque las relaciones sexuales no estarían para nada orientadas a la procreación de nuevas personas humanas. El matrimonio pierde su esencia de relación de por vida entre un varón y una mujer con la finalidad de vivir juntos, de auxiliarse mutuamente y de procrear, para pasar a ser cualquier cosa. El riesgo para la juventud es evidente. Convencida acerca de la disposición de su sexualidad sin freno y sin ninguna orientación, esa juventud, de hecho, pierde su libertad para caer esclava del vicio hasta destruir su personalidad".

"Es frente a ese peligro que Vergara levanta su voz y expone como contrapartida la que ha sido la enseñanza propia de nuestra civilización cristiana y nos recuerda precisamente cómo a través del uso de la sexualidad dentro del matrimonio entre una mujer y un hombre y abierta a la procreación, las personas se realizan en su entidad humana y dan un paso sustantivo en el camino de su perfección", finalizó junto con acusar "censura" contra el almirante en retiro.

#### Gendarmería y carabineros

El interno Boris Esteban Castillo Arriagada (23) se suicidó el 28 de enero en el Complejo Penitenciario de La Serena, tras recibir constantes abusos en razón de su orientación sexual en manos de gendarmes, según información proporcionada por sus cercanos al Movilh y a la Corporación Féminas Diversas en Acción.

El fatal desenlace pudo haberse evitado si Gendarmería hubiese adoptado las medidas adecuadas para evitar que el interno se siguiera infligiendo daño, como venía ocurriendo desde comienzos del 2020, a raíz de la discriminación por su orientación sexual.

El 3 de junio del 2020 el Movilh había informado por carta a Gendarmería de Chile que el señor Castillo Arriagada estaba en una situación de compleja vulnerabilidad, ya que se había infligido daño con material corto-punzante a objeto de evitar el traslado a otro recinto, donde los hostigamientos por su orientación sexual serían más severos.

Al respecto Gendarmería se limitó a señalar que el interno se negaba a ser atendido, y de ahí nunca más se supo de alguna gestión o medida de protección.

A esto se añadió que tras junio del 2020 el afectado comenzó a ser agredido en razón de su orientación sexual por funcionarios del Complejo Penitenciario de La Serena, sin que tampoco se cursaran medidas, según denunciaron sus cercanos.

En tal sentido, el Movilh y Corporación Féminas Diversas en Acción insistieron públicamente en la necesidad de que toda denuncia sobre abusos homo/ transfóbicos en la cárceles no fuera investigada, bajo ningún punto de vista, por nadie que hubiese tenido contacto con las víctimas o victimarios o con el recinto penitenciario donde ocurrieron los hechos, demanda formulada también a Gendarmería que nunca tuvo respuesta.

A solo cuatros días del suicidio, una mujer trans, K.M.P (31 años) denunció además constantes torturas en razón de su identidad de género en manos de funcionarios/as del Centro Penitenciario Acha de Arica.

La madre de K.M.P. relató que desde noviembre del 2020 su hija venía viendo vulnerados sus derechos por el accionar del funcionario, Hugo Martínez, y de la paramédico Claudia Claveles.

Mi hija "está siendo violentada psicológica y físicamente por su identidad de género, al extremo que la hacen desnudarse ante varios miembros del recinto para decir y "demostrar" que es "un hombre". Le están haciendo mucho daño", precisó.

Además, de acuerdo a la denuncia, la mujer recibió golpizas, ofensas, la desnudaron para que otros/as vieron

sus genitales y le negaron el acceso a las hormonas para el tratamiento de cambio corporal.

Por todos estos hechos, el 25 de enero, la madre de K.M.P, visitó de urgencia a su hija, percatándose de su grave estado de salud, por lo que dos días más tarde se reunió con el alcaide del Centro Penitenciario.

La respuesta del Alcaide fue que la interna se portaba un poco mal. Es decir, justificó en cierta manera los actos denunciados. Asimismo, luego de la visita, la interna comentó que sufrió nuevos malos tratos por parte del gendarme Sr. Martínez, a modo de represalia.

El Movilh denunció los hechos ante el director nacional de Gendarmería, Christian Alveal Gutiérrez, y al Instituto Nacional de Derechos Humanos, INDH.

En el transcurso del año se conoció de otro abusos.

El 7 de mayo, un interno del Centro de Detención Preventiva (CDP) de Quillota, M.I.A.V (31), denunció que personal de gendarmería lo insultó por su orientación sexual y se negó a prestarle ayuda luego de denunciar que otro recluso lo había violado.

"Yo di aviso al día siguiente de lo sucedido; ya que los hechos pasaron en el transcurso de la noche. Pido hablar con el jefe interno (Capitán Zapata.) Le cuento los hechos y sólo me dijo que no sé metía en problemas de maricones y lo tenía que solucionar yo mismo ya qué era un problema de maricones", dijo.

Añadió que tras ello siguió sufriendo agresiones sexuales. En una audiencia relató lo sucedido a una magistrada, la cual habría ordenado a Gendarmería que separaran a ambos internos como medida de seguridad, sin embargo, luego de eso el denunciante fue agredido físicamente por el mismo sujeto.

En paralelo gendarmes lo hostigaron señalándole "estás bien culiado por maricón" (Sic) "Por los hechos, y la depresión en la que aún estoy, me corté el brazo izquierdo, la pierna izquierda y me bebí una botella de cloro. Saliendo a la enfermería del penal me encuentro con el agresor y discutimos. Gendarmería me castigó a mí y pareja por agredir al interno agresor y luego me mantuvieron en el mismo lugar que él", relató.

Durante junio el Movilh reportó otro atropello a Alveal Gutiérrez, esta vez contra A.D.T y V.P, internas del Complejo Penitenciario de La Serena.

A.D.T denunció que el 12 de mayo, tanto ella como otras/as internos/as del módulo 94 (donde todos/as son LGBTIQA+), como es el caso de V.P. fueron agredidos/ as física, verbal y psicológicamente por un funcionario identificado con el apellido Maríquez.

Entre otros, el agresor roció a los/as internos/as con gas pimienta en sus rostros, además de tratarlas de

"lacras" y se negó a ayudarlos/as frente ataques homo/ transfóbicos propinados por sujetos de otro módulo.

"No es la primera vez que el funcionario Manríquez maltrata física y sicológicamente a los internos del Módulo # 94. No damos más con esta situación", añadió V.P.

A lo expuesto se suma una mala y negligente atención en salud.

V.P.P recordó que hace "aproximadamente cinco meses atrás me enfermé gravemente. Con ayuda de mis compañeros de módulo acudí al Hospital Penal ya que Gendarmería no quería prestarme atención médica".

"Una vez que llegué al hospital penal me tomaron la temperatura y como tenía mucha fiebre me mandaron en cuarentena a un módulo de aislamiento. Cuando terminé la cuarentena me regresaron al Módulo 94. Llegué peor de lo que estaba. Tuve que nuevamente ir al hospital penal con ayuda mis compañeros ya que Gendarmería decía que yo solo estaba fingiendo", añadió

"En el hospital me tomaron la temperatura. Tenía 39,8 grados de fiebre. Solo ahí adoptaron una buena decisión y me sacaron de urgencia a un hospital externo. Días después me enteré que me había contagiado de VIH y de Hepatitis B Los tratamientos a veces llegan y otras veces no. He estado varios días sin medicamento", finalizó.

Junto con lamentar las inhumanas, peligrosas e insalubres condiciones de vida que afectan a internos/ as LGBTQ+ en distintas zonas del país y que han valido varias de condenas de tribunales a Gendarmería el Movilh solicitó la intervención del Instituto Nacional de DDHH por los abusos cometidos en la Serena. Del mismo modo, pidió al Departamento de DDHH de Gendarmería investigar y sancionar a los responsables.

El 20 de julio, el INDH respondió al Movilh que el 25 de mayo había visitado el recinto donde "se constatan las condiciones de habitabilidad del Módulo y se conversa personalmente con las internas/as que se encontraban en el Módulo N° 94, recibiéndose diversas denuncia" por lo que había oficiado a Gendarmería, solicitando capacitaciones en materia LGBTIQ+, entre otros puntos.

El director nacional del INDH, Sergio Micco, añadió en la carta dirigida al Movilh que su "equipo de la sede regional, por instrucción de su jefatura, se traslada nuevamente al CP de La Serena, para entrevistar a los internos día martes 01 de junio de 2021. Se les entrevista personalmente y en términos generales lo relatado se condice con lo anteriormente observado".

Por último, en el cao de Carabineros los abusos del 2021 ocurrieron en Chañaral, Chillán, alto Hospicio, Viña del Mar y Valparaíso, afectando a mujeres trans, lesbianas y parejas del mismo sexo en el marco de procedimientos o de denuncias por homo/transfobia formuladas por la víctimas y que no son acogidas o bien recibidas por las policías<sup>24</sup>.

Para contribuir a la prevención de abusos similares, la Corporación Trans Féminas en Acción se reunió con el mayor de la Segunda Comisaría de San Felipe, Cristian Ramírez Galdames (13 de abril) y con el delegado de cuadrante, Alexis Araneda González (22 de abril). Tras ello, durante mayo y junio capacitó en temas LGBTIQA+ a funcionarios/as de San Felipe. Similares capacitaciones recibieron el 27 de agosto carabineros de Rancagua por parte de activistas LGBTIQA+ de la zona.

<sup>[24]</sup> Detalles de todos los atropellos homo/transfóbicos policiales del 2021 se encuentran en el segundo capítulo.



# IV.

# Avances y efectos legislativos y jurídicos

XX. Informe Anual de Derechos Humanos de la Diversidad Sexual y de Género en Chile

HECHOS 2021

# I.- INTRODUCCIÓN

La publicación del matrimonio igualitario en el Diario Oficial el 10 de diciembre del 2021, Día Internacional de los Derechos Humanos, constituye el cierre de un largo capítulo en la lucha por la igualdad social y legal impulsada de manera sistemática e ininterrumpida por el movimiento LGBTIQA+ desde 1991, hecho consolidado con la luz verde que el Congreso Nacional dio a comienzos del 2022 a la Ley de Garantías de la Niñez, la cual asegura igualdad de derechos a la infancia y adolescencia LGBTIQA+.

Con el cierre de una histórica etapa inicia un nuevo ciclo para la causa que parte con bases sólidas: la casi totalidad de la población rechaza la discriminación por orientación sexual o identidad de género, la homo/lesbo/ bisexualidad y la transexualidad ya no son un delito y, por el contrario la homo/transfobia está prohibida por la ley, mientras que las familias homoparentales y los/as niños, niñas, adolecentes LGBTIQA+ cuentan con los mismos derechos jurídicos que heterosexuales y cisgéneros, faltando solo que se permita a menores de 14 años cambiar su nombre y sexo legal en la Ley de Identidad de Género.

Los ataques y crímenes de odio, entre otros abusos homo/transfóbicos, no han cesado, aunque si se cuenta con herramientas, siempre perfectibles, para enfrentarlos en un contexto sociocultural más amable con la diversidad, pese a los intentos de reducidos sectores por imponer a la fuerza y, en muchas ocasiones con más violencia, sus prejuiciosas, autoritarias o fundamentalistas creencias e ideologías.

El nuevo camino que inicia tiene como desafíos cuidar las conquistas socio-legislativas alcanzadas, supervigilar para que se respeten y practiquen los derechos conseguidos, trabajar periódicamente para perfeccionar y actualizar los avances y, muy especialmente, definir nuevas prioridades, donde sin duda la discriminación interseccional juega un rol protagónico que concentrará buena parte de los esfuerzos para resolver los problemas que afectan a las personas LGBTIQA+ más vulnerables, como son las pobres, las migrantes, las con capacidades diferentes, las racializadas, las de zonas rurales o las pertenecientes a pueblos autóctonos, entre otras.

El comienzo de esta etapa coincide con una profunda revolución sociocultural y política gatillada por el Estadillo Social de octubre del 2019, realidad cruzada por la pandemia del Covid-19 y expresada en el trabajo constituyente y en la llegada al Poder Ejecutivo, desde marzo del 2022, de fuerzas políticas que nunca antes habían pisado La Moneda y que son encabezadas por Gabriel Boric, el presidente más joven en la historia del país.

El 2021 es indudablemente un año de inflexión en los más variados planos y niveles, como lo es el legislativo y jurídico de la causa LGBTIQA+, que tras la aprobación del matrimonio igualitario eleva al máximo conocido la vara de evaluación y medición de los derechos humanos, en especial al recordar lo complejo y extenso que resultó llegar a este momento.

Y es que finalmente el matrimonio igualitario pudo aprobarse en 2021 por el impulso dado por un presidente de Derecha, Sebastián Piñera, pese a que la Oposición favorable a esta ley era mayoritaria hace unos 10 años en el Congreso Nacional, mientras que el divorcio culposo por homosexualidad corrió similar suerte dado que el Legislativo lo borró del mapa jurídico solo porque una de las entidades con trayectoria más homofóbica y conservadora del país, como es el Tribunal Constitucional, lo declaró inaplicable.

Los sectores que hace años venían declarándose pro-derechos LGBTIQA+, pero poco y nada hicieron para aprobar el matrimonio igualitario o derogar el divorcio culposo, le deben explicaciones a las personas LGBTIQA+ por su excesiva e injustificada demora e inoperancia, en tanto, su responsabilidad en la tardanza es similar a la que podría adjudicarse a los sectores homo/transfóbicos.

El matrimonio igualitario desactualizó en 2021 otros dos proyectos de ley que se discutían en el Congreso Nacional, el de filiación y de reforma a la ley de adopciones. Esto, pues el matrimonio incorpora los derechos de filiación y adopción a todas las parejas, sean homo o heterosexuales.

En 2021 fueron aprobadas otras dos leyes que hacen referencia explícita a las personas LGBTIQA+, la que prohíbe la discriminación en la educación superior y la de Salud Mental, que impide "las terapias reparativas" de la homo/transexualidad. El Legislativo avanzó también en la derogación del artículo 365 del Código Penal, ahora la única norma abiertamente homofóbica existente en Chile.

A esto se sumó, en enero del 2022, la aprobación de la ley de Garantías de la Niñez, la cual garantiza igualdad de derechos a la infancia y adolescencia LGBTIQA+, siendo éste el más significativo e importante avance para tales grupos humanos.

A la par el Congreso Nacional inició el debate sobre un proyecto de ley para garantizar un cupo laboral trans y avanzó en una iniciativa que previene la discrecionalidad en el derecho a aborto por tres causales de hombres trans.

Lamentablemente la reforma a la Ley Zamudio pasó a segundo trámite con graves vacíos, por lo que deberán intensificarse los esfuerzos en la Cámara de Diputadas y Diputados para corregir ello.

En un contexto de cambios y de cierre de un ciclo, el Poder Judicial, y en particular la Corte Suprema, desaprovechó la oportunidad de emitir fallos que permitieran a las parejas del mismo sexo contraer matrimonio igualitario o el reconocimiento a todo evento, y no discrecional, de la filiación y adopción homoparental, siendo incapaz de hace prevalecer la igualdad ante la ley garantizada en la Constitución y los controles de convencionalidad. El Judicial, dejó esa labor solo en manos del poder político con la excusa de la independencia de los poderes del Estado, como si ese principio fuera contrario a los DDHH o justificara la emisión de sentencias que dinamitaron la universalidad de los derechos humanos.

El nuevo camino que inicia la causa LGBTIQA+ no está libre de peligros. El resurgimiento de los discursos de odio y de corrientes fascistas es un fenómeno mundial y del que Chile no está ajeno, a un punto que el candidato representante de las ideologías del odio alcanzó un alarmante 44,13% en la elección presidencial, estando vivo el fantasma de su resurgimiento.

No en vano, en el transcurso del 2021 ingresaron al Congreso Nacional tres proyectos de ley de corte homo/transfóbico y misógino que fueron impulsados justamente por seguidores del candidato presidencial fascista, mientras en la reforma a ley de adopciones se mantiene la posibilidad de que se apruebe un artículo que si bien no prohibiría la adopción a parejas del mismo sexo, levantaría sospechas sobre la homoparentalidad al obligar a los tribunales a consultar a los niños, niñas, y adolescentes si prefieren dos madres o dos padres o una madre y un padre.

En síntesis, el 2021 es el año de consolidación de todas las bases pro derechos LGBTIQA+, pero también es el período que llama a ser vigilantes de los fantasmas del odio que quieren retrocesos y ningún nuevo avance.

# II.- HISTÓRICA Y SINGULAR APROBACIÓN DEL MATRIMONIO IGUALITARIO

La situación de los derechos humanos de las personas LGBTIQA+ en la mayoría del mundo es desoladora y merece la atención y preocupación de todos aquellos países que han pasado a mejores condiciones de vida.

De los 194 Estados reconocidos por Naciones Unidas apenas el 15,5% cuenta con ley de matrimonio igualitario versus un alarmante 84,5% que sigue negando la plena igualdad de derechos para todas las parejas y familias solo en virtud de prejuicios, ignorancia, fundamentalismos u homofobia.

El número de países donde aún se criminalizan las relaciones sexuales entre adultos asciende a 69, más del doble de aquellos donde hay matrimonio igualitario. Es alarmante.

A fines del 2021 Chile entró en el reducido y selecto grupo de 30 países que permiten el matrimonio igualitario en todo su territorio, cerrando el país un ciclo en la historia de la lucha por la igualdad emprendida por el movimiento LGBTIQA+ de manera ininterrumpida desde 1991 a la fecha.

Al pionero paso dado por el Reino de los Países Bajos en 2001, siguieron Bélgica (2003), España (2005), Canadá (2005), Sudáfrica (2006), Noruega (2009), Suecia (2009), Portugal (2010), Islandia (2010), Argentina (2010), Dinamarca (2012), Brasil (2013), Francia (2013), Uruguay (2013), Nueva Zelanda (2013), Luxemburgo (2015), Estados Unidos (2015), Irlanda (2015), Colombia (2016), Finlandia (2017), Malta (2017), Alemania (2017), Australia (2017), Austria (2019), Taiwán (2019), Ecuador (2019), Reino Unido (2020), Costa Rica (2020), Chile (2021) y Suiza (2021)<sup>1</sup>.

Singularidad es uno de los conceptos que mejor explica el proceso ocurrido en Chile.

El matrimonio igualitario destrabó su nula-lenta tramitación legislativa tras el inesperado y sorpresivo impulso dado por un presidente de Derecha, Sebastián Piñera, quien hasta el 31 de mayo del 2021 ere conocido en el espacio público por oponerse a la iniciativa legal.

Los sectores favorables al matrimonio igualitario eran mayoría en el Congreso Nacional hace al menos 8 años, contándose con respaldos en la Izquierda, el Centro y una significativa parte de la Derecha. Sin embargo, fueron incapaces de coordinarse para poner el acelerador

<sup>[1]</sup> México lo permite en 26 de sus 32 Estados.

y cumplir con el Acuerdo de Solución Amistosa (ASA) que el Estado y el Movilh habían firmado en 2016 ante la Comisión Interamericana de Derechos Humanos (CIDH) para la aprobación del matrimonio igualitario<sup>2</sup>.

Se dio la paradoja de que el Congreso, con una mayoría opositora, requirió que un presidente de Derecha y ex opositor al matrimonio igualitario viniera a dar el impulso necesario. No les bastó la deuda histórica con las personas LGBTIQA+, la cotidiana violación a los derechos humanos de las parejas del mismo sexo y de sus hijos/as, la mayoría ciudadana favorable a ley, ni un compromiso internacional del Estado. Solo pusieron oído a la suma urgencia dada por Piñera.

Como si esas particularidades fueran pocas, a diferencia de otros países la oposición de las Iglesias y de grupos anti-derechos estuvo reducida a casi nada en el último período de la tramitación, el cual suele ser el más álgido y el que más movilizaciones provoca entre sectores homofóbicos.

La pérdida de credibilidad de las iglesias, potenciada al máximo en la última década, y el hecho de contar con una ciudadanía mayoritariamente favorable a la iniciativa, vació de fuerza a los grupos de odio, los mismos que ya hace tiempo veían como sus creencias, disfrazadas de argumentos, no tenían eco en las personas.

El contexto sociopolítico es otra inusual característica: el mundo bajo pandemia y Chile en medio de un proceso constituyente y de un nutrido año electoral: presidenciales (21 de noviembre y 19 de diciembre), parlamentarias y consejeros regionales (21 de noviembre), primarias (18 de julio) y municipales y convencionales constituyentes (15 y 16 de mayo).

A esto se añadía una insólita oposición de pequeños grupos desorganizados, auto-denominados LGBTIQA+, que consideraban al matrimonio igualitario como un tema desplazable, pues el país debía, a su juicio, solo atender temas "relevantes o urgentes". Si bien esta arremetida, que usaba el mismo argumento de los sectores abiertamente homofóbicos, tuvo nulo impacto en la tramitación de la ley, sirve para graficar otras de las particularidades del proceso chileno.

Así, en medio de las restricciones sanitarias, de las incertidumbres por la pandemia y por los resultados electorales y del trabajo de redacción de un nueva Carta Magna en manos de un Convención paritaria, Chile dio el vamos al matrimonio igualitario, sin que la aprobación o promulgación causarán un mayor impacto públicomediático que cuando el Presidente anunció la urgencia a la iniciativa. ¿Y es que cuál revuelo público podría haber si ya todo estaba dicho, superado y madurado en la sociedades, siendo solo la clase política la atrasada? Ninguna hazaña hubo por parte del Poder Político al aprobar la ley. El Estado solo se puso a tono con los tiempos.

El incontrarrestable, significativo y real impacto fue en la calidad de vida de las parejas del mismo sexo y de las familias homoparentales que dejaron de ser segunda categoría frente a los ojos del Estado y podrán acceder en igualdad de condiciones al matrimonio y a los derechos que éste garantiza, sin la discriminación y los abusos homofóbicos que, ahora, son del pasado.

La particularidades del proceso reflejan que si bien Chile entró a un reducido grupo de países que en el mundo cuenta con matrimonio igualitario, el Estado en relación a su realidad local, e incluso regional, llegó tarde, excesiva e injustificadamente tarde y en un momento de máxima peligrosidad, pues nada garantizaba que el candidato presidencial fascista, José Antonio Kast, no fuese electo, ni nada asegura que en la nueva composición del Congreso Nacional, disponible desde marzo del 2022, hay, al menos discursivamente, un apoyo mayoritario al matrimonio igualitario.

Sí, el 2021 fue de turbulencias, de una incesante lucha por el matrimonio igualitario que se dividió en dos tiempos con corte histórico el 1 de junio, como se analiza y describe a continuación.

### Primer semestre: contra viento y marea

Crudo fue el panorama para el matrimonio igualitario en 2020. Sin ir más lejos, en el anterior Informe Anual de Derechos Humanos de la Diversidad Sexual y de Género el tema fue analizado bajo dos títulos: "Senado resta toda relevancia al matrimonio igualitario: lo debatió apenas dos veces en un año" y "fin del Acuerdo de Solución Amistosa".

Con un Ejecutivo que desde el primer día se mostró opositor a la norma, aunque con ambigüedades de por medio, y un Congreso Nacional insensible con la temática y, por cierto, con la calculadora en la mano para obstaculizar que la iniciativa saliera bajo un Gobierno de Derecha; el futuro del matrimonio igualitario hasta mediados del 2021 era incierto. Si bien se sabía que si se votaba habría un triunfo sólido, no había fecha para ello. Y nadie del Estado estaba interesado en poner plazos. O al menos en jugársela por fijar plazos. A ello se añadía que las urgencias y preocupaciones del país, dado el carácter histórico de las mismas, eclipsaban otros debates o luchas, por más históricas que fueran y por más antiguas que fueran las deudas aún sin saldar con los derechos humanos LGBTIQA+.

<sup>[2]</sup> Todos los antecedentes sobre el ASA, y los avances o estancamientos que fue experimentando, se encuentran en el XV, XVI, XVII, XIII y XIX Informe Anual de los Derechos Humanos de la Diversidad sexual y de Género publicados en movilh.cl

En un contexto hostil, el Movilh optó en el primer semestre del 2021 por criticar con fuerza y en igualdad de condiciones tanto al Congreso Nacional, como al Gobierno, y por cierto al Estado en general. No olvidemos que, a diferencia de otros países donde el Poder Judicial jugó un rol protagónico para impulsar el matrimonio igualitario al dictar sentencias a favor de parejas a las cuales se les negaba ese derecho, en Chile los tribunales fueron más bien espectadores de esta temática, limitándose a señalar que el Congreso Nacional era el único llamado a efectuar el cambio. Y lo decían, como si la igualdad ante la ley no fuera un derecho constitucional o como sino fuese una obligación de los tribunales efectuar controles de convencionalidad, por ejemplo en relación a la Convención Americana de DDHH que, según la propia Corte Interamericana de DDHH, garantiza el matrimonio a las parejas del mismo sexo, aspecto establecido en la opinión consultiva OC-24/17 "Identidad de género, e igualdad y no discriminación a parejas del mismo sexo"3.

La convicción de que la demora en la tramitación era tanto responsabilidad de los homofóbicos, como de quienes se declararan pro-matrimonio igualitario, pero nada hacían al respecto, era total en el Movilh.

El primer paso fue poner en cuestión la "honorabilidad internacional del país", informando a la CIDH que el Estado no estaba cumpliendo con el ASA y, por tanto, el Movimiento LGBTIQA+ optó por continuar con la demanda internacional contra Chile, decisión comunicada al órgano interamericano el 25 de mayo del 2020<sup>4</sup>.

Ya con la amenaza cierta de que el caso fuese elevado a la Corte Interamericana de DDHH, el plan siguiente fue evidenciar durante todo el 2021 la desidia del poder político, en el marco de una travesía que durante el primer semestre el Movilh corrió solo.

Como resultado, por primera vez un presidente de la República, Sebastián Piñera, fue incluido en el Ranking Anual de la Homofobia y Transfobia<sup>5</sup> por oponerse el matrimonio igualitario, mientras que desde comienzos del 2021 el Movilh comenzó públicamente a calificarlo de homofóbico, en particular tras nuevas arremetidas de odio del Gobierno

El 20 de enero el Subsecretario del Ministerio General de la Presidencia, Máximo Pavez (UDI), señaló a La Tercera que en torno al rechazo del presidente Piñera al matrimonio igualitario "no hay una posición distinta a lo que se manifestó en el programa de gobierno. (...) No consideramos razonable innovar".

A la par anunció que "el gobierno va a reponer la indicación presentada en la Cámara de Diputados en la cual se busca que tengan preferencia en la adopción aquellas personas que puedan dotar a los niños de una familia representando el rol del padre y madre, tal como lo propusimos en la Cámara de Diputados y que no fue aprobado. Así que lo vamos a reponer".

"Existe una convicción en el gobierno de que lo importante es el interés superior del niño y para poder resguardar eso es que el Presidente tiene una convicción de que lo mejor para el niño es tener un ambiente de familia donde preferentemente se puedan identificar los roles de padre y madre", finalizó.

El Movilh reaccionó con un comunicado y una activa campaña de repudio por redes sociales.

"El país ha cambiado radicalmente y durante 30 años nos hemos preocupado de contribuir a avances y transformaciones socioculturales a favor de todos los derechos LGBTIQA+. Estamos en la recta final de la igualdad legal y si hasta ahora Piñera no entiende que el matrimonio igualitario y la adopción homoparental contribuyen a la dignidad de todas las familias, junto con promover el interés superior del niño; significa que el Presidente lisa y llanamente ha decidido permanecer anclado en superticiones, religiones o creencias que, a estas alturas, ni siquiera representan el sentir de la mayoría del país. Visto así, se aprecia una persistencia homofóbica en materia de igualdad legal. Ni siguiera el estallido social llevó a Piñera a repensar sus posiciones o al menos a investigar y educarse más en estas materias, respetando de paso los estándares internacionales de derechos humanos".

Por su lado, y en una carta al director publicada el 22 de enero por La Segunda, Iguales sostuvo que "resulta incomprensible que el Ejecutivo anuncie indicaciones al proyecto de adopción que (...) establecen prioridad a los roles de madre y padre enfatizando la discriminación a parejas del mismo sexo y atentando contra el bienestar de los niños".

Aprovechando el Día del Amor, el Movilh lanzó además el 14 de febrero la primera y única campaña que criticó directamente al presidente de la República por oponerse al matrimonio igualitario, difundiendo un video con sus dichos contra la iniciativa<sup>6</sup>, así como una declaración pública.

"En la actualidad matrimonio igualitario está prohibido en Chile porque un reducido grupo de personas que está en el Poder Ejecutivo y Legislativo así lo ha decidido, lo que además de violentar los derechos

<sup>[3]</sup> Más antecedentes sobre la Opinión Consultiva en el XVI Informe Anual de los Derechos Humanos de la Diversidad Sexual y de Género, publicado en movilh.cl.

<sup>[4]</sup> Todos los antecedentes sobre esta determinación se encuentran en el XIX Informe Anual de los Derechos Humanos de la Diversidad Sexual y de Género, publicado en movilh.cl.

<sup>[5]</sup> Se refiere al Ranking Anual 2020, que se dio a conocer en marzo del 2021.

<sup>[6]</sup> https://www.youtube.com/watch?v=kVxp4SaitzI

humanos, es contrario al deseo de la mayoría de nuestro país, la cual es favorable a esa ley. Es tiempo ya que, por razones fundadas en los derechos humanos y en la democracia, quienes están en el poder terminen con las desigualdades legales basadas en la orientación sexual o la identidad de género de las personas", sostuvo el Movimiento en comunicado.

En un contexto donde el poder político entregaba sus tiempos y esfuerzos a las distintas carreras electorales, el 12 de abril el Movilh arremetió luego contra el Congreso Nacional, enviando una carta a todos/ as los/as senadores/as y diputados/as.

"El Congreso Nacional, tiene una deuda histórica con las parejas del mismo sexo y con las familias homoparentales, por lo cual los/as animamos a superar estas problemática mediante el decidido avance del matrimonio igualitario en breve, de manera de terminar con la vulnerabilidad e injusticia que día a día dañan la calidad de vida de personas solo en razón de su orientación sexual", señaló la misiva.

Dado que el tema no avanzaba por sí solo, en mayo hubo un nuevo giro en la estrategia y se optó por relacionar la demanda por el matrimonio igualitario con la denominada "Agenda de Mínimos Comunes", surgida el 30 de abril en una reunión de Piñera con los/ as presidentes/as del Senado, Yasna Provoste, y de la Cámara, Diego Paulsen.

Si bien la iniciativa tenía como fin original implementar medidas sociales a favor de las personas afectadas por la pandemia, con el correr de los días se fue instalando la idea de incluir en la agenda temas de derechos humanos, pero en ninguna de las propuestas que circulaban públicamente se mencionaba a las personas LGBTIQA+.

El 7 de mayo el presidente del Movilh, Gonzalo Velásquez, solicitó por carta a Provoste que "desde su cargo lidere y contribuya a hacer efectivo el respeto a los derechos humanos de las personas LGBTIQA+ en Chile, cuyos atropellos aumentaron un 14,7% el último año, sumando 1.266 abusos en 2020, la cifra más alta conocida hasta ahora".

"En momentos cuando se dialoga con el Gobierno la posibilidad de sumar un quinto capítulo sobre derechos humanos a la denominada "Agenda de Mínimos Comunes", solicitamos a usted que gestione y lidere que este proceso incluya también la realidad de las personas LGBIQ+, de las familias homoparentales y de las parejas del mismo sexo. Siempre ha habido excusas para excluir a nuestra realidad de los grandes acuerdos-país. Es tiempo de superar esta situación. De esa manera se saldarán deudas con un sector históricamente discriminado y se entenderán a los derechos humanos de una manera integral, amplia y universal acorde a los estándares internacionales", señaló la carta que pedía poner sobre la mesa el matrimonio igualitario.

El mismo día, el Movilh solicitó al presidente Comisión de Constitución, Legislación y Justicia del del Senado, Pedro Araya (IND), que reactivara la tramitación del proyecto de ley de matrimonio igualitario.

Las gestiones, empero, chocaban una y otra vez contra una pared, por lo que el 24 de mayo el Movilh envió una de sus cartas más duras al Congreso Nacional, además de iniciar una campaña que terminó recolectando 28.083 firmas a favor del proyecto de ley.

En la carta se alegaba que en "el Congreso Nacional hay dos sectores. Uno minoritario que rechaza al matrimonio igualitario y uno que hace más de una década es mayoría y dice apoyar esta ley, pero aún no la aprueba. Por tanto, la responsabilidad de que aún las parejas del mismo sexo y las familias homoparentales no cuenten con igualdad legal es tanto de los que se declaran pro-LGBTIQ+, pero no llevan su discurso a la práctica, como de quienes se oponen a esta ley, pues el efecto que provocan es, en términos prácticos, el mismo".

A la par por redes sociales el Movimiento desplegó una campaña cuyo cartel señalaba que "¿este Congreso Nacional se irá sin haber aprobado el matrimonio igualitario? ¿Dónde está el apoyo que hace casi más de una década manifiesta la mayoría de los congresistas a esta ley? Apoyar la causa LGBTIQ+ no es un discurso. Debe ser una acción".

El proyecto en cuestión había ingresado a la Comisión de Constitución, Legislación y Justicia del Senado el 5 de septiembre del 2017 y se encontraba literalmente estancado en la misma instancia a mayo del 2021.

Dado que los esfuerzos del Movimiento en el primer semestre del 2021 no sensibilizaban al apático poder político, el Movilh ya hastiado tomó la determinación de iniciar una inédita movilización en junio; con motivo del Día del Orgullo y de los 30 años de la organización; que incluía la toma del Congreso Nacional, del Ministerio de Justicia y de Derechos Humanos y de los partidos políticos que se declararan pro derechos LGBTQA+. A las tomas, cuyas fechas solo se sabrían al momento de ocurrir, se añadirían manifestaciones sin autorización en espacios públicos de las regiones Metropolitana, de Valparaíso y Biobío, así como la intensificación de las gestiones ante la CIDH por el incumplimiento del ASA.

El anuncio de esta nueva arremetida; que se encomendó encabezar al histórico dirigente del Movilh, Rolando Jiménez; tendría lugar el 1 de junio, cuando se esperaba que Piñera no dijera nada, de nada sobre la temática LGBTIQA+ en su cuenta pública ante el Congreso Nacional. Pero el Presidente, tenía otros inesperados planes.

## Piñera: del sorpresivo anuncio a la histórica promulgación

El período del primer gobierno de Piñera (2010 al 2014) fue uno de los más fructíferos para la causa LGBTIQA+ con avances en leyes y políticas públicas de carácter pionero<sup>7</sup>.

Luego, con el segundo mandato de la presidenta Michelle Bachelet (2014–2018), la situación LGBTIQA+ mejoró aún más y en lo referente al matrimonio igualitario se dio el paso más decisivo: la mandataria transformó a la temática en un asunto de Estado al firmar en 2016 ASA, donde se reconoció explícitamente que la negación del vínculo legal a las parejas del mismo sexo constituía una violación a los derechos humanos y, por tanto, de Chile se comprometió a nivel internacional a aprobar la ley en nuestro país<sup>8</sup>.

Antes de que Piñera triunfara en las elecciones que lo llevarían a un segundo mandato (2018–2022) se llegó a la convicción, al menos al interior del Movilh, de que en términos personales él estaba de acuerdo con el matrimonio igualitario y, en consecuencia, asistía la idea de que tarde o temprano lo haría público.

Sin ir más lejos, en mayo del 2018 el Gobierno de Sebastián Piñera firmó un addendum donde apoyó el ASA y, si bien el mandatario seguía pronunciándose públicamente contra el matrimonio igualitario, la rúbrica era una señal de que al menos no se entrometería en los avances que podría tener la tramitación del proyecto de ley y que, de una u otra manera, se cumpliría con un compromiso de Estado.

Con todo, al 2018, y como siguió ocurriendo después, el Congreso era indiferente con el proyecto de ley. En paralelo, tanto en Chile, como en el extranjero; por ejemplo en Brasil y Estados Unidos; la derecha más extrema estaba llegando a ocupar posiciones de poder inigualables que revitalizan en nuestro país a los sectores más opositores a los derechos LGBTQA+, como la UDI, una buena parte de RN y un naciente Partido Republicano. Junto a ello se silenciaba, perdía poder y se entrega a los designios del Gobierno el único partido de Derecha declarado pro matrimonio igualitario: Evópoli.

Con la ultra-derecha en las nubes, Piñera fue en ese período inmoralmente pragmático, pues la evasión o prevención de tensiones en su alianza fue más relevante que los derechos humanos de sectores históricamente vulnerados, como la población LGBTIQA+. El estallido social del 18 de octubre del 2019, lo cambió todo.

Chile, no quería ir por el rumbo que la élite política venía determinando. Los pueblos deseaban otro camino y, contra viento y marea, comenzó un proceso, aún en curso, que implicó el inicio de un nuevo ciclo, donde el poder estatal ya no está en manos de quienes lo ostentaban en los últimos 30 años, pues, por decisión democrática, pasó a nuevas fuerzas y corrientes.

En medio de este cambio revolucionario, acompañado de un Gobierno con altísimos niveles de rechazo y un oficialismo que renegaba y abandonaba a su suerte a La Moneda, Piñera debe haber llegado a la convicción que nada tenía que perder, e incluso algo podía ganar, si daba un giro en torno al matrimonio igualitario. Un giro presidencial, se insiste, pues a nivel personal todo indica que hace bastantes años no tenía ningún problema con el matrimonio lésbico o gay.

El 1 de junio, cuando llegó a rendir su última cuenta pública en el Congreso Nacional, nadie sabía lo que Piñera anunciaría, tomando por sorpresa a todo un país y a toda la coalición "oficialista" que lo había abandonado tras el estallido.

"En nuestro primer gobierno impulsamos el Acuerdo de Vida en Pareja. Hoy pienso que debemos profundizar sobre el valor de la libertad, incluyendo la libertad de amar y formar familia con el ser amado. Y también el valor de la dignidad de todas las relaciones de amor y afecto entre dos personas", dijo el presidente, impactando a su entorno.

"Pienso que ha llegado el tiempo de garantizar esa libertad y esa dignidad a todas las personas. Pienso que ha llegado el tiempo del matrimonio igualitario en nuestro país. Por estas razones, anunciamos que pondremos urgencia al proyecto de ley que lleva años en el Congreso y que establece el matrimonio igualitario entre todos nuestros compatriotas (...) De esta forma, todas las personas, sin distinguir por orientación sexual, tendrán derecho a vivir el amor y formar familia, con toda la protección y dignidad que ellas necesitan y merecen", apuntó, mientras algunos movimientos LGBTIQA+ o estaban incrédulos, paralizados o expectantes con el anuncio.

Un artículo de La Tercera, publicado el 5 de junio, retrata en buena medida el aire que se respiró en el Congreso Nacional y en Palacio con el golpe del Presidente.

"Esa tarde del lunes, Piñera aun no estaba 100% seguro de lanzarse. Si bien llevaba un buen tiempo masticándolo –algunos ministros recuerdan que en comités políticos antiguos que el Presidente les planteó que reflexionaran en torno al tema– no fue sino hasta mediodía del martes 1 de junio, en Cerro Castillo, cuando

<sup>[7]</sup> Más antecedentes en los X, XI, XII y XIII Informes Anuales de DDHH de la Diversidad Sexual y del Género publicados en movilh.cl

<sup>[8]</sup> Todo sobre el ASA en los XV, XVI, XVII, XVIII y XIX Informes Anual de Derechos Humanos de la Diversidad Sexual y de Género, publicados en movilh.cl

le dio el vamos definitivo. Y la imagen no deja de ser simbólica: Piñera no da ese "vamos" delante de su equipo político, ni de su jefe de asesores, ni de un presidente de partido. Sebastián Piñera lo hace con su núcleo más estrecho, cuyo principal trabajo es la figura del Mandatario. No los partidos, ni la coalición, ni siquiera el posible sucesor en La Moneda", dijo el diario.

"Piñera se quitó la mascarilla y comenzó a desgranar su última cuenta presidencial a las 15:05. Los precandidatos presidenciales no habían sido invitados, se dijo, por el aforo. Dirigentes y parlamentarios de Chile Vamos seguían esto por televisión; unos pocos en el salón. Doce de sus ministros hacían lo mismo sentados de piernas cruzadas en el Salón Montt Varas", relató el medio.

"Casi al mismo tiempo comenzó a circular una copia del mensaje presidencial. Ni una sílaba sobre la inminencia. Después, cuando ya estaba todo consumado, en La Moneda explicarían que excluyeron ex profeso el anuncio para que no se filtrara", añadió.

"Llevaba 13 minutos y 25 segundos cuando largó su "pienso que ha llegado el tiempo del matrimonio igualitario en nuestro país". Su gabinete quedó estupefacto. En el Salón de Honor, la mascarilla del senador UDI Juan Antonio Coloma no tapaba su molestia. Su compañera de bancada, Ena von Baer –que entre la primera y segunda vuelta del 2017 había recorrido regiones a la caza de votos evangélicos en manos de (precandidato presidencial) José Antonio Kast-, había dejado en pausa una reunión para observar el evento por tevé. Perpleja, decidió dejar de verlo y volver a sus asuntos", añadió.

Según La Tercera "dirigentes y legisladores UDI se volcaron a sus celulares. Algunos llamaron directamente al jefe de asesores del Segundo Piso en demanda de una explicación. En vano. Cristián Larroulet también se había enterado por televisión", finalizó el diario.

El anuncio lo cambió y agitó todo, junto con demostrar la excesiva debilidad de los sectores opositores al matrimonio igualitario, así como el sobre-exagerado oído que le habían prestado a los mismos las élites de la Izquierda, del Centro y de la Derecha, pues fueron pocos, muy pocos lo que rechazaron públicamente la medida y, muchos de quienes lo hicieron, tuvieron la inusual cautela de no incurrir en una homofobia explícita o cavernaria.

Desde el Gobierno los/as ministros/as de la Mujer y la Equidad de Género, Mónica Zalaquett y de Bienes Nacionales, Julio Isamit, salieron a decir que solo creían en el matrimomio heterosexual.

"Yo he sido siempre clara, toda mi vida he creído que el matrimonio es entre un hombre y una mujer, pero también tengo la convicción que este tema se tiene que discutir en nuestro país" dijo la ministra (Canal 13, 4 de junio).

"Creo en el matrimonio entre un hombre y una mujer. Los temas políticos fundamentales (como el matrimonio) tienen relación con nuestra visión de sociedad. Esta visión incluye posiciones en relación a la comunidad política, a la sociedad civil y a la familia". El presidente, añadió el ministro Isamit "tiene la facultad para tomar las decisiones que le parezcan (...) pero cuando se trata de temas políticos fundamentales, que no estaban en el programa de gobierno, es lógico y natural que todos los miembros de la coalición tengamos libertad de acción". (El Mercurio, 6 de junio).

El senador Juan Antonio Coloma (UDI) señaló a los medios que "no me gusta ser sorprendido, esto es una coalición, aquí hay un programa, un conjunto de cosas que vamos a hacer. A mí en lo personal no me parece. No es que yo lo apoye o no, acá hay una coalición que planteó un avance de la sociedad de otra naturaleza, dejando los espacios para que cada uno tenga su opinión, pero en ese punto no hubo acuerdo porque el matrimonio como tal, para muchos, es entre un hombre y una mujer". (La Tercera, 1 de junio).

Su opinión fue similar a la del senador Francisco Chahuán (RN): "este es un tema que no había sido conversado con la coalición de gobierno, es un tema que hay que estar a la espera de cómo llegue el proyecto. Nosotros sostenemos que el matrimonio es una institución entre un hombre y una mujer y ya habíamos avanzado en un Acuerdo de Vida en Común", dijo. (Radio Activa, 1 de junio).

En tanto, el senador Iván Moreira (UDI) sostuvo en su Twitter el 1 de junio que "el Presidente tiene prioridad para el matrimonio gay, para anunciar la agenda de la izquierda, pero no hay ninguna noticia relevante para la postergada clase media. Injusto", a lo que su compañera de partido, la congresista Luz Ebensperger, añadió que el matrimonio igualitario "es un tema que nos divide como sociedad y como coalición. En un tiempo que necesitamos unidad, no me parece prudente poner en la palestra temas que nos dividen" (Nuevo Poder, 1 de junio).

La senadora de la UDI, Jacqueline Van Rysselberghe, añadió que el anuncio de Piñera "en general hace mal al país, no solo a la campaña presidencial, los temas que polarizan, creo que no es necesario. Las cosas tienden a caer por su propio peso, por eso yo no entiendo por qué el presidente hizo esta cuestión (...) Estoy en contra del matrimonio igualitario" (Radio Biobío, 2 de junio)

A su vez la diputada evangélica Francesca Muñoz (RN) consideró que "Chile no está pidiendo matrimonio igualitario, es un gran error ponerle urgencia a este proyecto" (Radio ADN, 3 de junio), mientras su par, Leonidas Romero, dijo en su Twitter que "me alegro de no estar presencialmente en la cuenta pública de Piñera, me habría retirado del salón ya que traicionó a los cristianos que votamos por él", a lo cual el congresista del mismo partido Eduardo Durán, añadió que "Piñera se olvidó de sus compromisos de campaña, ahora dice que va a impulsar matrimonio igualitario. Esto es un engaño a electorado que confió en su palabra" (El Dínamo, 1 de junio)

Por último, el presidente de la Cámara, Diego Paulsen (RN), señaló que "en muchos proyectos la coalición de gobierno ha estado dividida, no es el primer tema en que vamos a tener divisiones entre nosotros. Yo voy a estudiar el proyecto, y una vez que llegue a la Cámara y viendo como esté, votaré a favor o en contra. Creo en la libertad de las personas, creo en el amor entre las personas, y no soy quien, para que aun cuando profese una determinada religión, estar en contra de un determinado proyecto".

El shock en algunos/as congresistas dejaba en claro que poco o nada habían masticado el mensaje presidencial, pues pedían conocer el proyecto, en circunstancias que Piñera fue enfático en señalar que le daría urgencia a la misma iniciativa legal que había sido redactada por el Gobierno de Bachelet e ingresada al Parlamento en 2017.

En tanto, desde el movimiento LGBTIQA+ la Fundación Iguales señaló en comunicado que "este apoyo desde el actual gobierno es algo inédito, que nos sorprende. Estamos empezando el mes del orgullo y sacar adelante este proyecto es dar el debido reconocimiento e igualdad de trato a las familias diversas", mientras el Movilh a través de su twitter resaltó que "Sebastián Piñera da un vuelco histórico para su sector político: se manifiesta a favor del matrimonio igualitario y anuncia urgencia al proyecto de ley presentado por la presidenta Michelle Bachelet".

En el mensaje había dos aspectos que no tenían respuestas. Uno era el tipo de urgencia que daría Piñera al proyecto de ley y el otro si presentaría indicaciones que podrían debilitar la propuesta igualitaria de Bachelet.

Se sumaban a dichas dudas múltiples incertidumbres: ¿qué garantías había de que Piñera cumpliría?, ¿cómo enfrentar la tentación en la Oposición de boicotear el proceso para no dar el crédito al Gobierno de Piñera?, ¿cómo afectaba o no el período electoral el avance de la tramitación?

Todo motivó a una parte del movimiento LGBTIQA+ a instalarse el 2 de junio a primera hora en el frontis de La Moneda, a objeto de que "las palabras no se las lleve el viento", y para gestionar al instante reuniones con sus ministros/as con el fin de conocer de primera fuente el camino que Piñera tenía planeado transitar. Al llegar a Palacio, el Movilh dejó una carta para el mandatario donde se pedía que diera la urgencia de "discusión inmediata" y que desistiera de apoyar cualquier indicación que le restará densidad en derechos al proyecto de ley. El objetivo en el primer caso era dejar en claro que la "urgencia simple" de nada serviría y que cualquier indicación homofóbica, debilitaría totalmente el gesto del Presidente.

Un día después, Piñera dio "suma urgencia" a la tramitación, una buena noticia que dejaba abierta la posibilidad de que la iniciativa se trasformara en ley antes de terminar su mandato. Es más, al final del proceso el Presidente elevó en dos ocasiones la urgencia a "discusión inmediata": el 30 de noviembre y el 6 de diciembre.

Al ser consultado el 2 de junio por Chilevisión-CNN Chile sobre las razones del vuelco, el mandatario explicó que se debió a "la vida, el conocer a mucha gente, el conocer a muchos casos. Esto es una relación de afecto, de amor. No es un tema de izquierda o de derecha ni un tema religioso; los matrimonios religiosos van a seguir siendo entre un hombre y una mujer. Esto es un tema de libertad, de elegir a quien uno quiera amar. Es un tema de protección y dignidad de todas las familias. Es un tema de igualdad ante la ley".

Consideró que cambió de visión al igual "como el (ex) presidente (de EE.UU, Barack) Obama, el presidente (de EE.UU, Joe Biden), la canciller (de Alemania, Angela) Merkel, el (ex) primer ministro (británico David) Cameron".

Añadió que "estamos en el siglo XXI, lo que yo he pedido es que un tema tan importante: que tiene que ver con la libertad, el amor; se pueda tratar en el Congreso (...) Yo no pido a nadie que vulnere su conciencia".

Si bien reconoció que sólo algunos/as ministros/ as sabían sobre el anuncio de urgencia, explicó que el tema "si lo habíamos conversado muchas veces en el comité político, con parlamentarios".

La misma noche, en entrevista con TVN, recordó que "cuando propusimos el Acuerdo de Vida en Pareja" en su primer periodo, muchos de su sector se opusieron, pero "después terminaron votando todos a favor", por lo que esta vez "quiero ver cómo van a votar, porque les quiero decir a todos: ¿Cómo es posible que en el Chile del siglo XXI hayan temas que no se puedan tratar?".

Luego fue la propia CIDH la que salió a "celebrar" el anuncio, resaltando que el proyecto de ley al cual se ponía urgencia había sido elaborado por el Gobierno de Bachelet "en el marco del acuerdo de solución amistosa, propiciado por CIDH, sobre la falta de acceso y reconocimiento del matrimonio igualitario". Dicho acuerdo<sup>9</sup> fue firmado en 2016 por el Estado y el Movilh, luego de que el dirigente del movimiento LGBTIQA+, Rolando Jiménez, interpusiera una demanda internacional por la prohibición del matrimonio a parejas del mismo sexo, contándose para tales efectos con la representación jurídica de los abogados Ciro Colombara, Branislav Marelic y Hunter Carter.

Fruto del acuerdo, el Gobierno de Bachelet redactó el proyecto de ley y realizó foros a lo largo de todo el país, incluyendo en la iniciativa las sugerencias y propuestas de distintos movimientos de la diversidad sexual y de género. Su mandato terminó por presentar la propuesta de ley al Congreso Nacional.

Con el fin de consolidar y de no dejar ningún espacio para desvíos al camino trazado, el 14 de junio del 2021 el Movilh se reunió con el Gobierno, en lo que sería la primera cita del movimiento LGBTIQA+ tras el anuncio presidencial.

En el encuentro estuvieron el vocero de Gobierno Jaime Bellolio, el Ministro de Justicia, Hernán Larraín, la subsecretaria de Derechos Humanos, Lorena Recabarren, el Director del Observatorio de Participación Ciudadana y No Discriminación del Ejecutivo Camilo Cayuqueo, así como los/as vocera del Movilh, Javiera Zúñiga y el dirigente Ramón Gómez, entre otros.

En la ocasión, el Movilh solicitó la permanencia de la suma urgencia al proyecto de ley hasta la aprobación del matrimonio igualitario, el apoyo a la iniciativa que había presentado la ex presidenta Bachelet, o sin indicaciones que restringieran o limitaran ningún derecho ahí contemplado, todo lo cual fue aceptado y apoyado por el Gobierno, con el entusiasmo de Bellolio y una posición más de tribuna de Larraín.Bellolio aprovechó el momento para anunciar que la tramitación del matrimonio igualitario "será un trabajo en equipo" del Gobierno, encabezado por el Ministerio de Justicia y Derechos Humanos e integrado por los ministerios Secretaria General de Gobierno, de la Presidencia y de Desarrollo Social y la Familia.Y en parte así fue. Si bien Larraín, un abierto opositor al matrimonio igualitario, estuvo casi ausente del debate parlamentario, en representación de su Ministerio la Subsecretaria de Derechos Humanos, Lorena Recabarren, jugó un rol protagónico, participando de todas las sesiones, contribuyendo a mejorar la iniciativa, estableciendo intercambios de opiniones de manera periódica con Iguales y el Movilh<sup>10</sup> y contribuyendo a llegar a acuerdos transversales con los/ as congresistas. Especial participación también tuvo en

el Congreso Nacional la ministra de Desarrollo Social y la Familia, Karla Rubilar, cuya gestión fue clave para que la iniciativa fuese promulgada antes de finalizar el 2021, en el marco de un trabajo estrecho realizado con el Movilh.

Tras seis meses de tramitación parlamentaria; donde se avanzó más que en los cuatro años previos; finalmente el 9 de diciembre Piñera promulgó el proyecto de ley. La tarde antes, llamó a Rolando Jiménez, para agradecerle y valorar la lucha que durante 30 años él dio por la causa LGBTIQA+ y que ahora tenía un nuevo fruto, el matrimonio igualitario. Minutos antes de la promulgación, Piñera se reunió en La Moneda con representantes de Iguales y Movilh, Luego, junto a ellos/ as, salió a uno de los patios de La Moneda, donde estaban familias homoparentales, ministros/as, parlamentarios/ as, la Defensora de la Niñez, Patricia Muñoz, representantes de organizaciones sociales, como Acción Gay, y profesionales de las comunicaciones abiertamente LGBTIQA+, entre otros/as.

Ante ellos/as , el Presidente leyó su discurso y luego firmó la ley.

A continuación se reproduce parte del discurso de Piñera:

"Hoy es un día histórico y de grandes emociones. Hoy vamos a promulgar la Ley de Matrimonio Iqualitario.

La verdadera libertad se construye reconociéndonos como iguales en dignidad y derechos. Respetando y valorando la diversidad de identidades y de proyectos de vida. Y esa libertad también debe incluir la libertad de amar (...).

Siguiendo el camino que inició la Presidenta Bachelet, a quien agradezco, y tal como lo dijimos en nuestra última Cuenta Pública, "hoy llegó el tiempo del Matrimonio Igualitario en nuestro país". El tiempo de profundizar en torno al valor de la libertad y la dignidad. El tiempo de consagrar la libertad de amar y formar familia, y el tiempo de la dignidad de todas las relaciones de amor y afecto entre dos personas.

Con la Ley de Matrimonio Igualitario que hoy promulgamos, todas las parejas que así lo deseen, independiente de su orientación sexual, podrán vivir el amor, contraer matrimonio y formar familia, con toda la dignidad y protección legal que necesitan y merecen.

<sup>[9]</sup> https://www.movilh.cl/documentacion/2016/Acuerdo-MO-VILH-Estado.pdf

<sup>[10]</sup> En 2019 y 2020, el Movilh lanzó duras críticas contra Recabarren por incumplir el ASA, llegado incluso a protestar en el frontis del Ministerio de Justicia y Derechos Humanos para exigir su renuncia. La molestia con la Subsecretaria se anclaba además en que antes de asumir en ese cargo, se había manifestado a favor del matrimonio igualitario.

Sabemos que en nuestro país hay posiciones distintas sobre esta materia, que reconocemos como legítimas y respetables. En el pasado, mi mirada fue distinta. Pero, así como es importante en la vida actuar con convicciones profundas, también es importante, y me siento orgulloso, de haber podido desarrollar nuevas perspectivas.

El Estado siempre debe cumplir su rol fundamental de promover una sociedad libre, diversa, tolerante e inclusiva, y evitar que existan discriminaciones arbitrarias o privilegios entre sus ciudadanos (...).

A lo largo de la historia y todavía en el presente, muchos grupos han sido discriminados o perseguidos en función de su religión, sexo, color y orientación sexual. En Chile y en el mundo, los crímenes de odio han aumentado y todos tenemos que unir voluntades para erradicarlos.

Esta ley no repara el sufrimiento que muchos han vivido, pero sí significa un paso adelante hacia una sociedad más libre, más tolerante con la diversidad, más humana, más justa y más bondadosa.

Esta Ley nos permite recordar y agradecer a tantas mujeres y hombres que dedicaron sus vidas a luchar contra las discriminaciones por su orientación o identidad sexual. Y también nos permite decirle a nuestros familiares, amigos, vecinos o compañeros de estudios o trabajo, que alguna vez se sintieron vulnerables y discriminados por amar a alguien del mismo sexo, que no hay nada malo en ello, que no tienen nada de que avergonzarse ni esconder.

Queremos agradecer también al Congreso, que aprobó esta Ley con apoyo de todos los partidos políticos, y muy especialmente, a los representantes de organizaciones de la sociedad civil que han luchado largamente por esta causa y porque ésta y otras leyes puedan ver la luz del sol, como Rolando Jiménez y Gonzalo Velásquez, representantes del Movilh e Isabel Amor, representante de Iquales.

Hoy es un buen día para la libertad, la familia, la dignidad, la igualdad y el aprecio y respeto por la diversidad de la sociedad chilena.

Porque el amor es amor. ¡Viva el amor, viva Chile! Muchas gracias.

## • Fin del primer trámite en el Senado

Mientras en 2020 el Senado apenas discutió dos veces el proyecto de ley de matrimonio igualitario; el 15 de enero y el 16 de octubre; en el 2021 se iba por similar camino, pues antes del anuncio de Piñera la Comisión de Constitución, Legislación, Justicia del Reglamento había debatido la temática solo en en una ocasión, el 11 de marzo, el mismo día cuando el congresista Alfonso De Urresti (PS) terminaría su cargo en la presidencia de la entidad y asumiría en su reemplazo Pedro Araya (IND).

La nueva Comisión, con Araya a la cabeza, quedó integrada por De Urresti, Francisco Huenchumilla (DC), Rodrigo Galilea (RN) y Luz Ebensperger (UDI).

El 11 de marzo la Comisión sellaría el camino que daría a la tramitación: no introduciría ningún cambio al proyecto de ley y solo se dedicaría a debatir y discutir las 14 indicaciones contra la iniciativa que habían sido presentadas casi un año antes, el 11 de mayo del 2020, por los senadores UDI Iván Moreira y Víctor Pérez<sup>11</sup>.

Luego de que Piñera diera la suma urgencia, la Comisión de Constitución reactivó la tramitación el 15 de junio, el mismo día que el Movilh dialogó sobre el tema con la relatora de la CIDH, Flavia Piovesan, con miras a dar un nuevo seguimiento al ASA y a la denuncia internacional que ese movimiento había presentado contra Chile por la prohibición del matrimonio igualitario

En la sesión del 15 de junio en la Comisión de Constitución, el Gobierno dio una nueva clara señal de que su intención era sí o sí aprobar la iniciativa antes de terminar su mandato: al debate asistieron el ministro de Justicia y Derechos Humanos, Hernán Larraín, el ministro secretario general de la Presidencia, Juan José Ossa, la ministra de Desarrollo Social y la Familia, Karla Rubilar y la Subsecretaria de Derechos Humanos, Lorena Recabarren, quienes defendieron por primera vez en el Congreso Nacional el proyecto de ley.

En el transcurso de este nuevo proceso las homofóbicas indicaciones de Pérez y Moreira fueron defendidas en la Comisión de Constitución por éste último y por Ebensperger con el fin de prohibir el matrimonio igualitario.

Entre otros puntos, las odiosas indicaciones impedían la separación de bienes para parejas del mismo

<sup>[11]</sup> En 2020 el senador Juan Ignacio Latorre (RD) había presentado otras 12 indicaciones con el objetivo de eliminar vacíos y dar mayor consistencia a los derechos de filiación, sin embargo, el parlamentario terminó por retirar sus propuestas el 15 de junio del 2021 con el fin, según señaló, de contribuir a acelerar la tramitación. Esto llevaría al Movimiento LGBTIQ+ a impulsar sus propias enmiendas en la Cámara de Diputadas y Diputados.

sexo y prohibían optar tras el casamiento al régimen de participación en los gananciales. También negaban a parejas lésbicas los derechos de filiación sobre hijos/as nacidos/as mediante técnica de reproducción humana; prohibían derechos de filiación a parejas del mismo sexo unidas en matrimonio; eliminaban del proyecto de ley los conceptos "progenitores" y "paternidad o maternidad" de parejas del mismo sexo y negaban el reconocimiento en Chile de los matrimonios igualitarios contraídos en el extranjero.

Las indicaciones fueron perdiéndose una a una en las votaciones que tuvieron lugar 11 de marzo, el 23 de junio y el 29 de junio.

Votaron contra las indicaciones de Moreira y Pérez los/as senadores/as Araya, Francisco Huenchumilla, Alfonso de Urresti y Rodrigo Galilea, mientras que Luz Eliana Ebensperger las apoyó.

El camino no estuvo exento de tropiezos, pues el 16 de junio se postergó la votación de las indicaciones dado que expusieron sectores homofóbicos durante largos minutos, con el claro fin de dilatar la tramitación, aspecto denunciado públicamente ese mismo día por el Movilh.

Junto a Ebensperger y Moreira, ese día intervino la profesora de la Universidad de Los Andes María Rodríguez. Similar situación ocurrió el 22 de junio, cuando se dedicaron apenas dos minutos para la votación de las indicaciones debido al excesivo tiempo de exposición otorgado a esa misma docente y a la profesora de la Pontificia Universidad Católica de Chile, Carolina Salinas.

Según Rodríguez al matrimonio "es una creación que emana de la naturaleza humana, de la condición sexuada que las personas tienen y que está diseñada como varón y mujer. En tal sentido, la complementariedad sexual entre ambos y la perpetuación de la especie humana sobre la tierra, es precisamente lo que forma y fundamenta el matrimonio". A la par destacó que "el matrimonio haya existido siempre y que este consorcio de vida en común siempre ha sido un hecho social importante y es un momento festivo entre un hombre y una mujer. Incluso, en sociedades en donde se aceptó socialmente la homosexualidad no existen registros de que se reconociera matrimonios entre personas del mismo sexo"<sup>12</sup>.

Por último exhortó a los miembros de la Comisión "a que se elabore un proyecto ley que permita que todos y a todas (heterosexuales) casarse de la forma que escojan, ya sea religiosa o no religiosa, y que los que no quieran contraer el vínculo conyugal civil puedan casarse solo por el matrimonio religioso de la fe que profesen", calificando

[12] Segundo Informe de la Comisión de Constitución, Legislación, Justicia y Reglamento del Senado. Página 28 de incomprensible que el Estado niegue "efectos civiles al matrimonio religioso celebrado en Chile"<sup>13</sup>.

Por su lado, Salinas, dijo que "a propósito del presente proyecto de ley, pareciera haber entonces un contrasentido debido a que se intenta subsumir toda unión afectiva o toda tipología familiar bajo el concepto de matrimonio, dando cabida forzosamente a realidades distintas dentro de un mismo concepto"<sup>14</sup>.

A su juicio, "una función entre varias que cumple la familia es la equidad intergeneracional, la que se cumple solamente si existe la generación al interior dentro del matrimonio. Pero en una pareja de adultos del mismo sexo que no tienen hijos, la equidad se podría producir solamente de manera sincrónica, nunca diacrónica. Es decir, no podría darse nunca entre generaciones en el transcurso del tiempo"<sup>15</sup>, por lo que el proyecto de ley "es el reflejo de una ideología que pretende transformar el derecho de familia mediante la modificación de su base principal: el matrimonio"<sup>16</sup>.

La visiones prejuiciosas, falsas e ignorantes; como las expuestas; fueron vencidas y finalmente, el 29 de junio, la Comisión de Constitución del Senado aprobó y despachó a Hacienda el proyecto de ley sin introducir ningún cambio relevante a la iniciativa original tras cuatro años de tramitación.

El 6 de julio fue el turno de la Comisión de Hacienda del Senado, encabezada por Ximena Rincón (DC), la cual aprobó por tres votos contra dos el informe financiero del proyecto de ley. Votaron a favor Rincón, Ricardo Lagos Weber (PPD) e Isabel Allende (PS) mientras que Juan Antonio Coloma (UDI) y José García-Ruminot (RN) se pronunciaron en contra solo porque son contrarios al matrimonio igualitario

La sesión explicitó que el matrimonio igualitario tenía un costo económico marginal para el Estado, un argumento más a favor de la iniciativa que reflotaba la crítica contra el injustificado retraso de la tramitación parlamentaria.

El gasto por concepto de actualización del sistema informático del Registro Civil, ascendía a 334 millones 800 mil pesos por una sola vez, a lo cual se sumaban 94 millones 860 mil pesos anuales por asignación familiar, aporte familiar permanente en marzo y otorgamiento de prestaciones previsionales.

Luego de gestionar ante Rincón que el proyecto fuese votado con celeridad por la Comisión de Hacienda, lo cual se cumplió, el Movilh solicitó desde el 2 de junio similar gesto a la presidenta del Senado, Yasna Provoste,

<sup>[13]</sup> Ibidem, página 29[14] Ibúdem, página 37[15] Ibídem

<sup>[16]</sup> Ibídem, página 40.

mientras que el 19 de julio dicho movimiento envió una carta a todos/as los/as senadores/as demandando que votaran a favor del matrimonio igualitario y cumplieran con los compromisos internacionales asumidos por Chile.

Dos días después de la aprobación del proyecto en la Comisión de Hacienda, Provoste contestó por carta al Movilh que "la Mesa del Senado hará todas las gestiones que estén a nuestro alcance para acelerar la tramitación de dicho proyecto de ley. Los informes de la Comisión de Constitución, Legislación y Justicia y Reglamento y de la Comisión de Hacienda ya dieron cuenta en la Sala del Senado y, según la urgencia dada por el Gobierno, el mensaje debe estar en la tabla de sesiones de la próxima semana legislativa".

Añadió que "para esta Presidenta el tema es prioritario, por lo cual en la próxima reunión de los Comités Parlamentarios, donde se definen las tablas, propondremos que la iniciativa sea despachada al segundo trámite a la brevedad".

Finalmente, y tras cuatro años, el 21 de julio el Senado aprobó y despachó a Cámara el proyecto de ley.

El Senado efectuó tres votaciones: la referente a artículos con quórum; las relacionadas con las normas generales del matrimonio igualitario y las vinculadas con la filiación y adopción homoparental. La primera fue aprobada por 28 votos a favor y 13 en contra, la segunda por 28 a favor y 14 en contra y la tercera por 29 a favor y 14 en contra.

En contra votaron los/as senadores/as UDI Claudio Alvarado Andrade, José Miguel Durana Semir, Luz Ebensperger Orrego, Iván Moreira Barros, David Sandoval Plaza, Jacqueline Van Rysselberghe Herrera, Ena Von Baer Jahn; los/a RN Juan Castro Prieto, Franscisco Chahuán Chahuán, José García Ruminot, Manuel José Ossandón Irarrázaval y los/as independientes de Derecha, Carmen Gloria Aravena Acuña y Kenneth Pugh Olavarría

En tanto, Alejandro García Huidobro Sanfuentes (UDI) votó en contra del matrimonio igualitario, pero a favor de la adopción y filiación homoparental.

#### Cámara y Comisión de Constitución: el perfeccionamiento del proyecto de ley

Dos eran los desafíos que el movimiento LGBTIQA+ debía enfrentar en la Comisión de Constitución de la Cámara de Diputadas y Diputados, presidida por Marcos Ilabaca (PS) e integrada por Jorge Alessandri (UDI), Karol Cariola (PC), Juan Antonio Coloma (UDI, Luciano Cruz-Coke (Evopoli), Camila Flores (RN), Gonzalo Fuenzalida (RN), Diego Ibáñez (CS), Pamela Jiles (PH), Paulina Núñez (RN), René Saffirio (IND), Leonardo Soto (PS) y Matías Walker (DC).

El primero, erradicar la tentación en algunos sectores de la Oposición por dilatar el trámite para que el proyecto no fuese aprobado bajo el Gobierno de Piñera y, el segundo, perfeccionar la iniciativa en temas de filiación, de reproducción humana asistida, de derechos sociales y laborales y de eliminación de normas transfóbicas de la Ley de Identidad de Género.

En relación al primer punto, inicialmente la travesía fue difícil, a tal nivel que el proyecto reactivó tu tramitación en la Comisión el 19 de agosto, un mes después de ser despachado por el Senado, pese a contar con suma urgencia.

La situación se complejizó momentáneamente cuando el presidente de la Comisión de Constitución señaló el 25 de julio a Radio Biobío que la tramitación sería mucho más larga de la pensada, proyectando el despacho del proyecto para fin de año.

"Tenemos una serie de debates pendientes con discusión inmediata y suma urgencia. Le vamos a dar la prioridad que se requiere (al matrimonio igualitario) y vamos a intentar avanzar rápidamente. Esperamos de aquí a fin de año tener completamente tramitado este proyecto para que pase a Sala", señaló Ilabaca.

Tal cronograma abría el peligro de que las votaciones finales ocurrieran en marzo del 2022 con un nuevo Congreso cuya composición, hasta ese entonces, se desconocía, y con el fantasma de un presidente de la República fascista, tras la acelerada carrera electoral de José Antonio Kast<sup>17</sup>.

Ante ello, el 26 de julio el Movilh solicitó a todos/as los/as congresistas de la Comisión "que implementaran medidas para garantizar que el proyecto de ley se transforme en ley de la República a más tardar en octubre

<sup>[17] 21</sup> de noviembre, tras las elecciones, se supo que el Congreso a asumir en marzo del 2002 sería menos favorable que el actual a los derechos LGBTIQA+

próximo. Lo anterior pasa porque vuestra Comisión lo despache a mas tardar en agosto próximo".

"Las posturas sobre el matrimonio igualitario están puestas todas sobre la mesa y son de conocimiento público, existiendo una mayoría del país favorable a esta legislación, según todos los sondeos"<sup>18</sup>, añadió el Movimiento.

Con el correr de los días Ilabaca terminó cuadrándose con un debate acelerado: el 19 de agosto comenzó el segundo trámite y, el 12 de octubre, la Comisión de Constitución terminó su trabajo.

En torno a las indicaciones, y a diferencia de lo ocurrido en el Senado, se esperaba discutir solo propuestas para ampliar los derechos del proyecto de ley, nunca para limitarlos. Contra ello, confabularon los congresistas UDI Juan Manuel Fuenzalida, Gustavo Sanhueza y Juan Antonio Coloma, al presentar el 2 de septiembre una indicación para incluir en la ley la objeción de conciencia de las iglesias frente al matrimonio igualitario, en circunstancias que el proyecto en nada se refería a ello, pues solo regulaba el enlace civil.

"Las iglesias, cualquiera sea la fe que profesen, no estarán obligadas a celebrar matrimonios entre parejas de igual sexo", señalaba la indicación que finalmente no prosperó.

En tanto, las expresiones de odio de grupos ultraconservadores de la sociedad civil fueron reducidas al mínimo en este proceso, a un punto que solo tuvo voz en la Comisión a través del director ejecutivo de la Corporación Comunidad y Justicia, Álvaro Ferrer.

Para él, "la frontera que se pretende derribar es nada menos que un requisito de existencia del matrimonio, como lo es la diversidad de sexo entre los contrayentes, evidentemente requerida y justificada en los fines inherentes de la misma institución. Por ello aquí no se está ampliando el matrimonio, se lo está reformando. Y dado que la reforma consiste en eliminar una condición esencial para su existencia, la verdad es que la reforma, en la realidad, determina que el matrimonio deja de existir como tal. Se lo deroga" <sup>19</sup>.

"Sin diferencia sexual no existe matrimonio. El matrimonio "igualitario" es otra cosa. Lo reafirma el nuevo fin por y para el cual se crearía esta nueva institución: la regulación de los afectos, la eliminación de supuestos prejuicios, la tolerancia, la afirmación y protección de la diversidad, la satisfacción de intereses o deseos, el cumplimiento de una solución "amistosa" no vinculante, etc. Es, sencillamente, otro derecho de familia"<sup>20</sup>, añadió.

"Este proyecto de ley no protege a los hijos sino que impone a su respecto una desigualdad enorme: les priva de un padre o de una madre, igualándolos a los deseos y anhelos de los adultos, pero en ningún caso igualándolos a los hijos que son criados y educados por su padre y su madre, no solo de facto, también de jure: este proyecto de ley priva a los hijos de su natural derecho a ser criados y educados por un padre y una madre"<sup>21</sup>, finalizó.

Pese a la gravedad y abierta ofensa a la dignidad humana de estas declaraciones, lo concreto que no incidieron en la tramitación.

Por el contrario sí fueron inicialmente un problema, y un eventual obstáculo, las diferencias entre los colectivos LGBTIQA+. Para el Movilh el proyecto debía mejorarse en aspectos de filiación, fertilización humana asistida y derechos trans, así como derogar a la procreación como uno de los fines del matrimonio; mientras para Iguales, la ley a aprobar debía ser la misma que el proyecto ingresado en 2017, salvo en lo referente a eliminar artículos transfóbicos de la Ley de Identidad de Género, siendo esta postura también defendida inicialmente por el Gobierno a través de la Subsecretaría de DDHH.

Si bien en la formalidad las diferencias entre ambos grupos se superaron el 20 el agosto, cuando terminaron la elaboración de una propuesta conjunta de indicaciones que presentaron a Ilabaca y Walker, en distintos momentos; como reuniones con el Gobierno o exposiciones en la Comisión de Constitución de la Cámara, Iguales reflotó las discrepancias.

Así por ejemplo en cita con Recabarren, sostenida el 25 de agosto, Iguales sugirió que los derechos de filiación fueran exclusivos para lesbianas que se sometieran a técnicas de reproducción humana asistida y, por otro, se opuso a la eliminación de la "procreación" como uno de los fines del matrimonio y apoyó que los derechos de filiación solo estuviesen permitidos respecto a dos personas. En tanto, el Movilh proponía igualdad de derechos filiativos para gays o lesbianas que se sometían a técnicas de reproducción humana asistida, al margen del sexo; la eliminación de la "procreación" como fin del matrimonio o, al menos, su sustitución por el concepto de crianza, y la no prohibición legal del reconocimiento de la filiación respecto de más de dos personas, en el entendido de que hay hijo/as con dos madres y un padre o con dos padres y una madre, por ejemplo.

Felizmente las discrepancias no entorpecieron el proceso, por lo que Ilabaca y Walker se cuadraron con las indicaciones conjuntas de Movilh e Iguales; al margen

<sup>[18]</sup> En el primer encuentra se encuentran los resultados de las encuestas aplicadas en 2022.

<sup>[19]</sup> Primer Informe de la Comisión de Constitución, Legislación y Justicia de la Cámara, página 45.

<sup>[20]</sup> Ibídem, página 47 [21] Ibídem.

de que verbalmente este último grupo se distanciara algunas veces de ello; y las presentaron para ser votadas en la Comisión con el apoyo oficial de Cariola, Ibáñez, Pamela Jiles, Saffirio y Soto, sumó en algunas ocasiones el respaldo de Cruz-Coke.

El 9 de septiembre la Comisión de Constitución aprobó en general y por unanimidad el proyecto y comenzó con la votación de las indicaciones impulsadas por el Movimiento LGBTIQA+, una de las cuales, la referente a la no discriminación por orientación sexual o identidad de género para efectos de filiación, fue defendida por el propio Ejecutivo al presentar nuevas redacciones que facilitaron llegar a consensos.Las siguientes votaciones tuvieron lugar el 23 de septiembre y el 5 y 12 de octubre, despachándose un proyecto mucho mejor que el original y que incorporaba todas las indicaciones sugeridas desde el Movimiento LGBTIQA+, salvo la referente a la eliminación de la pro-creación como uno de los fines del matrimonio, demanda que en la Comisión solo contó con el entusiasta apoyo de Cariola y el Movilh.

Entre otros aspectos se aprobaron:

- Dos disposiciones generales que garantizan la no discriminación por sexo, orientación sexual o identidad de género. Una en toda ley que haga referencia al matrimonio y, la otra, en cualquier norma sobre filiación.
- Una disposición que permite reconocer los derechos de filiación a más de dos personas. El proyecto original ponía el límite en dos persona, con lo que dejaba afuera a hijos/as de parejas del mismo sexo que mantienen el vínculo con sus progenitores/as biológicos/as.
- Una disposición que reconoce los derechos de filiación para toda persona que se somete a técnicas de reproducción humana asistida, sea cual sea su sexo. El proyecto original solo reconocía derechos a la mujer, excluyendo a hombres.
- Una disposición que prohíbe todo tipo de discriminación para efectos de cuidado personal de hijos e hijas.
- Una disposición que regula los derechos de permiso laboral en caso de maternidad, paternidad; o en caso de fallecimiento de la madre o el padre; y que incorpora el concepto de "progenitor no gestante".
- Una disposición que regula el orden de los apellidos de los hijos/as: el que los progenitores decida y, en caso de desacuerdo, por sorteo.

- Eliminación de las normas que impiden cambiar su nombre y sexo legal a personas trans casadas.
- Reducción del tiempo de la entrada en vigencia de la ley de 13 meses a 90 días de publicada en el Diario Oficial.

La votación de cada indicación contó con apoyo mayoritario de los/as congresistas, salvo el rechazo permanente del diputado Coloma.

De esa manera la Comisión de Constitución, Legislación y Justicia despachaba un proyecto de ley mejorado, perfeccionado y que eliminaba los vacíos en materia de filiación y custodia homoparental.

El camino, empero, no llegaba aún a su meta, y se encontraría nuevamente con retrasos. A dos semanas de despachada la propuesta por la Comisión de Constitución su par, de Hacienda, ni siquiera tenía fecha para analizarla.

El 26 de octubre el Movilh solicitó por carta al presidente de la Comisión de Hacienda, Pablo Lorenzini (IND), y a los/as diputados/as Sofía Cid (RN), Marcelo Díaz (IND), Javier Hernández (UDI), Cosme Mellado (PRSD), Manuel Monsalve (PS), Daniel Núñez (PC), José Miguel Ortiz (DC), Leopoldo Pérez (RN), Guillermo Ramírez (UDI), Alejandro Santana (RN), Marcelo Schilling (PS) y Gaston Von Mühlenbrock (UDI), que pusieran en tabla la iniciativa. Para el éxito de esta petición, jugó un especial rol el parlamentario Díaz, pues gestionó en la Comisión que el tema fuese analizado.

Un día más tarde, la Comisión de Hacienda anunció que el trámite tendría lugar el 2 de noviembre, cuando dio luz verde al presupuesto del matrimonio igualitario. La iniciativa fue aprobada por 6 votos contra 3. Votaron a favor Lorenzini, Díaz, Mellado, Núñez, Ortiz y Schilling y en contra Pérez, Ramírez y Von Mühlenbrock.

Finalmente el 23 de noviembre la Cámara de Diputadas y Diputados aprobó por amplia mayoría el proyecto de ley propuesto por la Comisión de Constitución.

La idea de legislar la mayoría de los artículos fue aprobada por 101 votos a favor, 30 en contra y 2 abstenciones<sup>22</sup>, mientras que los de quórum contaron con 97 votos a favor, 35 contrarios y 1 abstención<sup>23</sup>. Además se votaron otros tres artículos por separado, cuyos resultados fueron 93 a favor, 36 en contra y 4

<sup>[22]</sup> https://www.camara.cl/legislacion/sala\_sesiones/votacion\_ detalle.aspx?prmIdVotacion=37286

<sup>[23]</sup> https://www.camara.cl/legislacion/sala\_sesiones/votacion\_ detalle.aspx?prmIdVotacion=37287

abstenciones<sup>24</sup>; 95 a favor, 36 en contra y 2 abstenciones<sup>25</sup> y 95 a favor, 36 en contra y 2 abstenciones<sup>26</sup>.

Aunque hubo votos a favor de la Derecha, todos los contrarios (salvo un DC) y las abstenciones fueron del bloque "oficialista".

Se pronunciaron en contra en una o más votaciones el DC Jorge Sabag Villalobos y los/as UDI Nino Baltolu Rasera, Ramón Barros Montero, Sergio Bobadilla Muñoz, Juan Fuenzalida Cobo, Juan Antonio Coloma Álamos, Javier Hernández Hernández, María José Hoffmann Opazo, Juan Manuel Masferrer Vidal, Cristhian Moreira Barros, Iván Norambuena Farías, Rolando Rentería Moller, Renzo Trisotti Martínez, Ignacio Urrutia Bonilla, Osvaldo Urrutia Soto, Enrique Van Rysselberghe Herrera y Gastón Von Mühlenbrock Zamora

Lo mismo ocurrió en el caso de los/as RN José Miguel Castro Bascuñán, Catalina Del Real Mihovilovic, Eduardo Durán Salinas, Francisco Eguiguren Correa, Camila Flores Oporto, René Manuel García García, Harry Jürgensen Rundshagen, Karin Luck Urban, Carlos Kuschel Silva, Miguel Mellado Suazo, Francesca Muñoz González, Ximena Ossandón Irarrázabal, Leopoldo Pérez Lahsen, Guillermo Ramírez Diez, Jorge Rathgeb Schifferli, Leonidas Romero Sáez, Frank Sauerbaum Muñoz, Diego Schalper Sepúlveda, y el PR Cristóbal Urruticoechea Ríos.

Por último, se abstuvieron o una más votaciones los/as UDI María José Hoffmann Opazo, Juan Manuel Masferrer Vidal y los/as RN Sofía Cid Versalovic, Andrés Celis Montt, Aracely Leuquén Uribe, Karin Luck Urban y Pablo Prieto Lorca.

En la sesión argumentaron su voto en contra Mellado, Schalper, Urruticoechea, Ossandón y Durán<sup>27</sup>.

[26] https://www.camara.cl/legislacion/sala\_sesiones/votacion\_ detalle.aspx?prmIdVotacion=37290

#### El Senado: de la Comisión Mixta a la aprobación final

Despachado el proyecto de la Cámara, los desafíos siguientes fueron conseguir una rápida aprobación y evitar el paso por una Comisión Mixta, sin embargo, lo último no fue posible, aspecto que impactó de manera negativa en los derechos de las personas trans.

Ya en medio de las discusiones en la Cámara, el 4 de noviembre el Movilh se había reunido con la presidenta del Senado, Ximena Rincón, quien comprometió una rápida votación del proyecto apenas fuese despachado a Sala, lo cual efectivamente ocurrió.

Sin embargo, la Comisión de Constitución, Legislación y Justicia del Senado puso el 30 de noviembre reparos a los más trascendentales cambios introducidos por la Cámara, alegando errores jurídicos o la existencia disposiciones contrarias al espíritu del proyecto de ley original. Su bajada fue ratificada el mismo día por la Sala del Senado, 33 votos a favor y 1 en contra, el de Iván Moreira, quien estuvo por rechazar todo el proyecto y no solo lo objetado por la Comisión de Constitución.

La postura de la Comisión no solo era adversa para los deseos del Movimiento LGBTIQA+, sino también para el Gobierno. En efecto, la ministra Rubilar y la Subsecretaria Recabarren, coincidieron en que el proyecto debía despacharse el mismo 30 de noviembre, sin necesidad de pasar a Comisión Mixta, pues en la iniciativa enviada por la Cámara en ningún caso presentaba problemas jurídicos o alteraba el proyecto original.

Con el fin de evitar el fracaso de la propuesta surgida de la Cámara, el Movilh solicitó el 5 de diciembre a cada uno/as de los/as congresistas de la Comisión Mixta<sup>28</sup> que aceptaran las modificaciones introducidas por la Cámara, en tanto, garantizan "la no discriminación por sexo, orientación sexual e identidad de género de las parejas". Acto seguido explicó a los/as parlamentarios/as uno a uno la importancia de cada cambio.

Finalmente, el 6 de diciembre la Comisión Mixta aprobó la totalidad de las indicaciones que equiparaban derechos de filiación y derechos laborales entre las parejas de igual y distinto sexo, al tiempo que eliminó la causal de divorcio automático para las personas trans que cambian su nombre y sexo legal.

Si bien en algunos casos la Comisión Mixta cambió la redacción, sin que ello alterara la ideas originales

<sup>[24]</sup> https://www.camara.cl/legislacion/sala\_sesiones/votacion\_ detalle.aspx?prmIdVotacion=37288

<sup>[25]</sup> https://www.camara.cl/legislacion/sala\_sesiones/votacion\_ detalle.aspx?prmIdVotacion=37289

<sup>[27]</sup> Por el contrario, expusieron a favor del matrimonio igualitario los/as diputados/as Matías Walker (DC), Marisela Santibáñez (PC), Marcelo Díaz (IND), Érika Olivera (IND), Karol Cariola (PC), Maya Fernández (PS), Sebastián Keitel (Evópoli), Félix González (PEV), Tomás Hirsch (IND), Pepe Auth (IND), Leonardo Soto (PS), Florcita Alarcón (IND), Marcos Ilabaca (PS), Camila Vallejo (PC), Andrés Longton (RN), Natalia Castillo (IND), Vlado Mirosevic (PL), Francisco Undurraga (Evópoli), Nora Cuevas (UDI), Sebastián Torrealba (RN), Iván Flores (DC), Emilia Nuyado (PS), Gael Yeomans (PCS), Camila Rojas (Comunes), Diego Ibáñez (PCS), Marcela Sandoval (RD), Pablo Kast (Evópoli), Cristina Girardi (PPD), Catalina Pérez (RD), Amaro Labra (PC), Marcelo Schilling (PS) y Jorge Brito (RD). Por el Ejecutivo habló la Subsecretaria de DDHH, Lorena Recabarren.

<sup>[28]</sup> Los/as senadores/as Pedro Araya (IND), Alfonso Deurresti (PS), Luz Ebensperger (UDI), Rodrigo Galilea (RN) y Francisco Huenchumilla (DC) y los/as diputados/as Luciano Cruz-Coke (Evópoli), Marcos Ilabaca (PS), Andrés Longton (RN), Catalina Pérez (RD) y Enrique Van Rysselbergue (UDI).

salidas de la Cámara, los derechos trans sufrieron un revés.

En efecto, se eliminó la causal de divorcio automático para las personas trans que cambian su nombre y sexo legal. Pero al mismo tiempo se aprobó que se consulte a la pareja de la persona trans si quiere divorciase o no en caso de la rectificación de la partida de nacimiento.

"Lo ocurrido refleja ignorancia, temores infundados y transfobia encubierta. ¿Por qué hacer una mención especial a la identidad de género en temas de divorcio? Esto es un estigma, muy similar, aunque más encubierto al de la causal de divorcio culposo por homosexualidad que existía antes" criticó el Movilh en ese momento.

El día histórico llegó finalmente el 7 de diciembre, cuando las Salas del Senado y la Cámara aprobaron el proyecto de ley, tras intensas gestiones que el Movilh cursó ante la ministra Rubilar, la Subsecretaría de DDHH, la senadora Rincón, el primer vicepresidente de la Cámara de Diputadas y Diputados, Francisco Undurraga para que las dos votaciones ocurrieran un mismo día. Para tales efectos el Movilh solicitó al Ejecutivo que otorgara la discusión inmediata, la que se hizo efectivo el 6 de diciembre.

La primera votación tuvo lugar el Senado, donde el proyecto se aprobó por 21 votos a favor 8 en contra y 3 abstenciones<sup>29</sup>.

En contra se pronunciaron los/as senadores/as UDI Coloma Correa, Durana Semir, Ebensperger Orrego; los RN Castro Prieto, Chahuán Chahuán, García Ruminot y Ossandón Irarrázaval y la independiente Aravena Acuña. Se abstuvieron los UDI Alvarado Andrade, García Huidobro Sanfuentes y Sandoval Plaza.

En tanto, en la Cámara la iniciativa fue aprobada por 82 votos a favor, 20 en contra y 2 abstenciones<sup>30</sup>.

Votaron en contra el DC Sabag Villalobos; los/as UDI Baltolu Rasera, Moreira Barros, Coloma Álamos, Hernández Hernández, Norambuena Farías, Trisotti Martínez, Urrutia Bonilla, Von Mühlenbrock Zamora; los/as RN Eguiguren Correa, Jürgensen Rundshagen, Kuschel Silva, Mellado Suazo, Muñoz González, Luis Pardo Sáinz, Pérez Lahsen, Ramírez Diez, Sauerbaum Muñoz; el PLR Urruticoechea Ríos y el PRSD José Pérez Arriagada. Se abstuvieron los/as UDI Hoffmann Opazo y Morales Muñoz.

Tanto en la Cámara como el Senado, varios/ as de los/as parlamentarios/as felicitaron la labor de Iguales y de Movilh a favor del matrimonio igualitario y muy especialmente se mencionó al activista Rolando Jiménez, quien además de ser pionero en la lucha por esa legislación en el país luchó por la misma desde la década de los 90 hasta su aprobación.

A los festejos en Chile, a nivel internacional se sumó una declaración de la CIDH donde recordaba que la aprobación del proyecto de ley es parte del ASA firmado por el Estado de Chile y el Movilh, así como pronunciamientos de la Alta Comisionada de los Derechos Humanos para Naciones Unidas, Michelle Bachelet, entre otras reacciones en el extranjero detalladas en el VI capítulo del presente informe.

# • La reducida, pero grave homofobia

El proyecto de ley y su tramitación fueron en 2021 blancos de discursos y acciones homofóbicas al interior del Congreso Nacional, ya sea a través de los votos de rechazo, como mediante los discursos de diputados/ as, senadores/as y agentes ultra-conservadores de la sociedad civil que fueron invitados a exponer.

Tanto en el Congreso Nacional como en el espacio público hubo escasa oposición y la expresada no tuvo eco o réplica alguna, resultando solo muy grave y preocupante que al día siguiente de la aprobación activistas LGBTIQA+ fueran amenazados/as de muerte.

En el plano de las elecciones presidenciales solo hubo dos (pre)-candidatos que se mostraron abiertamente contrarios el matrimonio igualitario, Joaquín Lavín (UDI) y José Antonio Kast (PR).

Ya el 10 enero del 2021 Lavín señaló que "yo en eso soy más conservador, en el caso de la adopción homoparental yo soy partidario que al Acuerdo de Unión Civil permita la adopción, pero no (estoy de acuerdo) del matrimonio", (Canal 13).

Kast, el ganador de la Derecha en Primera Vuelta, se manifestó durante toda su candidatura contra la iniciativa, incluso luego de que fue aprobada por el Congreso Nacional.

"Nosotros no apoyaremos a ningún candidato que promueva el matrimonio homosexual y no pactaremos con ninguna fuerza política que no tenga la convicción de defender a las familias chilenas. A diferencia del actual Presidente, nosotros actuamos con convicción, consecuencia y transparencia siempre", dijo el 1 de junio por Twitter y añadiendo más tarde que "para nosotros el matrimonio es entre un hombre y una mujer. El Parlamento ha tomado una decisión mayoritaria. Eso no va a hacer que nosotros cambiemos nuestras convicciones" (El Mostrador, 7 de diciembre).

<sup>[29]</sup> https://www.senado.cl/appsenado/index.php?mo=sesionessala&ac=detalleVotacion&votaid=8572

<sup>[30]</sup> https://www.camara.cl/legislacion/sala\_sesiones/votacion\_ detalle.aspx?prmIdVotacion=37375

Junto con anunciar su respaldo a la candidatura presidencial de José Antonio Kast, el diputado Leonidas Romero (RN) sostuvo que si se "logra convencer al señor (Sebastián) Sichel<sup>31</sup> de estar en contra del aborto libre, el matrimonio igualitario, la adopción homoparental, la eutanasia, capaz que me convenza y yo vote por él" (Emol, 14 de septiembre).

Romero añadió que si "tenemos una unión civil para ellos que asegura herencias, pero el matrimonio es entre un hombre y una mujer con la idea principal de procrear y traer al mundo a una criatura (...) Me preocupa que dos personas del mismo sexo adopten a un menor de edad. El niño necesita en este mundo a un papá y una mamá para criarse de una forma normal" mientras que otras alternativas son "antinatura" (Canal 13, 1 de diciembre).

En un plano más social y ciudadano la oposición fue entre débil y escasa a tal nivel que, muy a diferencia de lo ocurrido en años pasados en torno a otros proyectos de ley vinculados a la causa LGBTIQA+, durante las votaciones más cruciales del 2021 no hubo manifestaciones de rechazo en el Congreso Nacional de Valparaíso o el frontis de La Moneda en Santiago.

Y es que a la nula credibilidad de las opiniones contrarias al matrimonio igualitario y al declive progresivo de fuerzas históricamente homófobas, como las iglesias y la ultra-derecha, se añadió que la urgencia dada por Piñera envió a todos los opositores el mensaje de que se podía cambiar de postura sobre el matrimonio y que el Estado tenía el deber de asumir realidades antes censuradas o marginadas por creencias religiosas o prejuicios.

No en vano, más que la eventual aprobación del proyecto de ley, lo que movilizó más a los homofóbicos fue el hecho de que Piñera le diera suma urgencia a la tramitación.

"Todo Chile sabe que en ChileVamos hay diferencias sobre el matrimonio entre personas del mismo sexo. El presidente también lo sabe y por eso es grave que haya ocultado este anuncio. Para muchos esto es una traición del pdte, y el divorcio definitivo con parte de la coalición", dijo el 1 de junio por Twitter el diputado UDI Guillermo Ramírez, mientras que el presidente de la UDI, Javier Macaya, salió a señalar que la medida de Piñera "habla de una falta de criterio político, falta de sintonía con la coalición", (El Mostrador, 2 de junio).

"El error no es el matrimonio igualitario, es la falta de empatía y de coordinación política a la hora de tomar esta decisión (...) el Presidente cometió un error político importante y espero que lo pueda enmendar (...) generó polémica en los presidenciables del sector y que eso no puede volver a ocurrir", redondeó Macaya (Radio Biobío, 6 de junio)

El senador UDI Iván Moreira enfatizó por su lado que "uno también piensa ¿cómo seguimos defendiendo nosotros al presidente? Porque de verdad esto que ha hecho hoy día es una bofetada para el mundo cristiano y para el pueblo evangélico, al que él le fue a pedir el voto". ( El Mostrador, 2 de junio).

El columnista Daniel Mansuy sostuvo que "si las sociedades han decidido resguardar y proteger al matrimonio no es tanto por su carácter sentimental, sino ante todo porque se trata de la institución que permite resguardar la reproducción de la vida y la cultura. Al modificar el vínculo entre filiación y sexualidad — como si la alteridad sexual fuera algo irrelevante, tocamos un resorte muy profundo de lo humano. Por lo mismo, nada impedirá luego la tecnificación de la reproducción (...) La demanda por el matrimonio homosexual termina siendo una demanda por volver artificial la reproducción de la vida: ya no se trata de imitar un proceso natural, sino de re-crearlo desde la técnica" (El Mercurio, 3 de junio).

"Si aprobamos el matrimonio homosexual se instalará una lógica virtualmente irresistible: ¿Por qué no permitir que esas parejas tengan sus propios hijos? ¿Y cómo repararlo sin recurrir a la técnica, cuya función ya no será imitar a la naturaleza sino sustituirla? ¿Qué tipo de mercados abrimos con esas posibilidades? (...) La discusión sobre el matrimonio homosexual tiene implicancias que lo exceden largamente. En ese sentido, puede pensarse que esta iniciativa se inscribe en una vasta empresa —no siempre consciente— de dominación sobre la naturaleza, al interior de cuya lógica la acción humana no admite límites y el mundo es algo plenamente disponible para la manipulación técnica", añadió (6 de junio, El Mercurio).

La delirante opinión fue compartida por los docentes de la Universidad Católica, Mario Correa Manríquez, y de la Universidad de los Andes, Joaquín García-Huidobro.

Según Correa Manríquez "en el matrimonio, institución primero natural y después jurídica, la diferencia de sexo es un elemento esencial y las diferencias entre los distintos sexos es enriquecedora. Es Dios, a través de la naturaleza que nos ha impuesto, quien ha querido que la familia naturalmente nazca por la unión, con affectio maritalis, entre un hombre y una mujer. Así, la unión entre personas del mismo sexo es tan artificial que ella no puede tener lugar sin una intervención por parte del Estado que fuerce y distorsione el concepto, como ha ocurrido en otros países (...) La familia reclama la diferencia. El proyecto responde a una ideología contraria a la naturaleza humana y deja de manifiesto la falta de lógica de quienes lo apoyan habiendo promovido,

<sup>[31]</sup> Pre candidato presidencial independiente que triunfó en las primarias de la Derecha.

pocos meses atrás, un proceso constituyente paritario" (La Tercera, 5 de junio).

"Me sorprende que gente que tiene gran lucidez para defender la autonomía del Banco Central, y que siente horror ante la sola posibilidad de que la moneda se vacíe de contenido, pueda pensar que podemos hacer y deshacer una institución como el matrimonio y que eso no tendrá consecuencias. Parece que solo en el caso del dinero es necesario mantener intacto su sentido y valor. No me detendré en el tema; por lo demás, hay trabajos excelentes sobre la materia, aunque pocos quieran leerlos: uno corre el riesgo de formarse convicciones que pueden ser incómodas. En todo caso, no es casual que, en Francia, Xavier Bongibault, fundador de "Plus gay sans mariage" (Somos más gays sin matrimonio), haya basado su oposición a esa reforma legislativa precisamente en la desestructuración de la sociedad que significaba desnaturalizar el matrimonio", redondeó García-Huidobro (El Mercurio, 6 de junio).

El abogado de la Fundación Jaime Guzmán, Emiliano García, en tanto, consideró que "no se debería hablar nunca de matrimonio homosexual, porque el matrimonio tiene un sola concepción como está hoy en el Código Civil, es entre un hombre y una mujer. El matrimonio tiene como fin, entre otras cosas, la procreación". (CNN Chile, 7 de junio).

Para el director ejecutivo del Instituto de Estudios de la Sociedad, (ESI) Claudio Alvarado, "Sebastián Piñera terminó de golpear a su coalición al decidir — soterrada e intempestivamente — apoyar el proyecto de "matrimonio igualitario" presentado por la ex presidenta Bachelet".

"Con todo, lo más sorpresivo va por otro lado, y guarda relación con la escasa presencia en la esfera pública de voces partidarias de mantener el estatuto matrimonial clásico. En todos los países en que ha surgido esta discusión, ella suele despertar visiones encontradas, y todo indica que en Chile el panorama es menos uniforme que lo sugerido por los medios y por la encuesta de los lunes", añadió.

"Nada sugiere que las posiciones sean tan homogéneas como cree la opinión pública ilustrada, cada vez más hostil al disenso en estas materias. En rigor, para gran parte de las élites este tema ni siquiera admite ser debatido", finalizó Alvarado (CNN Chile, 9 de junio).

El 15 de junio fue el turno del abogado Jorge Reyes Zapata, para quien "el proyecto de ley que introduce la unión de personas del mismo sexo igualándolo al matrimonio, no solo es radical y equivocado en lo obvio de intentar igualar lo que no es igual, sino que, entre otras cosas más, hace desaparecer de nuestro Código las expresiones "Padre" y "Madre" y las reemplaza por una neutra, ausente de todo valor: "Progenitores". Nada más alejado de la realidad familiar", abogado Jorge Reyes Zapata (La Tercera). La excesiva imaginación homofóbica llegó a uno de sus extremos con el abogado Gonzalo Ibáñez Santa María "tengo perfecta conciencia de que hay personas que nacen con tendencia homosexual y que no es posible eliminársela. Son personas cuyo cerebro funciona más bien con los rasgos de su sexo, pero dentro de un cuerpo del otro sexo (...) De ahí a creer que, yendo más lejos, puedan entablar entre ellas relaciones sexuales y afectivas similares a las que se dan entre personas de distinto sexo, hay una distancia infranqueable", dijo.

"El organismo de las personas tiene sus reglas a las que no cabe sino adaptarnos (...) Legalizar la opción de este "matrimonio igualitario" (...) es inducir a esa juventud a la manipulación de su naturaleza y, en definitiva, a su destrucción. Es lo que está haciendo Piñera con su anuncio: dar la partida a una carrera de corrupción de la juventud que va a gravitar pesadamente en el futuro tanto de esos jóvenes como de nuestra patria", finalizó (El Mercurio de Valparaíso , 20 de junio).

A su vez el decano de la Facultad de Derecho de la Universidad Católica, Gabriel Bocksang Hola y el profesor Felipe Widow Lira, señalaron que el matrimonio igualitario carece de "las condiciones objetivas de los sujetos: no parece importar ya la natural complementariedad del varón y la mujer. Incluso parece que la biología puede ser reemplazada por la técnica, y que la voluntad no debiera estar sometida a la realidad, ni los sentimientos a la razón. El Derecho, al parecer, no debería más que servir a la absoluta e indiscriminada autonomía individual. Pero los argumentos en favor del carácter heterosexual del matrimonio son fuertes y tienen el respaldo de siglos de tradición jurídica y filosófica. Para una reforma tan radical no basta el ambiguo recurso a la 'libertad y la no discriminación', ni menos el reemplazo de la racionalidad del Derecho por un voluntarismo absoluto" (28 de julio, El Mercurio).

En tanto, las opiniones de las iglesias estuvieron casi desaparecidas de la escena pública, una situación única en países que previamente estuvieron a pasos de aprobar el matrimonio igualitario, lo cual en Chile se cruza o explica por la escasa credibilidad que las personas dan a las altas jerarquías eclesiásticas, en especial por su responsabilidad en el abuso de niños/as.

Aunque el peso de su incidencia fue nulo, en algunas oportunidades alzaron la voz, como ocurrió tras el anuncio de Piñera o durante los Te Deum Ecuménico y Evangélico; desde donde los religiosos se lanzaran contra el matrimonio igualitario, recurriendo a prácticas homofóbicas que violentaron el Estado laico, pues se involucraban de manera descarada en temas legislativos, políticos e incluso electorales.

El 2 de junio, a un día de la urgencia anunciada por el Presidente, el Comité Permanente de la Conferencia Episcopal sostuvo en un comunicado que "los que seguimos a Jesucristo como Salvador y Señor y nos guiamos por su enseñanza, sostenemos la certeza de que el matrimonio establecido y querido por Dios es sólo entre un varón y una mujer, comunión que gesta vida y fundamenta la familia (...) Esperamos que estas palabras puedan ayudar al discernimiento de quienes ejercen la responsabilidad de legislar y de todas las personas que buscan el mayor bien para quienes vivimos en Chile".

Un mes después, el 3 de julio, la denominada "Academia de Líderes Católicos, organizó el coloquio online "¿Matrimonio Igualitario en Chile?: una mirada desde Doctrina Social de la Iglesia", donde expusieron: ex vicedecano de la Facultad de Teología de Dámaso, Juan José Pérez-Soba; la senadora italiana y fundadora del Centro Biomédico de Roma, Paola Binetti y el presidente de la Comisión de Doctrina de la Conferencia Episcopal de Chile, Felipe Bacarreza.

Luego, en el Te Deum Ecuménico del 18 de septiembre, y frente a Piñera, el arzobispo católico Celestino Arós valoró a quienes, a su juicio, "buscan respetar y proteger los valores no negociables", dando como ejemplo "el respeto y la defensa de la vida humana desde su concepción hasta su fin natural y la familia fundada en el matrimonio entre hombre y mujer".

"Hoy en la democracia no es tan evidente la cuestión sobre lo que ahora corresponde a la ley de la verdad, lo que es verdaderamente justo y puede transformarse en ley (...) En lo fundamental, donde está en juego la dignidad del hombre y de la humanidad, no basta el principio de la mayoría", sostuvo.

Un día antes el presidente de la Coordinadora de Unidades Pastorales Evangélicas de Chile (Cupech), Héctor Cancino, había dicho durante el Te Deum que "la iglesia evangélica respeta de manera absoluta a las minorías, pero decididamente no acepta la imposición de ideologías y modelos de vida de estas minorías que se contraponen con nuestros derechos ciudadanos, de sostener un estilo de vida conforme a los principios cristianos".

Al final, fue el propio Gobierno el que terminó reaccionando, dando una estocada final a la homofobia religiosa contra el matrimonio igualitario.

Sobre el Te Deum Ecuménico, Piñera sostuvo que "una cosa es el mundo de la religión, que es voluntario. Otra cosa es el mundo laico, de las leyes, que es obligatorio para todos y yo creo que la ley tiene que proteger a todas las familias".

Por su parte, y en repuesta al discurso del Te Deum Evangélico, el vocero de Gobierno, Jaime Bellolio, señaló el matrimonio igualitario es "precisamente para fortalecer la familia, para dar relevancia, protección y reconocimiento a esas uniones entre personas, y también, a los hijos e hijas que puedan nacer de esa unión de largo plazo (...) es una buena medida hoy día, en el respeto a la libertad, en el respeto a la diversidad avanzar en ese Matrimonio Igualitario".

Con todo, las reacciones más violentas fueron dirigidas contra el activismo LGBTIQA+. Así como durante la Marcha del Orgullo 2021, desarrollada el 13 de noviembre, un reducido grupo de unos 10 encapuchados/ as intentó boicotear la actividad lanzando botellas y agua a los asistentes, levantado una barricada y cortando la electricidad de un escenario, entre otras razones en protesta contra el Movilh por su lucha a favor del matrimonio igualitario.

En tanto, el 8 de diciembre en momentos cuando el Movilh desayunaba con familias homoparentales para festejar la aprobación de la ley el día previo, los/ as activistas de la organización fueron amenazados/as muerte.

Las amenazas fueron propinadas por un sujeto que llamó unas 10 veces tanto al fono fijo, como al celular de la organización, cuyos números son públicos en la web movilh.cl.

Entre otros, el agresor señaló por fono "¿Oye, que es esa ley culiá que salió en la tele? No estai viendo que hay niños chicos en este mundo y vo estai sacando esa guevá de Movilh y sacando esa guevá de ley donde sale mujer con mujer, hombre con hombre. Vo sabí que piensa un niño chico se ve esa guevá en la calle o no. ¿Ah? ¿Vo tení mente o no? Esa guevá del Movilh no es nada bonito. Acaso no sabí de la historia de Sodoma y Gomorra. Dios mató a esa ciudad de hombres, con hombres, mujeres, con mujeres, los quemó" (Sic).

Añadió que "te registré guevón, te seguí. Sé donde viví. Erí un degenerado. A mí no me sale ni por curao una bala guevón. Volví a las andanzas de nuevo. A matar a los travestis y todo eso, a limpiar el mundo. Si hay que limpiarlo, hay que limpiarlo. Si hay que matarlos, hay que matarlos, porque no sirven. Son unos bastardos, son unos degenerados" (sic)<sup>32</sup>.

<sup>[32]</sup> El Movilh reportó las amenazas ante la Policía Civil, la cual el 2 del 2022 informo que estaba cursando diligencias que pudiese dar con el responsable.

#### Contenidos de la ley

La histórica ley 21.400 fue publicada en el diario oficial el 10 de diciembre del 2021<sup>33</sup>.

Dividida en 10 artículos La ley otorga a las parejas del mismo sexo, todos y cada uno de los deberes y derechos con que gozan en la actualidad los matrimonios heterosexuales.

Para tales efectos introduce reformas al Código Civil; a la ley 19.947, Establece nueva ley de Matrimonio Civil; a la ley 20.830 que Crea Acuerdo de Unión Civil, a la ley 4.808 Sobre Registro Civil; al Código del Trabajo; a la ley 16.744 que Establece normas sobre accidentes del trabajo y enfermedades profesionales; al DFL 150 que Fija el texto refundido, coordinado y sistematizado de las normas sobre Sistema Único de Prestaciones Familiares y Sistema de Subsidios de Cesantía para los Trabajadores de los Sectores Privado y Público, a la ley 21.334, Sobre determinación del orden de los apellidos por acuerdo de los padres y a la ley 21.120 que Reconoce y da protección al derecho a la identidad de género

En materia de homoparentalidad, se garantiza la no discriminación por orientación sexual e identidad de género, entre otras categorías, para efectos de custodia, filiación y adopción, estén o no las parejas unidas en matrimonio y hubiesen tenido o no a sus hijos/ as mediante fertilización humana asistida.

Se reconoce, en tal sentido, la maternidad de mujeres trans y la paternidad de hombres trans en los certificados de nacimiento de sus hijos/as. También se determinó el orden de los apellidos de las parejas del mismo sexo; definiéndose que lo decidirán los progenitores y, si no hay acuerdo, el Registro Civil lo someterá a sorteo.

A la par se regulan los bienes de las parejas del mismo sexo, se garantizan las pensiones para viudos/as, los permisos laborales en caso de nacimiento de hijos/as y las asignaciones familiares y se amplía el concepto de hermanos/as, reconociendo tal calidad para quienes lo son por parte de ambos progenitores (doble conjunción) o solo por uno de ellos (simple conjunción). Se eliminan así conceptos de hermanos maternos y paternos.

De igual manera se reconocen los matrimonios igualitarios contraídos en el extranjero y se derogan de la Ley de Identidad de Género los artículos que divorciaban automáticamente a las personas trans casadas que rectificaban su partida de nacimiento.

## • Movilizaciones y festejos por el matrimonio igualitario

Junto a las gestiones realizadas por el movimiento LGBTIQA+ ante el Gobierno y el Congreso Nacional, descritas con anterioridad, hubo una permanente movilización social y ciudadana a favor del matrimonio igualitario.

Así es como la Fundación Iguales desarrolló desde el 28 de septiembre y hasta el 29 de diciembre la campaña "iiguales", mediante la cual recolectó firmas a favor del matrimonio igualitario.

La iniciativa incluyó videos con testimonios de personas y familias compuestas por personas LGBTIQA+; entre esas, las actrices y hermanas Fernanda e Isidora Urrejola; así como con el despliegue de la bandera de la diversidad (intervenida con el logo de Iguales) en siete lugares: la Universidad de Chile (23 de noviembre), el frontis del Centro Integral de Atención al Estudiante de la Universidad de Valparaíso (15 de noviembre), el Campus Angamos de la Universidad de Antofagasta (11 de noviembre), el Municipio de Arica (9 de noviembre), la Universidad de Talca (4 de noviembre), la Universidad de Concepción (29 de octubre) y la Municipalidad de Punta Arenas (12 de octubre).

Finalmente la entidad recolectó 17 mil firmas que fueron entregadas el 29 de noviembre junto a familias homoparentales la Presidenta del Senado, Ximena Rincón.

Otras diversas instituciones organizaron foros o encuentros sobre el matrimonio igualitario, Fue el caso del Instituto Igualdad cuyo seminario del 1 de septiembre tuvo como panelistas al presidente de la Comisión de Constitución, Legislación y Justicia de la Cámara, Marcos Ilabaca, a Iguales y Movilh. En tanto Infórmate La Serena convocó a otro encuentro donde expusieron Igualdad Plena y el Movilh, mientras el 1 de julio Iguales dialogó en la Facultad de Derecho de la Universidad de Chile.

El Movilh, en tanto, desarrolló diversas acciones a lo largo del año, como fueron el lanzamiento el 14 de febrero de la primera campaña que criticó a Piñera por su entonces rechazo al matrimonio igualitario.

A la par, entre mayo y el 29 de noviembre el Movilh recolectó un total de 28.083 firmas de apoyo al matrimonio igualitario, en el marco de una campaña que denominó el Amor es Amor. Las rúbricas fueron entregadas el 29 de noviembre a la presidenta del Senado, Ximena Rincón, junto a quien la organización lanzó además los resultados de la encuesta "La parejas del mismo sexo frente al matrimonio igualitarios"<sup>34</sup>.

<sup>[33]</sup> https://www.movilh.cl/wp-content/uploads/2021/12/ Ley-21.400-matrimonio-igualitario.pdf

<sup>[34]</sup> Todos los kos resultados del sondeo se encuentran en el Primer capítulo

Con anterioridad, el 13 de noviembre el Movilh organizó y convocó a la XXI Marcha del Orgullo teniendo como demanda central el matrimonio igualitario. La Marcha, la primera LGBTIQA+ tras la pandemia, convocó a más de 150 mil personas, convirtiéndose en la más masiva en la historia del movimiento LBTIQA+ en Chile<sup>35</sup>.

En paralelo, entre el 27 de noviembre y el 7 diciembre el Movilh impulsó una edición especial de la Campaña Arcoíris<sup>36</sup> en apoyo a la aprobación del matrimonio igualitario, logrando que un total de 42 entidades desplegaran la bandera LGBTIQA+ o iluminaran frontis con los colores de la diversidad en respaldo a la votación de la iniciativa en el Congreso Nacional.

A nivel municipal se plegaron al "Banderazo Arcoíris" en apoyo al matrimonio igualitario los municipios de Catemu (cuyo alcalde es Rodrigo Díaz Brito, IND); de Cerro Navia (Mauro Tamayo, IND); de Cerrillos (Arturo Aguirre, PS), de Chillán (Camilo Benavante, (IND, Poder); de Concepción (Alvaro Ortiz, DC), de Coyhaique (Carlos Gatica, DC); de Curicó (Javier Muñoz (DC); de Estación Central (Felipe Muñoz, IND); de Huechuraba (Carlos Cuadrado, PPD); de Independencia (Gonzalo Durán, PS), de La Pintana (Claudia Pizarro, DC); de La Serena (Roberto Jacob, PRSD); de Llay-Llay (Edgardo González, DC); de Macul (Gonzalo Montoya, IND); Maipú, (Tomás Vodanovic, RD) de Melipilla (Lorena Olavaría, FA); de Ñuñoa (Emilia Ríos Saavedra, RD); de Padre Hurtado (Felipe Muñoz, PS); de Pedro Aguirre Cerda (Luis Astudillo, IND), de Pudahuel (Ítalo Bravo, PI); de Quinta Normal, (Karina Delfino, PS); de Recoleta (Daniel Jadue, PC); de Renca (Claudio Castro); de San Antonio (Constanza Lizana, IND); de San Felipe (Carmen Castillo, (IND-PS); de San Joaquín (Cristóbal Labra, IND); de San Bernardo (Christopher White, PS); de San Ramón (Gustavo Toro, DC) y de Vitacura (Camila Merino, Evópoli).

En el terreno diplomático adhirieron las embajadas de Argentina (cuyo embajador es Rafael Bielsa), de Australia (Todd Mercer), Austria (Stephan Vavrik), Canadá (Patricia Peña), Costa Rica (Adriana Murillo Ruin), Dinamarca (Jens Godtfredsen), México (Francisco Javier Olavarría), Reino de los Países Bajos (Carmen Gonsalves) y Reino Unido (Louise de Sousa).

El Gobierno Regional de Magallanes; dirigido por Jorge Flies; el Instituto Nacional de la Juventud, que encabeza Renata Santander, y el Banco Mundial, cuya representante en Chile es Virginia Brandon, también se cuadraron con el "Banderazo Arcoíris"<sup>37</sup>.

[37] https://www.movilh.cl/wp-content/uploads/2021/11/mapa-ac-

Ad portas de la aprobación matrimonio igualitario, que permite la adopción homoparental, el Movilh capacitó además el 9 de julio sobre la diversidad familiar funcionarios/as de todo el país del Departamento de Adopciones del Servicio Nacional de Menores (Sename).

A las campañas, vinieron los festejos: un masivo evento artístico y cultural en la Plaza de la Dignidad y un desayuno con familias homoparentales.

El evento reunió a unas cinco mil personas y tuvo lugar el mismo día de la aprobación de la Ley en el Congreso Nacional.

Desarrollado entre las 19:00 y las 22:45 horas del 7 de diciembre; el evento arrancó con la entonación el himno nacional por parte de la cantante lírica trans Francesca García, tras lo cual se procedió a los discursos y un acto artístico-cultural.

Especialmente intervinieron la ex diputada Fanny Pollarolo<sup>38</sup>; autoridad pionera en apoyar los derechos LGBTIQ+ a comienzos de los años 90, y César Peralta y Víctor Arce, quienes junto a sus respectivas parejas demandaron junto al Movilh al Estado de Chile ante la Comisión Interamericana de Derechos Humanos por la prohibición del matrimonio igualitario, siendo esa acción la cual originó el proyecto de ley aprobado.

Animado por el transformista Paul Bichón, en el evento también expusieron el vicepresidente de la Convención Constitucional, Pedro Muñoz y el Convencional Constituyente, Tomás Laibe, así como familias homoparentales con sus hijos/as. A la par, parejas lésbicas y gays se pidieron matrimonio sobre el escenario.

En el plano artístico, se presentaron el grupo Aion, los/as cantantes Dani Ride, Laure Bel, los transformistas Taina Quendesnfeld, Sabrina O'Donell y Francisca del Solar y el "Sensual y Estúpido Spiderman".

El evento terminó con música electrónica a cargo del DJ Fletcher.

A la misma hora que las personas LGBTIQ+ celebraban en la Plaza de la Dignidad, La Moneda se iluminó con los colores del Orgullo por decisión del presidente de la República.

Al día siguiente de la aprobación, familias homoparentales desayunaron en la sede del Movilh para compartir sus expectativas en torno al matrimonio igualitario y dialogar sobre sus experiencia.

Participaron del encuentro Isidora Iturriaga y Michell Sierra quienes estaban a solo días de convertirse en madres de mellizos/as; Vanessa Solorzano y Joalismir Moreno, una pareja venezolana que asistió acompañada

<sup>[35]</sup> Más antecedentes sobre histórica marcha en el capítulo VII

<sup>[36]</sup> La Campaña Arcoíris, también conocida como Banderazo Arcoíris, llama a instituciones públicas o privadas a desplegar la bandera LGBTIQ+, a iluminar sus frontis o a desarrollar campañas contra la homo/ transfobia. La iniciativa surgió en 2012. Más antecedentes en el tercer capítulo.

tualizado-movilh.png

<sup>[38]</sup> https://www.youtube.com/watch?v=Bqnl4dVByjY

de su hijo Erick; y las chilenas Jacqueline Paez y Evelyn Maldonado, madres de la pequeña Emily.

#### Discurso del Movilh

A continuación reproduce la declaración que el Movilh lanzó el 7 de diciembre por la aprobación del matrimonio igualitario:

En Chile ya es ley el matrimonio igualitario.

Retroalimentación de luchas sociales, avance, transformación socio-cultural política y estatal, perseverancia, solidaridad, indiferencias, resiliencia, sueños, desafíos, historia y alto costo social y humano son los procesos vividos en los últimos 30 años y que bien resumen el camino hacia el desenlace que conocemos hoy, un inolvidable martes 7 de diciembre del 2021.

Con la aprobación del matrimonio igualitario, Chile ha dado un paso histórico y decisivo para el avance y consolidación de los derechos humanos de las parejas del mismo sexo y de las familias homoparentales, todas las cuales, sin distinción, venían siendo discriminadas y vulneradas desde los orígenes de nuestro país.

La definición estatal sobre el matrimonio existente hasta hoy en Chile se derrumbó. La homofobia, la hetero-normatividad y la desigualdad que lo caracterizaba, en desmedro de las personas LGBTIA+, ha llegado a su fin.

Ya no existirán más privilegios jurídicos para una parejas y familias sobre otras solo en razón de su orientación sexual o identidad de género. Cualquier pareja o familia podrá o no formalizar su relación en igualdad de condiciones que las heterosexuales a través de una institución que por tanto tiempo les fue esquiva.

El abanico de posibilidades que otorgaba el matrimonio solo a un grupo de parejas, hoy se despliega para todas, todos y todes con cada uno de los colores, dejando atrás un pasado gris, de siglos de discriminación y abusos.

Tantas muertes, tanta tristeza, tantas lágrimas y dolor significó llegar a este momento. Conocemos de 55 víctimas fatales de la homo/ lesbo/bi/transfobia en Chile. Y sabemos que son más. Para estas víctimas, y para las cuales cuyo asesinatos de odio fueron silenciados o no denunciados, va este avance, este triunfo de la igualdad, del amor. Un cambio radical a favor de la dignidad humana que también dedicamos a todas aquellas parejas y familias que fueron encarceladas, torturadas, separadas o distanciadas solo por su orientación sexual o identidad de género.

Extendemos especial reconocimiento a las valientes parejas del mismo sexo que confiaron en Movilh para que judicializaramos su demanda para ser reconocidos como familia y matrimonio, permitiéndonos llegar hasta la Comisión Interamericana de Derechos Humanos (CIDH) hasta concluir con un Acuerdo de Solución Amistosa que derivó en la redacción e ingreso al Congreso Nacional del proyecto de ley que hoy aprobó el Congreso Nacional.

Gracias a cada una de las personas, autoridades e instituciones que empujaron esta lucha, haciendo posible que entre todas y todos y todes consiguiéramos lo que a hasta la década de los 90 era un imposible, un sueño inimaginable, un sueño inexistente.

Somos una organización ya adulta. Con más de 30 años de trayectoria. Nuestros primeros pasos de conformación los dimos cuando la Organización Mundial de la Salud seguía considerando a la homosexualidad como una patología; cuando la homosexualidad era sancionada con la cárcel en Chile; cuando la sociedad en su casi totalidad hacía suyas las creencias religiosas y veía a toda persona LGBTIQA+ como pecadora, inmoral, anti-natura y sucia. En ese contexto, por cierto que el matrimonio igualitario era un sueño inexistente, había que derribar otros extendidos y crudos estigmas antes de llegar al día de hoy.

Nos emociona recordar que cuando por primera vez pensamos en luchar por el matrimonio igualitario, por ahí en 1999, la conclusión del momento fue "hagámoslo, pero seguro no estaremos vivos/as para verlo".

Recordamos que cuando fuimos al Registro Civil hace una década con parejas del mismo sexo a pedir horas de matrimonio, nos dijeron locos/as, irresponsables y ridículos/s, en circunstancias que esa estrategia terminó siendo la base que cambió el rumbo de la historia jurídica y legislativa de las parejas del mismo sexo en nuestro país.

El matrimonio igualitario; que viene a mejorar la calidad de vida de personas, familias y parejas; es el resultado de todas las luchas por los derechos humanos: la de las mujeres, la de los pueblos originarios, la de las personas con capacidades diversas, la de los jóvenes, la de los adultos mayores, la de los migrantes, la de las personas con VIH, la de los pobres, la de quienes viven con alguna enfermedad y las de todo sector que ha visto vulnerado sus derechos por los prejuicios, la ignorancia, los estigmas y la desigualdad estructural que, en tantos ámbitos; aún pesa en Chile.

Toda lucha por la igualdad y la no discriminación, sabiéndolo o no; queriéndolo o no; se retroalimenta con otras y va cambiando las sensibilidades y los conocimientos de la ciudadanía, volviéndonos más justos/as, nobles, empáticos/as y comprensivos/as.

Toda lucha por los derechos humanos, cualquiera sea ésta, sienta las bases para mejores condiciones de vida y permite más conquistas.

Gracias a todas las luchas; individuales, grupales o institucionales; hoy dimos un nuevo paso que confiamos sea un impulso y una esperanza para las diversidades de otros países, en particular para aquellos donde ser LGBTIQA+ sigue siendo un delito y/o significa la pena de muerte. No los olvidamos. Nunca. Estamos con ustedes y con cada una de las personas que aún en nuestra propia tierra siguen sufriendo debido a los nocivos efectos de la homo/lesbo/bi/transfobia.

#### Movilh

#### Cronología:

Principales hitos previos al 2021

- **6 de marzo del 2008:** El Movilh y un grupo de congresistas presentan el primer proyecto de ley de matrimonio igualitario al Congreso Nacional.
- Julio a septiembre 2010: El Movilh desarrolla una campaña para judicializar la lucha por el matrimonio entre personas del mismo y llama a parejas homosexuales a sumarse a la causa.
- **25 de septiembre 2010:** Parejas del mismo sexo asisten junto al Movilh al Registro Civil para pedir una hora matrimonio.
- **4 de abril del 2012:** La Corte Suprema falla contra las parejas del mismo sexo que pidieron matrimonio en el Registro Civil.
- 15 de mayo del 2012: El Movilh, representado por Rolando Jiménez, demandó al Estado de Chile ante la Comisión Interamericana de Derechos Humanos (CIDH) por prohibir el matrimonio a parejas del mismo sexo.
- 11 de junio del 2016: Bajo la administración de Michelle Bachelet, el Estado de Chile y el Movilh firmaron un Acuerdo de Solución Amistosa (ASA). En el ASA el Estado se comprometió a elaborar un proyecto de ley, presentarlo al Congreso Nacional y a aprobarlo.
- **5 de septiembre del 2017:** En el marco del cumplimiento del ASA, Bachelet presenta al Congreso Nacional el proyecto de ley de matrimonio igualitario, tras redactarlo junto a organizaciones de regiones del norte, centro y sur del país.
- 17 de mayo del 2018: El Gobierno del presidente Sebastián Piñera se compromete ante la CIDH a cumplir con el ASA.

## • Hitos del 2021

- **14 de febrero:** En el Día del Amor lanzan primera campaña por el matrimonio igualitario que responde al rechazo del presidente Piñera a a esa iniciativa legal.
- 11 de marzo: Comisión de Constitución del Senado debate sobre el matrimonio igualitario. En la ocasión Movilh e Iguales expusieron sus puntos de vista sobre la ley.
- 12 de abril: En carta enviada a todos/ as los senadores/as y diputados/ as, el Movilh demandó la aprobación del matrimonio igualitario.
- Entre mayo y el 29 de noviembre: El Movilh recolecta 28.083 firmas de apoyo al matrimonio igualitario. Las firmas fueron entregadas a la presidenta del Senado, Ximena Rincón
- 7 de mayo: El Movilh pide a presidenta del Senado, Yasna Provoste, incluir a los DDHH LGBTIQ+ y al matrimonio igualitario en los acuerdos de la Oposición con el Ejecutivo.
- 7 de mayo: El Movilh demanda al Presidente Comisión de Constitución, Legislación y Justicia del del Senado, Pedro Araya (IND), la reactivar la tramitación del proyecto de ley de matrimonio igualitario".
- 24 de mayo: El Movilh envía una misiva a todos/as los congresistas exigiendo la rápida aprobación del matrimonio igualitario, criticando a las autoridades que decían apoyar la ley, pero nada hacían.
- 1 de junio: En la cuenta pública en el Congreso Nacional el presidente Piñera anuncia que dará urgencia al matrimonio igualitario.
- **2 de junio:** El Movilh pide a la presidenta del Senado, Yasna Provoste, dar celeridad a la votación del proyecto de ley apenas sea despachado a Sala.
- 2 de junio: Hasta el Palacio de La Moneda llegó Movilh para solicitar al presidente Sebastián Piñera que otorgue "discusión inmediata" al proyecto de Ley de Matrimonio Igualitario.

- **3 de junio:** El gobierno otorga "suma urgencia" para el matrimonio igualitario.
- 5 de junio: La Comisión Interamericana de DDHH "celebra" la suma urgencia dada por el Gobierno al matrimonio igualitario y recuerda que el avance es parte del Acuerdo de Solución Amistosa firmado por el Estado y el Movilh.
- 14 de junio: En cita con el Movilh, el vocero de Gobierno, Jaime Bellolio, y el Ministro de Justicia, Hernán Larraín, comprometen la mantención de la suma urgencia.
- 15 de junio: La Comisión de Constitución del Senado reactiva la tramitación del matrimonio igualitario.
- 15 de junio: El Movilh dialoga con la relatora de la CIDH, Flavia Piovesan, el estado de avance del Acuerdo de Solución de Amistosa (ASA) por el matrimonio igualitario.
- 16 de junio: El Movilh denuncia públicamente que sectores homo/transfóbicos estaban dilatando la votación del proyecto de ley en la Comisión de Constitución.
- 29 de junio: La Comisión de Constitución del Senado despacha a Comisión de Hacienda el proyecto de ley.
- **6 de Julio:** La Comisión de Hacienda del Senado aprueba el presupuetso del matrimonio igualitario y lo despacha a Sala.
- 8 de julio: La presidenta del Senado,
   Yasna Provoste, manifiesta que gestionara
   a la brevedad la votación del proyecto
   de ley en Sala, tras carta enviada por
   el Movilh donde se solicitaba ello.
- **9 de julio:** El Movilh capacita en diversidad familiares a funcionarios/ as del Departamento de Adopciones del Sename de todo el país.
- 19 de julio: El Movilh envía una carta a todos/as los/as senadores/as solicitando que voten a favor del matrimonio igualitario y cumplan con los compromisos internacionales asumidos por Chile.

- **21 de Julio:** El Senado aprueba el matrimonio igualitario y lo despacha a la Cámara.
- 26 de julio: El Movilh solicita a la Comisión de Constitución, Legislación y Justicia de la Cámara de Diputadas y Diputados que contribuya a dar celeridad a la tramitación del matrimonio igualitario.
- 19 de agosto: La Comisión de Constitución, Legislación y Justicia de la Cámara de Diputadas y Diputado, inicia el segundo trámite del matrimonio igualitario. Exponen el Movilh e Iguales.
- **25 de agosto:** La Subsecretaría de Derechos Humanos del Ministerio de Justicia, que encabeza Lorena Rebabarren, se reunió con el Movilh y la Fundación y Iguales para dialogar sobre las indicaciones al proyecto de ley.
- 1 de septiembre: El Instituto Igualdad organiza un foro sobre matrimonio igualitario con el presidente de la Comisión de Constitución, Legislación y Justicia de la Cámara, Marcos Ilabaca, Iguales y Movilh.
- **9 de septiembre:** La Comisión de Constitución de la Cámara aprueba por unanimidad la idea de legislar el matrimonio igualitario.
- **17 y 18 de septiembre:** Altos jerarcas de las iglesias se manifiestan contra el matrimonio igualitario durante los Te Deum Ecuménico y Evangélico.
- 28 de septiembre al 29 de noviembre: Iguales desarrolla una campaña de recolección de firmas a favor del matrimonio igualitario, logrando el apoyo de 17 mil rúbricas que fueron entregadas a la presidenta del Senado, Ximena Rincón.
- 12 de octubre: La Comisión de Constitución, Legislación y Justicia de la Cámara de Diputadas y Diputados aprueba y despacha el matrimonio igualitario.
- **26 de octubre:** El Movilh solicita a la Comisión de Hacienda poner en tabla el matrimonio igualitario, tras dos semanas de parálisis en la tramitación.

- **2 de noviembre:** La Comisión de Hacienda de la Cámara aprueba el presupuesto del matrimonio igualitario.
- 4 de noviembre: La presidenta del Senado, Ximena Rincón, compromete en cita con el Movilh una rápida votación del proyecto del proyecto, así como su respaldo a las indicaciones introducidas por la Cámara.
- 13 de noviembre: Más de 150 mil personas se suman a la Marcha del Orgullo convocada por el Movilh para demandar el matrimonio igualitario. El desfile fue el más masivo en la historia de los derechos LGBTIQA+ en Chile.
- **23 de noviembre:** La Cámara de Diputadas y Diputados aprueba el proyecto de ley y lo despacha al Senado.
- **27 de noviembre al 7 diciembre:** 42 instituciones públicas y privadas se pliegan a la Campaña Arcoíris del Movilh desplegando la bandera o colores LGBTIQA+ en apoyo al matrimonio igualitario.
- **29 de noviembre:** El Movilh da a conocer los resultados de la "Encuesta Nacional, las parejas del mismo sexo frente al matrimonio igualitario", contestada por 1.878 personas.
- 30 de noviembre: La Comisión de Constitución del Senado rechaza las indicaciones de la Cámara al proyecto de ley y aprueba enviarlo a Comisión Mixta.
- 30 de noviembre: La Sala del Senado aprueba la determinación de la Comisión de Constitución, Legislación y Justicia de enviar a Comisión Mixta el proyecto de ley.
- **30 de noviembre y 6 de diciembre:** El Gobierno otorga discusión inmediata a la tramitación, tras nuevas peticiones del Movilh.
- **5 de diciembre:** El Movilh solicita a los/ as congresistas de la Comisión Mixta del Matrimonio Igualitario que aprueben las modificaciones introducidas por la Cámara de Diputadas y Diputados.
- **6 de diciembre:** La Comisión Mixta aprueba la ley de matrimonio

igualitario incorporando los derechos de filiación y cuidado homoparental.

- **7 de diciembre:** Las salas del Senado y de la Cámara aprueban el matrimonio igualitario.
- **7 de diciembre:** Unas 5 mil personas festejan la aprobación del matrimonio igualitario en un evento convocado por el Movilh en la Plaza de la Dignidad.
- **8 de diciembre:** La ex presidenta y Alta comisionada para los Derechos Humanos de la ONU, Michelle Bachelet, celebra la aprobación de la ley.
- **8 de diciembre:** Familias homoparentales desayunan con el Movilh para compartir sus expectativas en torno al matrimonio igualitario y dialogar sobre sus experiencias.
- **8 de diciembre:** Activistas del Movilh son amenazados de muerte por la aprobación del matrimonio igualitario.
- 9 de diciembre: La Oficina para América del Sur del Alto Comisionado de las Naciones Unidas para los Derechos Humanos (Acnudh) valora la promulgación de la ley en Chile.
- **9 de diciembre:** El presidente Piñera promulga la ley de matrimonio igualitario en una ceremonia que contó con la asistencia de colectivos LGBTIQA+ como Acción Gay, Iguales y el Movilh.
- 9 de diciembre: La Comisión
   Interamericana de Derechos Humanos (CIDH)
   recuerda que la aprobación del matrimonio
   igualitario se enmarca en el cumplimiento
   de un Acuerdo de Solución Amistosa (ASA),
   tras una demanda interpuesta por el Movilh.
- 10 de diciembre: La ley de matrimonio igualitario es publicada en el Diario Oficial<sup>39</sup>.

## III. – HISTÓRICO: LEY DE GARANTÍAS DE LA NIÑEZ, LA PRINCIPAL HERRAMIENTA LEGAL PARA PROTEGER A LGBTIQA+

El "Proyecto de ley de garantías y protección integral de los derechos de la niñez y adolescencia" (Boletín N° 10.315-18), ingresado a tramitación por la ex presidenta Michelle Bachelet en septiembre del 2015, fue aprobado el 19 de enero del 2022, convirtiéndose en la principal herramienta para proteger y promover los derechos de niños, niñas y adolescentes, incluido los/as LGBTIQA+, quienes son expresamente mencionados en la iniciativa.

Si bien la tramitación en 2021 fue acelerada, se entrampó luego de que Chile Vamos consiguiera limitar los derechos de los NNA en tres artículos del proyecto de ley y después de que el Congreso Nacional declarara inadmisible observaciones del presidente Sebastián Piñera, siendo este último conflicto superado a comienzos del 2022.

#### Derechos LGBTIQA+ y tramitación

El 29 de enero del 2021 el proyecto de ley inició el tercer trámite en la Comisión de Familia de la Cámara, cuya labor sería analizar los cambios introducidos por la sala Senado, que lo había discutido y aprobado en particular entre el 22 de diciembre del 2020 y el 27 de enero del 2021.

El 24 de marzo la Comisión de Familia de la Cámara no dio luz verde a todos los cambios del Senado, lo cual fue ratificado un día después por la Sala de la Cámara, por lo que el trámite continuó en Comisión Mixta. Finalmente la propuesta de la Comisión Mixta fue aprobada tanto por las Salas de la Cámara (16 de junio), como del Senado (23 de junio).

Durante la tramitación del 2021 los derechos de NNA LGBTIQA+ y de las familias homoparentales no estuvieron en juego, pues los cambios del Senado y de la Comisión Mixta no habían modificado esos temas, todos aprobados en el primer trámite en la Cámara tras propuestas del Movilh<sup>40</sup>.

<sup>[39]</sup> https://www.movilh.cl/wp-content/uploads/2021/12/ Ley-21.400-matrimonio-igualitario.pdf

<sup>[40]</sup> Más antecedentes sobre el primer trámite en la Cámara se encuentran en el XIV y XV Informe Anual de los Derechos Humanos de la Diversidad Sexual y de Género, publicados en Movilh.cl. En tanto, los avances de la norma en el transcurso del 2019 y del 2020, se encuentran en

Los artículos de mayor relevancia para los derechos de los/as niños/as LGBTIQA+ son el 8 y el 26.

El artículo 8 establece que "ningún niño, niña o adolescente podrá ser discriminado en forma arbitraria en razón de su (...) sexo, orientación sexual, identidad de género, expresión de género y características sexuales", entre otras categorías, ni tampoco por la "actividad o estatus suyo o de sus padres y/o madres, familia, representantes legales o de quienes lo tengan legalmente a su cuidado".

En tanto, el artículo 6 se señala que todo/a NNA "tiene derecho a conocer la identidad de sus padres y/o madres, su origen biológico, a preservar sus relaciones familiares de conformidad con la ley, a conocer y ejercer la cultura de su lugar de origen y, en general, a preservar y desarrollar su propia identidad e idiosincrasia, incluida su identidad de género, conforme a la legislación vigente".

A lo expuesto se añade que el proyecto de ley reconoce la diversidad familiar al reconocer la existencia de "padres y/o madres" en los artículos 26, 27, 39, 30, 31, 34, 35, 36, 38, 41, 42, 43, 45, 49, 50, 56, 59, 62, 66, 70, 72 y 80.

#### • El conflicto

El 21 de julio Piñera formuló 7 observaciones al proyecto de ley, las cuales fueron declaradas inadmisibles por el Congreso Nacional.

En términos generales el Gobierno pretendía reducir la autonomía de los/as NNA y los recursos del Estado para la protección de tal grupo humano.

Entre otros, Piñera buscaba añadir en el proyecto que las obligaciones y deberes del Estado con la ley "se cumplirán de manera progresiva y conforme a sus atribuciones y medios". También agrega a la oración "todos los niños, niñas y adolescentes tienen derecho a la inmunización contra las enfermedades prevenibles" la frase "conforme al programa nacional de inmunizaciones".

A la par perseguía eliminar que "el ejercicio del derecho a la protección de la intimidad y la propia imagen corresponde al niño, niña o adolescente, de acuerdo con su edad y grado de madurez, y siempre en atención a su interés superior", dejando tal atribución solo en manos de "los padres y/o madres, representantes legales o quienes los tengan legalmente a su cuidado", aunque siempre con consulta a los/as NNA.

el XVIII y XIX Informes Anuales de los Derechos Humanos de la Diversidad Sexual y de Género, en forma respectiva, publicados en movilh.cl Finalmente buscaba suprimir la obligación del Estado de garantizar "una acción de amparo y el derecho a contar con la asistencia de un abogado en el lugar en el que se encuentren, a todos los niños, niñas o adolescentes detenidos o retenidos ilegal y/o arbitrariamente por las policías o por cualquier otro agente estatal. Ésta podrá ser interpuesta por sí mismo, un letrado o por cualquier persona a su nombre".

Tras ser declaradas inadmibles las observaciones por el Congreso Nacional, el vicepresente de la República, Rodrigo Delgado, presentó al Tribunal Constitucional un requerimiento de insconsticionalidad.

El 13 de octubre el TC declaró inconsticional la inadmisibilidad formuladas a las obervaciones de Piñera, por cuanto, consideró que era una obligación jurídica admitirlas a trámite, toda vez que las mismas tienen directa relación con la ideas matrices del proyecto de ley.

Además, el 16 de julio, el TC había acogido otro dos requerimientos de insconstitucionalidad presentados por congresistas de Derecha que impugnaron 3 de los 88 artículos del proyecto de ley solo con el fin de restar autonomía a los/as NNA e impedir una educación laica y no sexista.

En un fallo nefasto, el TC ordenó eliminar del proyecto de ley las siguientes frases destacadas en negrita:

- "Todo niño, niña y adolescente, de conformidad al Sistema de Garantías y Protección Integral de los Derechos de la Niñez y Adolescencia, podrá ejercer sus derechos en consonancia con la evolución de sus facultades, atendiendo a su edad, madurez y grado de desarrollo que manifieste, salvo que la ley limite este ejercicio tratándose de derechos fundamentales, en cuyo caso las limitaciones deben interpretarse siempre de modo restrictivo" que seguía al parráfo".

- "Durante su proceso de crecimiento los niños, niñas y adolescentes van desarrollando nuevas capacidades y profundizando otras que les permiten, progresivamente, requerir menor dirección y orientación por parte de los padres y/o madres, representantes legales o las personas que los tengan legalmente a su cuidado".

- "Los niños, niñas y adolescentes tienen derecho a tomar parte en reuniones públicas y manifestaciones pacíficas convocadas conforme a la ley, sean de carácter festivo, deportivo, cultural, artístico, social, religioso, o de cualquier otra índole, en compañía de sus padres y/o madres, otros adultos responsables, o por sí solos, si su edad y el grado de autonomía con el que se desenvuelven así lo permitieren".

A la par se impugnó el artículo 41, para el cual la educación sexual debía ser "de carácter laico y no sexista".

#### • Ley aprobada

Finalmente el veto presidencial se desvaneció, pues el Presidente decidió retirar seis de sus siete observaciones, dejando solo para votación del Congreso Nacional aquella que garantizaba rol preferente de los padres y/o tutores en el cuidado y protección de la intimidad e imagen de los/as NNA, aunque siempre teniendo en consideración la opinión de los menores de 18 años.

Al respecto, el ministro Secretario General de la Presidencia, Juan José Ossa, explicó la persistencia en esa indicación porque "nos preocupa el uso de las redes sociales por parte de los niños, niñas y adolescentes. Creemos que es muy necesario que los padres los acompañen y estén presentes en esa materia. Siempre, por supuesto, respetando los niveles de privacidad que van evolucionando con el paso de los años", (El Mostrador, 20 de enero 2022).

Incorporando ese elemento, la Sala de la Cámara aprobó el 19 de enero del 2022 el proyecto de ley por 101 votos a favor y 2 en contra y, horas más tarde, el Senado lo ratificó por 33 votos a favor y 1 abstención.

## IV.- HITO: SENTENCIA DEL TC DECLARA INAPLICABLE EL DIVORCIO CULPOSO POR HOMOSEXUALIDAD Y EL CONGRESO LO SUPRIME

Al comenzar el 2021 Chile contaba con tres normas explícitamente homofóbicas:

el artículo 365 del Código Penal; que establece distintas edades de consentimiento sexual según la orientación sexual de adolescentes y jóvenes; el artículo 102 del Código Civil, que prohibía el matrimonio igualitario, y el número 4 del artículo 54 de la Ley 19.947 que tipificaba como causal de divorcio culposo a la homosexualidad.

Al finalizar el año solo quedaba una, el artículo 365, pues el matrimonio igualitario fue publicado en el Diario Oficial el 10 de diciembre y la derogación del divorcio culposo por homosexualidad corrió igual suerte el 16 de agosto.

Si la aprobación del matrimonio igualitario tiene la particularidad de haber sido acelerada por un Gobierno de Derecha que inicialmente era opositor a esa ley<sup>41</sup>, la derogación del artículo 54 número 4 de la Ley 19.947 ocurrió luego de que una entidad con una larga trayectoria de homofobia, como el Tribunal Constitucional, lo declarara inaplicable.

De esa forma, por segunda vez en menos de un año, el Congreso Nacional se movilizó decididamente a favor de en temáticas históricas para los derechos LGBTIQA+ solo porque así lo determinaron fuerzas externas, antes que por una coordinación parlamentaria que de suyo hubiese impulsado avances en áreas donde la mayoría de los/as congresistas decía hace años estar de acuerdo, pero nada o poco hacían, salvo honrosas excepciones que no alcanzaban a mover la balanza.

<sup>[41]</sup> Todo sobre este hito se encuentra en el II título del presente capítulo.

#### • La histórica sentencia de TC

El artículo 54 de la Ley de Matrimonio establece que "el divorcio podrá ser demandado por uno de los cónyuges" en caso del "atentado contra la vida o malos tratos graves", "abandono", "transgresión grave y reiterada de los deberes de convivencia, socorro y fidelidad", "condena de crímenes o delitos", "alcoholismo o drogadicción" y "tentativa para prostituir al otro cónyuge o a los hijos".

En el mismo listado de causas de divorcio culposo, exactamente en el numeral 4, se mencionaba a "la conducta homosexual", como si por si sola fuera una falta asimilable incluso a delitos, todo un estigma que solo dañaba la dignidad de las personas y cuya utilidad era nula, pues el divorcio siempre se ha podido tramitar por infidelidad.

Desde el 2012 que el Movilh venía demandando con manifestaciones, campañas o presentaciones en el Congreso Nacional, tribunales y organismos internacionales la derogación del divorcio culposo, logrando que su supresión fuese incorporada en el proyecto de ley que la presidenta Michelle Bachelet envió al Parlamento en el marco de un Acuerdo de Solución Amistosa firmado por el Estado ante la Comisión Interamericana de DDHH.<sup>42</sup>

El guante, empero, lo tomaría el TC.

En dos ocasiones anteriores, 10 abril y el 30 diciembre del 2014, el TC había rechazado por 6 votos contra 4 y un empate de 4, en forma respectiva, requerimientos de inaplicabilidad por inconstitucionalidad del divorcio culposo<sup>43</sup>.

Años después la situación cambió a raíz de que la Jueza Titular del Juzgado de Familia de Coquimbo, María Antonieta Santibáñez Rodríguez, presentó el 23 de junio del 2020 un requerimiento alegando que la causal era discriminatoria, en el marco de una demanda de divorcio interpuesta por un hombre, Óscar Plaza, contra su esposa, Paula Sarria por mantener una relación con otra mujer, Claudia Escobar.

Su visión fue respaldada por Amicus Curiae que ingresaron al TC la Corporación Fundamental (19 de julio del 2020), el Movilh (24 de julio del 2020) y Rompiendo el Silencio (14 de septiembre del 2020), así como rechazada en otro escrito de la Corporación Comunidad y Justicia (27 de julio del 2020)<sup>44</sup>.

Finalmente el 27 de abril del 2021 el TC declaró por 6 votos contra 4 inaplicable la causal de divorcio culposo por homosexualidad, un hecho histórico que contó con los pronunciamientos favorables de los/as ministros/ as María Luisa Brahm Barril, Gonzalo García Pino, Nelson Pozo Silva, Cristián Letelier Aguilar, Rodrigo Pica Flores, María Pía Silva Gallinato, mientras en contra se pronunciaron los/as magistrados/as Iván Aróstica Maldonado, Juan José Romero Guzmán, José Ignacio Vásquez Márquez y Miguel Ángel Fernández González.

En su sentencia, el TC sostuvo que "esta causal de divorcio culpable asigna al cónyuge una responsabilidad por actos indistinguibles de su condición personal, reafirmando un estándar subjetivo no permitido por la Constitución. La determinación del legislador constituye una vulneración esencial del propio ámbito de los derechos fundamentales, puesto que la identificación de un límite debe estar basada irredargüiblemente en actos externos, de significación jurídica plausible, que generen afectación a terceros. No es posible tolerar la constitución de un límite a un derecho fundamental a un trato igualitario, si la naturaleza de ese límite consiste en degradar la condición de la persona misma o imputarla con responsabilidad y sanciones por un patrón conductual que no puede modificar" (página 21).

Añadió que con la mencionada causal "el legislador introduce, en consecuencia, un ejercicio comparativo de la "conducta homosexual" en el mismo catálogo de delitos, patologías sociales, enfermedades de dependencia física o sentencias condenatorias por abusos o violencia" (página 19).

Para el TC "la noción de conducta, neutramente entendida, no refiere acciones específicas, pero adjetivada con la palabra "homosexual", activa una integración normativa de prejuicios, en manos del intérprete de la regla, que puede incorporar hechos ilimitadamente adversos sin atender a la condición de persona y a sus características individuales. También puede acontecer lo contrario. Esto es una dimensión restrictiva que lleve a una prácticamente nula aplicación de la regla. Pero la debilidad de la norma es esa, permitir un cuestionamiento a la condición de las personas en un marco crítico para resolver la ruptura del matrimonio" (página 21).

"La interpretación que integra y crea una causal de divorcio identificando la condición individual de la orientación sexual de uno de los contrayentes, vulnera el artículo 19, numeral 2°, de la Constitución puesto que afecta la condición de persona misma (artículo 1° y 19° de la Constitución) y su dignidad humana (artículo 1° de la Constitución), en su relación con el artículo 19, numeral 2°", especificó el tribunal (página 21).

Explicó además que "el divorcio por culpa introduce un conjunto de causales extremadamente graves y

<sup>[42]</sup> Más antecedentes en el II título del presente capítulo.

<sup>[43]</sup> Todos los detalles en el XIII. Informe Anual de los Derechos Humanos de la Diversidad Sexual y de Género, publicados en movilh.cl

<sup>[44]</sup> Más antecedentes en el XIX. Informe Anual de los Derechos Humanos de la Diversidad Sexual y de Género, publicados en movilh.cl

completas de un modo tal que ni siquiera la infidelidad pura y simple constituye una de esas causales. Basta un conjunto superior de requisitos, medios probatorios y verificaciones avaladas en un conjunto de hechos" (página 22).

Tampoco esta causal, añadió el TC, "cumple con el principio de necesidad. El juicio por divorcio culpable se mantiene en pie. Ningún derecho de las partes se ha afectado por dejar de utilizar esta causal, declarando su inaplicación concreta y no obligando a la jueza de familia a tener que fallar conforme exclusivamente al principio de inexcusabilidad, a sabiendas de la conciencia de inconstitucionalidad de la norma" (página 22).

"Se trata de un caso en donde el mantenimiento de la causal para el caso concreto genera una minusvaloración para la dignidad humana de las personas homosexuales, en todas sus formas en general, y, en particular, de la parte demandada en el juicio por divorcio culpable. Se trata de una afectación de condiciones esenciales respecto de los cuales no cabe diferenciar a las personas. Se trata de una norma que define una regla discriminatoria al ser fundada en un criterio no razonable, arbitrario y denigrante de la condición de personas históricamente segregadas y sostenidas en una clasificación basada en un estatus inmutable o en condiciones que la persona no puede controlar. Aquello vulnera el artículo 19, numeral 2° de la Constitución, ya que el legislador estableció una "diferencia arbitraria", sostenida en la orientación sexual de las personas, estableciendo una regla punitiva de efectos civiles, procesales y económicos perjudiciales para uno de los contrayentes del matrimonio" (página 23), finalizó el TC.

El voto minoritario, lejos de argumentar si la causal de divorcio era o no discriminatoria, se limitó a señalar que era innecesario analizar el caso, pues la jueza que presentó el requerimiento bien podría dirimir o autorizar el divorcio, sin recurrir a la causal por homosexualidad.

"Los antecedentes de la causa dan cuenta que no es necesaria una declaración de esta Magistratura para que evitar que el procepto impugnado sea aplicado en el juicio de divorcio. Estamos ante una causa en la que ninguna de las partes, incluido la juez quiere que se aplique la causal de divorcio que hace referencia a la conducta homosexual. Por consiguiente, la acción de inaplicabilidad interpuesta no cumple con el requisito constitucional consistente en que el precepto que se objeta pueda ser aplicado, tal como lo dispone el artículo 93, inciso undécimo, de la Constitución" (página 25), precisó el voto disidente.

Si bien la sentencia quitaba toda validez al divorcio culposo por homosexualidad, el Movilh cursó acciones ante el TC y el Congreso Nacional para que se eliminara totalmente del ordenamiento jurídico el artículo 54 N° 4 de la Ley 19.947.

En un requerimiento de 53 páginas patrocinado por los/as abogados/as Ciro Colombara, Carola Cotroneo y Angélica Cárdenas, el Movilh precisó el 10 de mayo al TC que tras considerarse inaplicable el mencionado artículo "solicitamos se declare ahora su inconstitucionalidad (...) ordenando su derogación y expulsión del ordenamiento jurídico".

En paralelo, el Movilh realizó desde abril gestiones ante el Congreso Nacional para que, por ley, se derogara el divorcio culposo por homosexualidad, siendo esta última acción la que terminó por prosperar primero.

## • La aprobación en el Congreso Nacional

Si bien al 11 abril se desconocían los argumentos de la sentencia del TC, su resultado se hizo público a través de El Mercurio. Con ese información, al día siguiente el Movilh envió una carta a todos/as los/as senadores/as y diputados/as pidiendo "saldar sus deudas históricas con las familias homoparentales y con las parejas del mismo sexo".

"Considerando el avance registrado en el TC, es del todo oportuno, necesario y urgente que el Congreso Nacional elimine del ordenamiento jurídico la causal de divorcio culposo por homosexualidad, en tanto en la praxis, la norma ya no tendrá utilidad", apuntó el Movilh.

"La eliminación de la causal de divorcio por homosexualidad puede ser por tres vías a saber: a) pedir a la Cámara que ponga en tabla la discusión y la tramitación con carácter de urgencia de dos proyectos de ley que buscan derogarla, el primero presentado en 2014 por el ex diputado Felipe Letelier y el segundo, en 2020, por la congresista Maya Fernández, b) presentar un nuevo proyecto de ley, que inicie su debate en el Senado y c) acelerar la tramitación del proyecto de ley de matrimonio igualitario, presentado en 2017 por la entonces presidenta Michelle Bachelet", señaló el Movilh.

Dos días después, las senadoras Isabel Allende (PS), Adriana Muñoz (PPD), Yasna Provoste (DC), Ximena Rincón (DC) y Marcela Sabat (RN) tomaron nota y presentaron un nuevo proyecto de ley que pasó a manos de la "Comisión de la Mujer y la igualdad de Género" y al cual el Gobierno le dio urgencia simple en tres ocasiones: el 20 de mayo, 22 de junio y 27 de julio.

La Comisión aprobó el 29 de abril el proyecto con los votos de Allende, Muñoz, Provoste y Sabat y una abstención de la senadora Jacqueline Van Rysselberghe (UDI).

En la misma sesión expusieron la subsecretaria de Derechos Humanos, Lorena Recabarren; además

representantes de Rompiendo el Silencio, Iguales y Movilh, y el testimonio de Paula Sarrín.

Un día después de que Piñera anunciara urgencia en la tramitación por el matrimonio igualitario, el Senado aprobó por 19 votos y 4 abstenciones la derogación de la causal de divorcio culposo por homosexualidad, siendo la iniciativa apoyada por el Gobierno a través de intervenciones del ministro de Justicia, Hernán Larraín, y de Recaberren.

Votaron a favor las senadoras Allende, Rincón, Provoste y Sabat, junto a los/as legisladores/as Carmen Gloria Aravena, Pedro Araya, Loreto Carvajal, Juan Castro, Francisco Chahuán, Alfonso de Urresti, Álvaro Elizalde, Rodrigo Galilea, Alejandro Guillier, Ricardo Lagos, Juan Ignacio Latorre, Juan Pablo Letelier, Carlos Montes, Jorge Pizarro y Jorge Soria. Se abstuvieron los UDI Juan Antonio Coloma, José Miguel Durana, Luz Eliana Ebensperger y David Sandoval.

Uno de los antecedentes más significativos de la tramitación en el Senado es que nadie votó en contra, lo cual solo vino a evidenciar una vez más el peso transversal del TC en el Poder Político.

Pese a su abstención, Ebensperger no pudo dejar de decir en Sala que "a lo mejor, yo puedo perdonar una infidelidad; pero ¿puedo perdonar una infidelidad con una conducta homosexual? Más allá de ese tipo de conducta, se afecta cierto aspecto en la esencia de los requisitos del matrimonio: mi marido se casó conmigo porque yo tenía una determinada orientación sexual. No es que él sea discriminador con la homosexualidad, pero se casó conmigo sabiendo cuál era mi orientación sexual. Entonces, él no se estaría divorciando conmigo por una infidelidad cualquiera; a lo mejor, si solo fuera eso, me perdonaría y no se divorciaría".

En la Comisión de la Mujer y Género de la Cámara, en tanto, el proyecto fue aprobado el 19 de julio por 8 votos a favor (Maite Orsini Pascal, Maya Fernández Allende, Marcela Hernando Pérez, Erika Olivera De La Fuente, Joanna Pérez Olea, Camila Rojas Valderrama, Patricia Rubio Escobar y Marisela Santibáñez) y 2 abstenciones de la diputada Ximena Ossandón (RN) y Virginia Troncoso (IND).

Finalmente solo en la Sala de la Cámara de Diputadas y Diputados se manifestaron 7 votos en contra: los/as RN Eduardo Durán, René Manuel García, Harry Jürgensen, Francesca Muñoz, Leonidas Romero y Cristóbal Urriticoechea, así como el PR Ignacio Urrutia. Además se abstuvieron los UDI Nino Baltolu y Osvaldo Urrutia, los RN Luis Pardo y Leopoldo Pérez y el DC Jorge Sabag.

Con todo, el proyecto se aprobó el 28 de julio con un amplia mayoría 119 votos a favor.

La derogación del divorcio culposo por homosexualidad fue finalmente publicada en el Diario Oficial el 16 de agosto<sup>45</sup>.

#### Cronología

- 12 de abril: El Movilh pide a todos/ as los senadores/as y diputados/as que deroguen la causal de divorcio culposo.
- **14 de abril:** Ingresa al Senado un proyecto de ley para derogar la causal de divorcio culposo.
- **27 de abril:** El Tribunal Constitucional declara inaplicable la causal de divorcio culposo por homosexualidad.
- 29 de abril: Rompiendo el Silencio, Iguales, Movilh y Paula Sarrín, exponen en la Comisión de la Mujer y la Igualdad de Género del Senado.
- **29 de abril:** La Comisión de la Mujer y la Igualdad de Género del Senado aprueba la derogación del divorcio culposo por homosexualidad.
- **10 de mayo:** Movilh presenta un requerimiento ante el TC para que se elimine del ordenamiento jurídico la causal de divorcio culposo.
- **2 de junio:** El Senado aprueba la derogación de la causal de divorcio culposo por homosexualidad.
- 19 de julio: La Comisión de Mujeres y Equidad de Género de la Cámara de Diputadas y Diputados aprueba el proyecto de ley.
- 28 de julio: La Sala de la Cámara de Diputadas y Diputados aprueba la derogación del divorcio culposo por homosexualidad.
- **16 de agosto:** La derogación del divorcio culposo por homosexualidad es publicada en el Diario Oficial.

<sup>[45]</sup> El 25 de agosto del 2021 la jueza del Juzgado de Familia de Santa Cruz, Carolina Andrea Muñoz León, también solicitó al TC que declarara inaplicable el artículo 54 N° 4, luego de que Jaime Andrés González Moreno pidiera divorciare de su esposa, entre otras razones por su "conducta homosexual". Sin embargo, el 5 de noviembre, fue el propio abogado de González Moreno quien señaló al TC que "habiendo entrado en vigencia la Ley N° 21.367 y su "Artículo único.– Suprímase el número 4° del Artículo 54 de la Ley N°19.947"; esta parte se allana, solicitando se tenga presente y se dé curso progresivo a los autos".

## V.- LEY CONTRA LA DISCRIMINACIÓN EN EDUCACIÓN SUPERIOR INCLUYE DERECHOS LGBTIQA+

Ley 21.369 que regula el acoso sexual, la violencia y la discriminación de género en el ámbito de la educación superior<sup>46</sup>, publicada 15 de septiembre del 2021, incorporó explícitamente los conceptos de "sexo, género, identidad y orientación sexual", lo cual es de especial relevancia para estudiantes LGBTIQA+.

El objetivo de la ley, según lo señalado en su primer artículo "es promover políticas integrales orientadas a prevenir, investigar, sancionar y erradicar el acoso sexual, la violencia y la discriminación de género, y proteger y reparar a las víctimas en el ámbito de la educación superior, con la finalidad de establecer ambientes seguros y libres de acoso sexual, violencia y discriminación de género, para todas las personas que se relacionen en comunidades académicas de educación superior, con prescindencia de su sexo, género, identidad y orientación sexual".

En otras palabras, el sexo, el género o la identidad y orientación sexual no podrán ser usados como excusa o argumento a favor de alguna discriminación o para excluir a alguna persona de algún derecho o política educacional y, por el contrario, es un deber implementar medidas para erradicar y prevenir cualquier tipo de exclusión por esos motivos.

Para tales efectos, las instituciones de educación superior deberán crear "una política integral contra el acoso sexual, la violencia y la discriminación de género, que contendrá un modelo de prevención y un modelo de sanción de dichas conductas, construido con la participación de todos los estamentos existentes en su interior" (artículo 3).

Entre otros, deberá garantizarse "apoyo psicológico, médico, social y jurídico para las víctimas y los miembros de la comunidad educativa" (artículo 4), mientras que la normativa interna contra el acoso sexual, violencia y discriminación de género "deberá ser incorporada expresamente en los contratos de trabajo y de prestación de servicios educacionales, convenios académicos y de investigación y cualquier otro instrumento celebrado por la institución, incluidos los convenios que se celebren para efectos de llevar a cabo actividades de esparcimiento y recreación" (artículo 9).

Las entidades que no implementen "una política integral contra el acoso sexual, la violencia y la discriminación de género (..) no podrán acceder u obtener la acreditación institucional" (artículo 7).

"Las instituciones de educación superior (...) tendrán un plazo máximo de un año" a a contar del 15 de septiembre del 2021, "para implementar los modelos de prevención y de sanción construidos participativamente", finalizó el artículo transitorio de la norma.

La ley surgió de tres mociones presentadas por los/as senadores Ximena Órdenes, Isabel Allende, Yasna Provoste, Ena Von Baer y Carlos Montes (Boletín 11.750-04); Juan Pablo Letelier, Ricardo Lagos y Jorge Pizarro (Boletín 11.797-04) y Ricardo Lagos (Boletín 11.845-0).

La primera norma que protegió expresamente a las personas LGBTIQA+ en Chile fue la Ley Antidiscriminatoria 20609 (2012) a la que siguieron la Ley 20.750 que permite la introducción de la televisión satelital terrestre (2014), la Ley 20.830 sobre Acuerdo de Unión Civil (2015), la Ley 20.940 que Moderniza el Sistema de Relaciones Laborales (2016), Ley 20.968 que Tipifica los Delitos de Tortura y de Tratos Crueles, Inhumanos y Degradantes (2016); la Ley 21.120 de identidad de Género (2018), la Ley 21.212 que Modifica el Código Penal, el Código Procesal Penal y la ley 18.216 en Materia de Femicidio (2020), Ley 21.325 de Migración y Extranjería (2020)<sup>47</sup>, la Ley 21.400 de Matrimonio Igualitario (2021)<sup>48</sup> y la Ley de Sistema de Garantías de la Niñez<sup>49</sup> (2022).

<sup>[46]</sup> https://www.movilh.cl/wp-content/uploads/2022/01/ Ley-educacion-superior-no-discriminacion.pdf

<sup>[47]</sup> La historia sobre todas estas leyes se encuentran en los respectivos Informes Anuales de los Derechos Humanos de la Diversidad Sexual y de Género, publicados en movilh.cl

<sup>[48]</sup> Todos los antecedentes en el segundo título del presente capítulo.

<sup>[49]</sup> Todos los antecedentes en el tercer título del presente capítulo.

## VI.- CONGRESO NACIONAL INICIA DEBATE SOBRE CUPO LABORAL TRANS

La discriminación laboral en razón de la identidad de género es una de las realidades con que menos estadísticas se dispone.

Por un lado, las denuncias por abusos son escasas, pues los reportes generalmente provienen de personas que ya están ejerciendo alguna labor, en circunstancias que históricamente la población trans ha sido impedida de antemano de ingresar a fuentes laborales debido a los prejuicios y la ignorancia.

Si bien es cierto en los últimos años cada vez son más las personas trans con acceso a campos laborales antes negados, el proceso aún es incipiente y de largo aliento a un punto que aún más de la mitad de mujeres trans mayores de 18 años ejercería el comercio sexual por obligación antes que por opción debido a las puertas cerradas en otros espacios.

A lo expuesto se suma el hecho de que quienes rectifican su partida de nacimiento se ven menos expuestos/s a la discriminación, pues la identidad legal, al ser concordante con el género, deja de generar "conflictos" en su entorno y/o porque buena parte de este grupo humano mantiene en total reserva y privacidad el nombre y sexo asignados al nacer.

Tras la entrada en vigencia de la Ley de Identidad de Género el 27 de diciembre del 2019 el mencionado proceso ha ido en acelerado ascenso. Si entre 1990 y el 2019 solo 750 personas rectificaron su partida de nacimiento, desde diciembre del 2019 a diciembre del 2021 unas 3.759 personas lo hicieron. En otras palabras, cada vez más personas comenzarán a buscar trabajo o a desenvolverse laboralmente con antecedentes legales acordes a su género, teniendo el empleador menos margen para abusos transfóbicos y, ninguno, si es que desconoce el nombre y sexo asignado al nacer de su empleado/a.

Siendo la población trans la más discriminada y vulnerable del colectivo LGBTIQA+, es que se necesitan medidas de acción afirmativa en el campo laboral que vayan mermando la desigualdades hasta cuando no quede ninguna persona que solo en razón de su identidad de género no pueda trabajar o sea vea obligada a desempeñarse en determinadas funciones.

Al respecto, el 23 de junio ingresó a la Comisión del Trabajo y Seguridad Social de la Cámara de Diputadas y Diputados el denominado "Proyecto de ley que establece acciones afirmativas para incluir a las personas trans en el ámbito laboral".

La iniciativa; patrocinada por los/as diputados/as Karol Cariola, Natalia Castillo, Daniella Cicardini , Erika Olivera, y Alejandro Bernales, Tucapel Jiménez, Vlado Mirosevic, Víctor Torres, Pablo Vidal y Matías Walker; establece en su primer artículo que "las empresas del Estado y las empresas en que el Estado, sus instituciones o empresas tengan aporte de capital igual o superior al 50%, seleccionarán preferentemente a las personas trans que reúnan las condiciones de idoneidad para el cargo que corresponda, hasta completar el 1% de la dotación anual del personal contratado".

"En el caso de las Fuerzas Armadas, de las Fuerzas de Orden y Seguridad Pública y de Gendarmería de Chile, la obligación establecida en el inciso anterior considerará respecto de su personal civil. En relación al personal militar, la norma se cumplirá prefiriendo el ingreso de personas trans hasta completar el 1% del total de postulaciones anuales", añade el proyecto de ley junto con precisar que tales derechos serán detallados en "un reglamento establecido por el Presidente de la República".

El proyecto señala además que "al menos uno de los trabajadores que se desempeñe en funciones relacionadas con recursos humanos dentro de los órganos del Estado, empresas e instituciones que se señalan en este artículo, y también en empresas del sector privado, deberá contar con conocimientos específicos en materias que fomenten la inclusión laboral de las personas trans".

Finalmente, en el artículo 2 aclara que "se entenderá por persona trans o persona travesti la persona que se autopercibe o expresa un género distinto al sexo que le fuera asignado al momento del nacimiento, o bien un género no encuadrado en la clasificación binaria masculino femenino, independientemente de su edad y de acuerdo a su desarrollo evolutivo psicosexual. En los procesos de selección, se resguardará estricta confidencialidad de la identidad transgénero de la persona postulante, especialmente si ésta no ha realizado aún su cambio de nombre y sexo registral".

Pese a sus buenas intenciones, el proyecto no establece prioridades para las personas trans más vulnerables; como pueden ser las pobres o quienes no ha rectificado su partida de nacimiento; ni tampoco aclara porque el 1% es suficiente, ni como resolverá el hecho de que la rectificación de la partida de nacimiento es un aspecto de la vida privada que debería visilizarse ante el empleador para acceder a un cupo laboral. A este se añade que el proyecto tampoco señala qué pasará si no se cumple con el 1% ni como se sabrá ello, al tiempo que para su elaboración no consideró la participación de todos los movimientos LGBTIQA+ que tienen interés o trabajo en la materia.

## VII.- TRES PROYECTOS DE ODIO INGRESAN A LA CÁMARA

Desde la entrada en vigencia de la Ley Antidiscriminatoria, en 2012, cada vez es más difícil para los grupos de odio impulsar iniciativas que busquen limitar los derechos en razón del sexo, la orientación sexual o la identidad de género de las personas, por lo que recurren a conceptos o ideas más generales destinadas a canalizar sus propuestas de corte fascista

Algunos de esos conceptos son muy antiguos, como es el caso de "la moral y las buenas costumbres", cuya "ofensa" sigue siendo sancionada en el artículo 373 del Código Penal, pese ser una disposición arbitraria que solo se ha usado para violentar derechos humanos de sectores históricamente desaventajados.

No en vano, el Consejo de Derechos Humanos de Naciones Unidas viene solicitando a Chile desde el 2009 que derogue esa norma, en el marco de la rendición del Examen Periódico Universal y luego de que el Movilh denunciara que el artículo era usado repetidamente por las policías, al menos hasta el 2006, para retener a personas por expresar su identidad de género o su afecto a alguien del mismo sexo.

Otra estrategia de odio es atacar el lenguaje inclusivo por considerarlo una amenaza para el estatus quo solo porque visibiliza diversas realidades en función del sexo, la orientación sexual o la identidad y expresión de género de las personas.

Los diputados RN Harry Jürgensen (RN) y Cristóbal Urriticoechea (PLR) se unieron en 2021 y presentaron tres proyectos de ley de reforma constitucional; de tipo homo/transfóbico y misógino; que justamente defienden la moral y las buenas costumbres y se lanzan en picada contra el lenguaje incluso.

El primero, denominado proyecto que "Modifica la Carta Fundamental para prohibir las alteraciones gramaticales y fonéticas que desnaturalicen el lenguaje en la educación parvularia, básica y media" (Boletín 14272–07), fue presentado en la Cámara el 26 de mayo.

Los parlamentarios señalaron que "esta reforma constitucional tendrá un impacto positivo en la educación nacional y promoverá el uso correcto, oportuno y adecuado del lenguaje dentro de las aulas de clase, impidiendo que las ideologías contaminen mediante el lenguaje la educación de los niños y adolescentes, y evitando que de este modo se coarte o restrinja el derecho preferente que tienen todos los padres y madres de educar a sus hijos según los valores y principios que estimen pertinentes".

Las motivaciones de odio del proyecto se delataban por sí solas, pues se enfrenta a realidades sociales que definen como "ideologías que contaminan". Esto en un contexto donde ambos parlamentarios han votado contra cualquier proyecto pro-derechos LGBTIQA+ o de la mujer, calificando de "ideologías" a la homosexualidad o la transexualidad.

El 16 de junio ingresaron a la Cámara un segundo proyecto para prohibir reuniones y manifestaciones públicas contrarias a la familia, la moral y las buenas costumbres en que se ejecuten acciones obscenas, impúdicas o con contenido sexual explícito" (14319–07).

"Las familias, y especialmente los niños, niñas y adolescentes, se ven frecuentemente expuestos a conductas obscenas, inmorales, pornográficas, indecentes, impúdicas, y desaprensivas ocurridas durante estas marchas, protestas y convocatorias sociales, lo cual puede producir un grave daño o perjuicio a sus derechos", indicaba la iniciativa que fue retirada el 22 de junio por sus propios autores.

Finalmente el 17 de junio ingresaron una tercera reforma constitucional, muy similar a la anterior, pues busca prohibir "las acciones obscenas, impúdicas o con contenido sexual explícito en marchas, protestas y manifestaciones sociales (Boletín 4321–07)".

A "los graves problemas de orden público (...) se suelen sumar otros hechos o episodios que atentan directamente contra la moral y las buenas costumbres del país, tales como la quema de banderas, escudos o símbolos patrios, la quema de iglesias y de recintos dedicados al culto de una religión, los graffitis en edificios, estructuras, estatuas, esculturas, monumentos, los desfiles de personas exhibiendo sus genitales y realizando conductas inmorales, gente mostrando preservativos o juguetes sexuales, lanzando sus heces o excrementos en la calle, efectuando conductas sexuales explícitas, por nombrar solamente algunos ejemplos", señala el proyecto de ley en un contexto donde los grupos homofóbicos suelen adjudicar varias de estas situaciones a las Marchas del Orgullo".

Al cierre de este informe ninguna de las dos propuestas que permanecieron en el Congreso Nacional; y que fueron fuertemente criticadas por el Movilh; registraban avance alguno y, todo indica, que "nacieron muertas", pues no tienen espacio para debate en el contexto sociocultural actual del país.

## VIII. – AVANZA LA DEROGACIÓN DEL ARTÍCULO 365 DEL CÓDIGO PENAL, LA ÚLTIMA NORMA HOMOFÓBICA VIGENTE EN CHILE

El 12 de julio del 1999 fue un día histórico para la población LGBTIQA+ pues se publicó en el Diario Oficial la despenalización de las relaciones sexuales entre homosexuales mayores de 18 años.

Las diversidades sexuales y de género dejaron de ser un delito, tras 8 años de lucha del Movilh, y con ello se abrió la puerta a todas las leyes y políticas públicas proderechos LGBTIQA+ que han visto la luz en los últimos 22 años.

Sin embargo, la histórica reforma venía con letra chica, pues el artículo 365 del Código Penal resultante fijó en 18 años la edad de consentimiento sexual para parejas del mismo sexo, en circunstancias que para heterosexuales es de 14 años.

El artículo 365 establece que "el que accediere carnalmente a un menor de dieciocho años de su mismo sexo, sin que medien las circunstancias de los delitos de violación o estupro, será penado con reclusión menor en sus grados mínimo a medio". Es decir, sin delitos sexuales de por medio, se aplicará una pena solo por ser homosexual.

En 2021 se abrió la más importante posibilidad de derogar definitivamente el 365 y, al igual como ocurrió en 1999, ello está avanzando gracias a que la temática es parte de una reforma más integral y amplia, donde el homofóbico artículo es solo un aspecto más.

Se trata del "Proyecto de Ley que Modifica el Código Penal para reforzar la Protección Penal de la Infancia", iniciativa originada por mociones refundidas del presidente de la República, Sebastián Piñera (Boletín 14107-07 del 24 de marzo del 2021) y de los/as diputados(as) VíctorTorres, Gonzalo Fuenzalida, Marcos Ilabaca, Pamela Jiles, René Saffirio, Gabriel Silber, Leonardo Soto, Camila Vallejo y Matías Walker (Boletín 14123-07 del 17 de marzo del 2021).

Si bien ninguna de las mociones originales derogaba el artículo 365 del Código Penal, una indicación ingresada por los/as congresistas Ilabaca, Walker, Soto y Karol Cariola consiguió que ello fuera posible, tras tener a la vista las argumentaciones del Movilh y de dos proyecto de ley ingresados previamente al Congreso que abordan solo ese tema<sup>50</sup>.

La derogación del 365 fue aprobaba el 1 de julio por unanimidad por la Comisión de Constitución, Legislación y Justicia de la Cámara, con los votos de los diputados Marcos Ilabaca (Presidente de la Comisión); Karol Cariola; Luciano Cruz-Coke; Gonzalo Fuenzalida; Diego Ibáñez, y Leonardo Soto.

El 28 de julio corrió igual suerte en la Sala de la Cámara, donde el proyecto fue aprobado por 130 votos a favor y ninguno en contra

El 3 de agosto la iniciativa inició su segundo trámite en la Comisión de Constitución, Legislación y Justicia del Senado, presidida por Pedro Araya, ante quien el Movilh seguía cursando al cierre de este informe diversas gestiones para acelerar el debate

El 365, la única norma homofóbica vigente en Chile, daña la dignidad de jóvenes homo/bisexuales, pues solo en razón de su orientación sexual, y de ninguna otra consideración, considera a sus relaciones como un delito.

Así, por ejemplo, se estigmatiza a jóvenes de 19 ó 20 años que tienen relaciones homosexuales con otros de 16 ó 17 años, lo que no aplica a la juventud heterosexual. Es una abierta discriminación que el propio Comité de los Derechos del Niño de la ONU ha pedido a Chile derogar. Más aún, Chile se comprometió a eliminar este artículo en un Acuerdo de Solución Amistosa firmado en 2016 ante la Comisión Interamericana de DDHH con el Movilh<sup>51</sup>.

<sup>[50]</sup> Ambos proyectos fueron impulsados por el Movilh. Uno, del 2020, con el apoyo de la diputada Carolina Marzán, y otro del 2009 con el respaldo de la parlamentaria María Antonieta Saa. Más antecedentes se encuentran en el XIX y en el VIII Informe Anual de los Derechos Humanos de la Diversidad Sexual y de Género, en forma respectiva.

<sup>[51]</sup> Más antecedentes en el XV Informe Anual de los Derechos Humanos de la Diversidad Sexual y de Género, en forma respectiva.

## IX.- CÁMARA APRUEBA EXTENDER EL ABORTO POR TRES CAUSALES A HOMBRES TRANS

La no discriminación por identidad y/o expresión de género está garantizada en la Ley 21.120 sobre Identidad de Género, en la Ley 20609 que establece Medidas contra la Discriminación, así como en las circulares 21<sup>52</sup> y 24<sup>53</sup> del Ministerio de Salud y 768<sup>54</sup> y 812<sup>55</sup> del Ministerio de Educación.

Con este abanico de protección es poco aprobable que a un hombre trans le nieguen el derecho al aborto por tres causales garantizado en el Código Sanitario, sin embargo, al considerar que a nivel socio-cultural el conocimiento sobre la identidad de género es aún erróneo o prejuicioso nada garantiza que en algún centro de Salud se prohíba ese derecho, por tanto resulta necesaria alguna norma explícita sobre la materia, que elimine cualquier vacío o posibilidades de discrecionalidad.

Con esa convicción 10 congresistas, encabezados por Víctor Torres (DC), presentaron el 8 de marzo un proyecto de ley (boletín 14074-34) que extiende el aborto por tres causales a "la persona gestante" y ya no solo a mujeres.

En específico la iniciativa (boletín 14074-34)<sup>56</sup> modifica el artículo 119 del Código Sanitario estableciendo que "toda persona con capacidad de gestar" puede interrumpir su embarazo por una de las tres causales de la Ley N° 21.030, esto es por inviabilidad fetal, riesgo de muerte del/a gestante o violación.

"Se ha elegido la expresión "persona con capacidad de gestar" para incorporar no solo a las mujeres, sino también a toda otra persona, independiente de su identidad y/o expresión de género que tenga la capacidad de gestar, pues no están exentas de calificar en alguna de las tres causales, reconociéndoles como sujetos de derecho. Mientras tengan la capacidad de gestar y se encuentren en alguna de las tres causales que regula la Ley N° 21.030, deben tener las mismas condiciones que tiene actualmente una mujer para interrumpir el embarazo", señala el proyecto de ley. Junto a Torres patrocinaron la propuesta las diputadas Karol Cariola (PC), Natalia Castillo (IDP), Daniela Ciccardini (PS), Marcela Hernando (PRSD), Claudia Mix (Comunes), Maite Orsini (RD), Camila Rojas (Comunes), Camila Vallejo (PC), Gael Yeomans (PCS).

.El 3 de mayo la Comisión de la Mujer y de la Equidad de Género de la Cámara de Diputadas y Diputados aprobó por 8 votos a favor y 2 en contra el proyecto.

Votaron a favor la presidenta de la Comisión, Maite Orsini (RD), así como las/os diputadas/os Karol Cariola (PC), Maya Fernández (PS), Marcela Hernando (PRSD), Érika Olivera (RN), Víctor Torres (en reemplazo de Joanna Pérez (DC), Camila Rojas (Comunes) y Patricia Rubio (DC).

En contra se manifestaron Ximena Ossandón (RN); por considerar que el tema está consagrado en la Ley de Identidad de Género; y Virginia Troncoso (UDI).

Igual suerte corrió el proyecto en la Sala de la Cámara de Diputadas y Diputados el 1 de septiembre cuando se aprobó por 82 votos a favor, 48 en contra y 6 abstenciones.

Votaron en contra los DC Jorge Sabag Villalobos y Miguel Calisto Águila; los/as UDI Jorge Alessandri Vergara, Sandra Amar Mancilla, Nino Baltolu Rasera, Ramón Barros Montero, Sergio Bobadilla Muñoz, Álvaro Carter Fernández, Juan Antonio Coloma Álamos, Juan Fuenzalida Cobo, Sergio Gahona Salazar, Javier Hernández Hernández, Juan Manuel Masferrer Vidal, Cristhian Moreira Barros, Rolando Rentería Moller, Gustavo Sanhueza Dueñas, Renzo Trisotti Martínez, Ignacio Urrutia Bonilla, Osvaldo Urrutia Soto, Enrique Van Rysselberghe Herrera y Gastón Von Mühlenbrock Zamora.

También rechazaron el proyecto los/as RN Bernardo Berger Fett, José Miguel Castro Bascuñán, Jorge Durán Espinoza, Catalina Del Real Mihovilovic, Francisco Eguiguren Correa, Camila Flores Oporto, Tomás Fuentes Barros, René Manuel García García, Ramón Galleguillos Castillo, Harry Jürgensen Rundshagen, Cristian Labbé Martínez, Miguel Mellado Suazo, Camilo Morán Bahamondes, Francesca Muñoz González, Paulina Núñez Urrutia, Luis Pardo Sáinz, Ximena Ossandón Irarrázabal, Pablo Prieto Lorca, Guillermo Ramírez Diez, Jorge Rathgeb Schifferli, Hugo Rey Martínez, Leonidas Romero Sáez, Frank Sauerbaum Muñoz, Diego Schalper Sepúlveda y Sebastián Torrealba Alvarado; el PR Cristóbal Urruticoechea Ríos; el Evópoli Sebastián Alvarez Ramírez y la independiente Virginia Troncoso Hellman.

Se abstuvieron la UDI Nora Cuevas Contreras; el DC Daniel Verdessi Belemmi; el independiente Pedro Velásquez Seguel y los RN Aracely Leuquén Uribe, Karin Luck Urban y Diego Paulsen Kehr.

<sup>[52]</sup> Más antecedentes en el X Informe Anual de los Derechos Humanos de la Diversidad Sexual en Chile.

<sup>[53]</sup> Más antecedentes en el XI Informe Anual de los Derechos Humanos de la Diversidad Sexual en Chile.

<sup>[54]</sup> Más antecedentes en el XVI Informe Anual de los Derechos Humanos de la Diversidad Sexual y de Género.

<sup>[55]</sup> Más antecedentes en el III Capítulo.

<sup>[56]</sup> https://www.movilh.cl/wp-content/uploads/2021/03/abor-to-hombres-trans.pdf

El 7 de septiembre el proyecto pasó a la "Comisión Especial Encargada de conocer iniciativas y tramitar proyectos de ley relacionados con la mujer" del Senado, donde aún no comenzaba su debate al cierre de este informe.

## X.- FILIACIÓN Y ADOPCIÓN HOMOPARENTAL: TARDÍA Y DESACTUALIZADA TRAMITACIÓN LEGISLATIVA

La tramitación de la "Reforma Integral al Sistema de Adopción en Chile" (boletín 9119–18) y del "Proyecto que regula los derechos de filiación de los hijos e hijas de parejas del mismo sexo" (boletín 10.626–07) terminó el año en completa desactualización en términos de homoparentalidad. Esto, por cuanto el matrimonio igualitario, publicado en el Diario Oficial el 10 de diciembre del 2021, garantiza la plena igualdad de los derechos filiativos y de adopción a las parejas del mismo sexo.

Con todo, la Reforma al Sistema de Adopción sigue siendo necesaria para perfeccionar diferentes aspectos del proceso, aunque ya no relacionados con la orientación sexual o identidad de género de los postulantes, mientras que la amenaza de limitar o condicionar derechos a personas LGBTIQA+ en el marco de este proyecto sigue latente.

# • Reforma a la ley de adopciones

El proyecto de ley mejora y perfecciona aspectos importantes para todas las familias, sea cual sea su orientación sexual o identidad de género.

La reforma consagra el interés superior del niño, regula la adopción por integración, elimina el orden de prelación y facilita los trámites para que los niños, niñas y adolescentes permanezcan institucionalizados menos tiempo.

En el caso específico de las personas o parejas LGBTIQA+ el proyecto de ley incorpora diversas propuestas del Movilh que fueron aprobadas en la Cámara. Entre otras, garantiza expresamente la posibilidad de que las familias adopten, al margen de su composición; según se establece en los 1, 5, 24, 25, 28, 35; y prohíbe la discriminación por orientación sexual o identidad de género, entre otras categorías de los adoptantes (artículos 28 y 39).

Sin embargo en su artículo 11 señala que "si el niño, niña o adolescente manifiesta su voluntad de tener un padre y una madre, el juez deberá considerarlo en forma preferente". Misma idea se repite en los artículos 21 y 44. "Suponer que un niño, niña o adolescente (NNA) preferiría a una familia de composición heterosexual por sobre una homosexual y establecer que el tribunal está obligado a aceptar esta definición, es igual a decir que si un/a NNA rechaza a una familia por su raza, nacionalidad, etnia, posición socioeconómica es deber del Estado garantizar que ello ocurra", señaló el Movilh al exponer el 26 de mayo en la Comisión de Constitución, Legislación y Justicia del Senado.

"El deber del Estado, de sus leyes y autoridades es educar a los/as NNA en el respeto a la diversidad social y cultural del país y en ningún caso trasladar y perpetuar en ellos/as los prejuicios, la ignorancia, los fanatismos, la homofobia o la transfobia de los adultos, volviéndolos automáticamente responsables de decisiones de mayores de edad que son contrarias a todos los estándares internacionales de derechos humanos, así como a la jurisprudencia chilena", puntualizó el Movilh.

Al nulo avance experimentado por el proyecto de ley en 2020, se sumó una escasa tramitación en 2021, pues la Comisión de Constitución solo aprobó en general la idea de legislar el 30 de agosto con los votos de los/ as congresistas Pedro Araya, Rodrigo Galilea Francisco Huenchumilla y Luz Ebensperguer. De esa forma, la iniciativa no ha dado ningún paso de relevancia desde que el 9 de mayo del 2019 la Sala de la Cámara la aprobó y despachó a su segundo trámite.

Como si fuera poco, aún no ha sido posible eliminar del proyecto de ley los componentes homofóbicos establecidos en sus artículos 11, 21 y 44 y, mientras que durante su tramitación en el Senado, la parlamentaria Ebenspeger incurrió en discursos de odio.

"Sin perjuicio de respetar los distintos tipos de familia que pudieren existir, la señora Senadora no fue partidaria de la adopción homoparetal: en su concepto, un niño siempre estará mejor con un matrimonio heterosexual que con una pareja homosexual"<sup>57</sup>.

Además, y en referencia homoparentalidad, la senadora "solicitó precisar si la finalidad de una ley de adopción es proteger el derecho de los niños a tener una familia, o el de las personas a adoptar (...) Hay información que respalda que un niño puede desarrollarse mejor y en forma más plena teniendo un padre y una madre, que teniendo solo una madre, o un padre, o dos madres y dos padres. Se debe transmitir la visión de padre y madre con características diferentes, consiguiendo un desarrollo más pleno del niño"<sup>58</sup>.

Mientras ello ocurría, y en la antesala de la aprobación del matrimonio igualitario, el 9 de julio el Movilh capacitó sobre diversidad familiar a funcionarios/ as del Departamento de Adopciones del Sename de todo el país.

#### Derechos filiativos

El "Proyecto que regula los derechos de filiación de los hijos e hijas de parejas del mismo sexo", ingresado al Parlamento el 22 de abril del 2016, enfrentó dos grandes problemas durante su tramitación: la excesiva lentitud y las graves deficiencias técnicas de la propuesta original que llevaron a los/as congresistas a presentar el 3 de agosto y el 23 de octubre del 2020 una serie de indicaciones.

Fue la propia Corte Suprema la que advirtió, en un informe del 2019<sup>59</sup>, que el proyecto no da respuesta a los problemas que dice resolver, priva de derechos a los padres gays o madres lesbianas no biológicos, traslada y extiende los vacíos e inconsistencias de la legislación actual a las parejas del mismo sexo, no aclara procedimientos, repite mecanismos de protección ya existentes y, muy especialmente, carece de una regla genérica que reforme todas las leyes vinculantes.

Esas y otras deficiencias, analizadas en detalle en el XVIII Informe Anual de los Derechos Humanos de la Diversidad Sexual y de Género, fueron las que en 2021 concentraron el interés de la "Comisión especial encargada de tramitar proyectos de ley relacionados con los niños, niñas y adolescentes" del Senado, que en ocho sesiones<sup>60</sup> debió analizar y votar 40 indicaciones; entre esas las propuestas por Movilh a través de los/ as congresistas Adriana Muñoz y Jaime Quintana para mejorar la iniciativa.

El proyecto fue analizado en la Comisión por los/as senadores/as Loreto Carvajal (PPD), Juan Ignacio Latorre (RD), Yasna Provoste (DC), Marcela Sabat (RN) y Ena Von Baer (UDI), siendo esta última la que en al menos cinco momentos o votaciones se pronunció contra los derechos LGBTIQA+ al negarse a reconocer la adopción homoparental, la doble maternidad o paternidad, los derechos de filiación por unión civil o de las mujeres que se someten a técnicas de reproducción humana asistida y la no discriminación por identidad de género, entre otros.

Si bien al finalizar el proceso en la Comisión algunas problemáticas del proyecto original se mantuvieron; por ejemplo la exclusión de los derechos de filiación a parejas de hombres que se someten a técnicas de reproducción humana asistida (a diferencia del matrimonio igualitario que no discrimina por sexo), hubo mejoras en la ampliación de derechos a las uniones civiles y en

<sup>[57]</sup> Primer Informe de la Comisión de Constitución, Legislación, Justicia y Reglamento del Senado. Página 16.

<sup>[58]</sup> Ibídem, página 54.

<sup>[59] [293]</sup> Informe proyecto de Ley Boletín 10.626-07. Oficio 189-2019, 29 de agosto del 2019. p. 10

<sup>[60] 1, 8, 22</sup> y 29 de julio; 5, 12 y 26 de agosto y 2 septiembre

el orden de los apellidos de los/as hijos/as. Sin embargo, lo perfeccionado es parte de la ley de matrimonio igualitario y/o son temas no exclusivamente LGBTIQA+ que correspondería debatirlos en el marco de la reforma a la Ley de Adopciones.

La excepción son las garantías explícitas para que toda persona, sin discriminación, pueda acceder en igualdad de condiciones a las técnicas de reproducción humana asistida, un aspecto considerado en términos generales en el proyecto de filiación y que aún no resuelve la ley chilena, pues existen múltiples interpretaciones o vacíos al respecto.

Como ocurre con cualquier ley es probable que después de celebrarse los primeros matrimonios igualitarios vayan conociéndose algunos problemas o vacíos de manera más concreta y específica y, en ese momento, habrá que replantearse como resolver ello o reflotar nuevas propuestas sobre filiación y, muy especialmente, sobre el acceso a las técnicas de reproducción humana asistida.

El proyecto de filiación surgió de una moción liderada por la senadora Isabel Allende y apoyada por Alfonso De Urresti, Felipe Harboe, Ricardo Lagos y Adriana Muñoz, en el marco de una propuesta presentada por la Corporación Humanas, Familia es Familia, Rompiendo El Silencio y Visibles.

## XI.- AVANZA REFORMA A LA LEY ZAMUDIO CON GRAVES VACÍOS Y EN MEDIO DE NUEVOS FALLOS DE TRIBUNALES

La Ley 20.609 que Establece Medidas Contra la Discriminación surgió de una conservadora, sesgada e ideologizada tramitación legislativa de siete años que terminó por cercenar derechos y garantías de inclusión que eran parte del proyecto original ingresado al Congreso Nacional en 2005.

A nueve años de la entrada en vigencia de la ley sus vacíos y debilidades se han traducido en un escaso uso de la misma, en un quehacer discrecional por parte de tribunales y en pocas sentencias favorables para las víctimas.

Según cifras de la Dirección de Estudios de la Corte Suprema, conocidas el 23 de agosto del 2021, en nueve años de vigencia apenas 468 personas han usado la norma y solo en 274 casos hubo sentencias, la mayoría contrarias a las expectativas de las víctimas.

Lo paradojal es que todos los puntos débiles de la Ley hubiesen sido resueltos sí el Congreso Nacional hubiese aprobado la propuesta original del 2005.

Como no lo hizo, el 3 de marzo del 2019 ingresó al Parlamento un proyecto de reforma que experimentó sus principales pasos en 2021, toda vez que la iniciativa fue despachada por el Senado para su segundo trámite. Sin embargo, el proyecto egresado no cumple, ni tampoco atiende necesidades claves de la reforma, lo que obligará a potenciar estrategias para superar dichos problemas en la Cámara.

La reforma a la Ley Zamudio en 2021 avanzó en paralelo a nuevos fallos de tribunales, entre esos dos referentes a asesinatos homo/lesbofóbicos a cuyos responsables los/as magistrados/as no aplicaron la agravante de odio, ya sea porque la norma no lo permite expresamente o por la escasa comprensión en los tribunales penales sobre la manera como opera la discriminación en contextos de agresiones físicas o crímenes.

### Trámite legislativo: el despacho de una reforma deficiente

El 27 de enero del 2021 la Sala del Senado aprobó en general; por 24 votos a favor 15 en contra y 1 abstención; la reforma a la Ley Zamudio.

Votaron a favor los/as senadores/as PS Isabel Allende, Alfonso De Urresti, Álvaro Elizalde, José Miguel Insulza, Juan Pablo Letelier, Carlos Montes y Rabindranath Quinteros; los/as PPD, Guido Girardi, Ricardo Lagos Weber, Adriana Muñoz, Ximena Órdenes, Jaime Quintana y Jorge Soria; los/as DC, Carolina Goic, Francisco Huenchumilla, Jorge Pizarro, Yasna Provoste y Ximena Rincón; el RD, Juan Ignacio Latorre; la RN Marcela Sabat, el Evópoli Felipe Kast y los independientes Pedro Araya, Carlos Bianchi y Alejandro Guillier.

En contra se pronunciaron los/as parlamentarios/ as UDI Claudio Alvarado, Juan Antonio Coloma, José Durana, Luz Ebensperger, Iván Moreira, David Sandoval, Jacqueline Van Rysselberghe y Ena Von Baer; los/as RN Juan Castro Prieto, Francisco Chahuán, José García Ruminot, Manuel José Ossandón, Rafael Prohens, Kenneth Pugh y la independiente de Derecha, Carmen Gloria Aravena. En tanto, Alejandro García-Huidobro (UDI) se abstuvo.

La aprobación podría haber sido un festejo, sin embargo cinco números claves del primer artículo del proyecto de ley fueron rechazados por falta de quórum, dado que se trata de normas orgánicas constitucionales que requieren el voto favorable de cuatro séptimos del congresistas en ejercicio.

Las disposiciones rechazadas fueron las siguientes:

-Número 1: "Es deber del Estado, de las entidades y empresas relacionadas con el Estado que ejercen funciones públicas, y de todos los servicios e instituciones de ellas dependientes, así como del Poder Judicial, Ministerio Público, Academia Judicial, y Fuerzas Armadas y de Orden y Seguridad Pública, elaborar e implementar las políticas públicas y arbitrar las acciones que sean necesarias para promover y garantizar el pleno, efectivo e igualitario goce y ejercicio de los derechos y libertades de las personas reconocidos por la Constitución Política de la República, las leyes y los tratados internacionales ratificados por Chile y que se encuentren vigentes".

-Número 6, donde se establece que la acción judicial deberá entablarse ante "el juez de letras correspondiente al domicilio del demandado o del demandante, a elección de este último".

-Número 11, que regula la incompatibilidad entre una acción de discriminación arbitraria y una demanda de tutela laboral por discriminación. -Numero 22 c, que obliga a los victimarios a rectificar sus discursos de odio por el mismo medio donde los emitió y en los términos que la víctima decida.

-Número 24, que permite apelar a las sentencias definitivas o a las resoluciones que declaren inadmisibles la demanda.

A esto se suma un problema mayor: si bien en el año el Gobierno se allanó a la reforma, se negó sistemáticamente a crear una institucionalidad antidiscriminatoria, aún cuando esa es la demanda más sentida por la sociedad civil, así como un aspecto recomendado por órganos internacionales de Derechos Humanos.

Con el fin de superar los problemas en marzo del 2021 el Movilh envío al presidente de la Comisión de Derechos Humanos, Nacionalidad y Ciudadanía del Senado, Juan Ignacio Latorre, y a la congresista Adriana Muñoz nuevas indicaciones destinadas a recuperar los derechos perdidos en la votación de Sala.

El 13 de abril, la Comisión aprobó la reforma en una sesión donde estuvieron los senadores José Miguel Insulza, Alejandro Navarro, Felipe Kast y Francisco Chahuán, así como la subsecretaria de Derechos Humanos, Lorena Recabarren.

La propuesta aprobada recuperó todos los puntos perdidos en la votación de enero. Sin embargo, en la sesión de Sala que tuvo lugar el 3 de agosto, nuevamente se perdieron los puntos más significativos (salvo en referente al numero 24 del primero artículo) y sin nunca siquiera haber votado la creación de una institucionalidad antidiscriminatoria.

Las deficiencias nublaron otros importantes derechos a los cuales el Senado dio luz verde como son la prohibición jurídica de las terapias reparativas de la homo/bi/transexualidad; la definición de sanciones contra "grupos de personas" además de elevarse de 50 a 500 UTM la multa a beneficio fiscal y establecerse una indemnización para las víctimas que no podrá ser inferior a 40 UTM. En otros términos, se podrá exigir justicia cuando se afecte a un colectivo en particular, y no solo a una persona, y por primera vez habrá reparación monetaria para las víctimas.

El mayor avance pasó porque se amplían las posibilidades de aplicar la agravante por delitos de odio. Debido a que se obliga a demostrar las motivaciones personales del delincuente, algo casi imposible de demostrar, con la actual ley solo se ha logrado aplicar agravante en seis ocasiones; siendo cuatro de estas causas asesoradas por el Movilh.

Con la nueva redacción, bastaría la presencia de elementos discriminatorios, al margen de la motivación del victimario.

En efecto, el proyecto de ley garantiza la aplicación de agravante cuando se cometa un delito "de un modo que expresare rechazo o desvalorización basado en racismo, pertenencia étnica, identidad cultural, nacionalidad, situación migratoria o condición de refugiado, repatriado, apátrida o desplazado interno, situación socioeconómica, idioma, ideología u opinión política, religión o creencia, participación o afiliación o no a organizaciones gremiales o sindicales, sexo, orientación sexual o afectiva, género, identidad o expresión de género, características sexuales, maternidad, lactancia materna, amamantamiento, estado civil, edad, filiación, apariencia personal, estado de salud físico o mental, discapacidad y/o seropositividad y el trabajo, profesión u oficio".

Lamentablemente el proyecto despachado a segundo trámite es preocupante, pues no resuelve cuáles tribunales se harán cargo de estas materias y, por otro, el Estado no asume responsabilidades concretas para prevenir la discriminación.

Los vacíos o problemas espera resolverse con la presentación de nuevas indicaciones en la Cámara de Diputadas y Diputados en el transcurso del 2022.

#### Los dispares fallos de tribunales

Las negativas consecuencias de la deficiente Ley Antidiscriminatoria se sienten en los procesos judiciales.

En 2021 se dictaron sentencias definitivas sobre al menos cinco atropellos a los derechos humanos de las personas LGBTIQA+ ocurridas en años previos: dos crímenes, una agresión y dos expulsiones de espacios comerciales. A comienzo del 2022 se sumó otro fallo referente a un asesinato homofóbico.

En la mayoría torno a los crímenes juega en contra que la Ley Zamudio obligue a demostrar las "motivaciones" homofóbicas del delincuente. También obstruye la justicia la labor del Ministerio Público, pues buena parte de sus fiscales desecha de antemano pedir la agravante, pues demostrar que un asesinato o ataque se originó por la orientación sexual o identidad de género es una tarea de largo aliento y que requiere dedicación. Este tema no se ha resuelto, aún cuando ha sido abordado por el Movimiento LGBTIQA+ en muchas ocasiones con el Ministerio Público, como ocurrió el 9 de noviembre del 2021 en una reunión de Iguales, OTD y Movilh con la Unidad Especializada en Derechos Humanos, Violencia de Género y Delitos Sexuales de la Fiscalía

Por su parte, y salvo honrosas excepciones, los/as magistrados/as tienen nula o débil comprensión sobre la manera como se expresa la discriminación en el marco de la ocurrencia de delitos, lo que deriva en conclusiones erradas y sentencias injustas o absurdas, situación que paradojalmente se repite más frecuentemente en delitos graves, como asesinatos o golpizas, que en otros como expulsiones de recintos públicos o privados, según se aprecia en los casos que a continuación se detallan.

#### Samuel Gamboa

La sentencia sobre el joven Samuel Gamboa Muñoz (18), asesinado el 24 de junio del 2019 en el domicilio que compartía con sus padres en la comuna de Lo Padro, llegó finalmente en 2021 con la condena que el Primer Tribunal de Juico Oral en lo Penal de Santiago determinó contra los tres responsables del delito: Ricardo Andrés Jiménez Cereceda (26), Marcelo Ariel Maulén Fuentes (24) y Juan Carlos Quijada Villanueva (21).

De acuerdo al fallo emitido el 22 de noviembre del 2021 por la presidenta del tribunal, Claudia Galán Villegas y los/as magistrados/as Christian Alfaro Muirhead y María Isabel Pantoja Merino, los asesinos se coordinaron para engañar a la víctima a través de la aplicación de Grindr.

Haciéndose pasar por gays, concertaron una cita en el domicilio de Samuel, donde lo robaron y asesinaron

"El día lunes 24 de junio de 2019, previo concierto propuesto por Ricardo Jiménez, éste junto a los acusados Marcelo Maulén y Juan Quijada acordaron concurrir al domicilio de la víctima Samuel Gamboa Muñoz (...) con el objeto de sustraer especies, para lo cual el acusado Ricardo Jiménez Cereceda hizo contacto con la víctima por el sitio Grindr para una cita homosexual, a la que se presentaría el acusado Juan Quijada", señaló el fallo.

Añadió que "alrededor de las 13.30 hrs. los tres acusados se dirigieron al domicilio de la víctima, al que ingresó inicialmente Juan Quijada, le siguió Marcelo Maulén, y entre ambos maniataron pies y taparon la boca de la víctima usando cinta adhesiva e intimidando a la víctima con el revólver Pasper Bagual calibre 22, serie 363893, que proporcionó Ricardo Jiménez. Luego ingresó Ricardo Jiménez y, con el revólver referido, uno de los tres acusados disparó a la víctima en hemitórax anterior izquierdo, lesionando pulmón izquierdo, pericardio y tabique interventricular que le causó la muerte por proyectil sin salida. Con ánimo de lucro, los acusados se apropiaron de un televisor TCL de 32" y un teléfono celular Samsung Galaxy SM-J8, ambos nuevos".

Pese a que este crimen no hubiese sido posible si la víctima fuera heterosexual y/o los victimarios no hubiesen engañado con ser gays y a que la propia sentencia reconoció que la orientación sexual de Samuel era interpretada por sus verdugos como una posibilidad de salir impunes, el tribunal desechó la aplicación de la agravante de la Ley Zamudio, aún cuando de todas formas dictó una pena alta.

Los sujetos fueron condenados por el delito de robo calificado con homicidio, en grado de ejecución consumado, con una pena de 20 años de presidio mayor en su grado máximo, así como a la "inhabilitación absoluta perpetua para cargos y oficios públicos y derechos políticos y la inhabilitación absoluta para profesiones titulares mientras dure la condena".

"Si bien los acusados tienen irreprochable conducta anterior lo cierto es que la declaración de los mismos no se consideró un aporte sustancial, pues en muchas ocasiones hubo que refrescárles la memoria o superárseles una contradicción a los acusados que prestaron declaración, Maulén y Quijada, haciendo más lento y engorroso el desarrollo del juicio, sin que sus declaraciones lograrán entregar toda la información requerida, y sin hacer que el Ministerio Público liberara prueba. Por su parte, el acusado Jiménez no prestó declaración en juicio, por lo que se estima no ha colaborado en absoluto al esclarecimiento de los hechos, ya que en la declaración que prestó como testigo, negó el conocimiento del televisor sustraído y del arma que él mismo guardaba en su closet y se los imputó a Maulén", señaló la sentencia.

"Por otra parte y teniendo, además, presente que llevaron a cabo un crimen en forma tan fría y desalmada que actuaron de acuerdo a un plan común, sin importar quien diera el golpe, atendido aquello, lo más justo pareciera ser una pena igual para todos, teniendo presente que le quitaron la vida a un joven de apenas 18 años de edad, que según su madre era "su orgullo", un joven estudioso, tranquilo que cursaba ingeniería en finanzas en un instituto, misma opinión que tenían sus vecinos, que era un joven muy tranquilo y estudioso y que no le conocían polola. Teniendo, Samuel Gamboa Muñoz, todo un futuro por delante, le truncaron la vida a una temprana edad, viéndose esta pobre víctima envuelta en un plan macabro destinado a sustraerle especies, a cualquier costo, pues acudieron armados a dicho encuentro, aprovechándose de su indefensión, pues se aseguraban de que este tipo de víctimas, dada su condición sexual, se encontraran solas en sus domicilios, concertando, en el caso concreto, una cita amorosa homosexual con ésta para proceder a sustraer especies, a cualquier costo, como lo fue la muerte de Samuel", finalizó el fallo.

La familia del joven fue representada jurídicamente en el caso por los/as abogados/as del Movilh Mijail Guevara Martínez, Mónica Arias y María Jesús Abdeladim.

#### Nicole Saavedra

El Tribunal de Juicio Oral en lo Penal de Quillota condenó el 21 de octubre a Víctor Alejandro Pulgar Vidal por lo delitos de secuestro, violación y homicidio cometido en junio del 2016 contra la joven lesbiana Nicole Saavedra (23), negándose la Justicia a aplicar la agravante de la Ley Zamudio.

El fallo unánime fue dictado por la presidenta del Tribunal, Leticia Morales y las magistradas Genoveva Matteucci y Mónica Oliva.

Saavedra fue secuestrada cuando el 18 junio del 2016, a eso de las 7:40 horas, abordó un bus que manejaba Pulgar Vidal. La joven iba a su casa, tras participar de una fiesta.

El sujeto mantuvo secuestrada a la joven entre el 18 y el 24 de junio, la obligó a beber alcohol, la violó y la golpeó hasta matarla, dejándola abandonada en el sector del embalse Los Aromos, en Limache, donde el cuerpo fue encontrado por transeúntes al día siguiente.

El Tribunal si bien consideró que el sujeto actuó con alevosía, descartó aplicar la agravante de la Ley Zamudio por estimar que "no resultó acreditado" que los delitos se relacionaran con su orientación sexual.

#### Carolina Torres

El Primer Tribunal de Juicio Oral en lo Penal de Santiago condenó en 2021 a Reynaldo Javier y Miguel Ángel Cortéz Arancibia y Claudia San Martín Marchant por el ataque que el 13 de febrero del 2019 recibió la joven Carolina Torres (24) cuando iba de la mano con su pareja por la intersección de las avenidas Laguna del Inca y Laguna Sur, comuna de Pudahuel.

El Tribunal, sin embargo, aplicó agravante por Ley Zamudio solo contra Miguel Ángel, en circunstancias que su hermano agredió a la joven en el mismo momento y lugar que él.

La sentencia llegó al absurdo de afirmar que Reynaldo quedaba libre del agravante solo porque no hubo antecedentes de que conociera la orientación sexual de la víctima y/o de que con anterioridad la hubiese hostigado por ello. Así, no bastó como prueba el comprobado apoyo que Reynaldo brindó al ataque que propinó su hermano a Carolina solo porque la joven era lesbiana.

La joven resultó con fractura de cráneo, hemorragia subaracnoídea aguda frontotemporal izquierda, contusión frontal izquierda, fractura de clavícula y fractura de huesos de la nariz, por lo que estuvo varios días internada la Unidad de Cuidados Intensivos (UCI). "Con la intención de matarla, los imputados la abordaron, encerrándola y ubicándose de tal forma que ésta quedó indefensa e impedida de arrancar", señaló la Fiscalía Metropolitana Occidente durante el juicio.

La condena fue dictada el 12 de julio del 2021 por la presidenta del Primer Tribunal de Juicio Oral, Irma Tapia Valdés, Christian Alfaro Muirhead y la redactora Marcela Urrutia Cornejo, quienes aplicaron la agravante de la Ley Zamudio solo contra Miguel Ángél, condenándola a pena efectiva de 15 años por el delito de homicidio calificado en calidad de frustrado. Para Reynaldo se dictó una pena de 12 años, mientras San Martín Marchant fue sancionada con 541 días de presidio como encubridora del ilícito.

"Quedó acreditado que la motivación de Miguel Ángel Cortez para agredir de manera tan violenta a Carolina Paz Torres con una ira desmedida, fue su orientación sexual (...) motivación que se desprende de la agresividad desplegada contra ella, que da cuenta de una manifestación de odio, para 'castigar' a una mujer que no cumple con los estereotipos de género socialmente dominantes que al acusado le violentaba y no toleraba", señaló el fallo.

"No es posible concluir lo mismo respecto de Reynaldo Cortez toda vez que la agravante del artículo 12 número 21 del Código Penal exige que el partícipe de la agresión lo haga también motivado –en este caso– por la orientación sexual (...) En el caso de Reynaldo no se acreditó que se conocieran con anterioridad, que este la denostara por ser lesbiana, como sí lo hubo hecho siempre su hermano".

Posteriormente, el 2 septiembre la Undécima Sala de la Corte de Apelaciones de Santiago, integrada por las ministras Jessica González, María Loreto Gutiérrez y el abogado (i) Francisco Javier Ovalle, confirmó en forma unánime la sentencia.

### Dos sentencias por discriminación a clientes/as

En el transcurso del 2021 la Corte Suprema confirmó dos sentencias por las discriminaciones que afectaron a una clienta trans y a una pareja gay, fallando a favor de las víctimas en virtud de la Ley Zamudio.

El 15 de marzo del 2021 los magistrados/as de la la Cuarta Sala de la Corte Suprema; Ricardo Blanco, Gloria Ana Chevesich, Andrea Muñoz, Mauricio Silva Cancino y María Angélica Repetto; confirmaron la sentencia contra el Bar El Túnel de Santiago, obligándolo a pagar una multa de 10 UTM por discriminar en 2018 a una clienta trans.<sup>61</sup>

[61] Más antecedentes del caso se encuentran en el noveno título del cuarto capítulo del XVII Informe Anual de Derechos Humanos de la DiversiLa determinación se adoptó al rechazar la Corte el recurso de casación contra la sentencia<sup>62</sup> presentado por la empresa Comercializadora y Administradora Santa Lucía SA (Bar El Túnel).

"Se configuró un acto de discriminación arbitraria en los términos del artículo 2º de la Ley Nº 20.609", señaló el fallo para agregar que solo por concurrir la demandante al establecimiento comercial "vestida conforme los usos de las personas del sexo femenino, fue controlada de manera especial por los guardias del lugar, no sólo solicitándole la exhibición de su cédula de identidad, sino, además, siendo impropiamente consultada acerca del servicio higiénico que eventualmente utilizaría, indicándole que no podía usar los baños destinados a las mujeres".

"Dicha situación fáctica da cuenta de una conducta que por sí sola configura una distinción de trato que provoca una afectación en el ejercicio legítimo de los derechos fundamentales de la actora, pues, cualquiera sea el motivo que lo provoque no parece susceptible de justificación racional, desde que la exigencia arbitraria a una persona de un documento de identidad a fin de entrometerse acerca del tipo de servicio higiénico que se propone utilizar, en un contexto público, en la fila de entrada a un establecimiento comercial, configura en sí un acto de humillación y conculcación a la garantía de igualdad y no discriminación, como al derecho a la honra e intimidad, que se encuentra proscrito por nuestro ordenamiento jurídico, máxime si de lo expuesto queda palmariamente claro que la diferencia de trato se basó solamente en la apariencia de la actora, que fue lo que finalmente motivó el control sobre su identidad y la preferencia acerca del servicio sanitario que utilizaría".

En tanto, el 29 de enero la Corte Suprema rechazó un recurso de casación presentado por el Resort & Spa Panimávida con el fin de anular una sentencia de la Corte de Apelaciones que había condenado a la empresa por discriminar el 1 de julio del 2018.

a una pareja gay: el activista de Iguales, Roberto Ampuero y Felipe Vigouroux.

El dueño del recinto, Roberto Movillo Céspedes, había exigido a la pareja que no se besara en los espacios públicos de recinto. Caso contrario, deberían abandonar el lugar, donde se hospedó entre el 29 de junio y el 2 de julio del 2018.

"Se concluye que los demandantes fueron víctimas de un acto de discriminación arbitraria, pues besarse en público en pleno siglo XXI, no es un acto que en la actualidad, al menos en Chile, atente contra la moral

dad Sexual y de Género, publicado en Movilh.cl

<sup>[62]</sup> El 27 de marzo del 2018 el Trigésimo Juzgado Civil de Santiago condenó al bar a pagar 20 UTM. Si embargo, el 3 de enero del 2019 la Corte de Apelaciones de Santiago redujo la multa a 10 UTM

y las buenas costumbres, por tanto, el prohibirles hacerlo solo estuvo motivado por su orientación sexual, lo que sí es un acto discriminatorio y vulnera el principio de la igualdad ante la ley, establecido en la Constitución Política de la República y normas referidas precedentemente", señaló la sentencia del 16 de junio del 2020 dictada por el Vigésimo Sexto Juzgado Civil de Santiago y confirmada el 16 de septiembre del mismo año por la Séptima Sala de la Corte de Apelaciones de Santiago.

"En relación a la afirmación de la demandada de que otros huéspedes del hotel habían reclamado respecto del comportamiento de los demandantes durante su estadía en él, a fin de justificar su conducta, primero, no ha sido acreditado por la demandada -ninguno de los testigos presentados por ella se refirieron a quejas de otros huéspedes del hotel, es más, el segundo testigo afirmó que los comentarios de la gente, después del hecho de autos, fue que los demandantes fueron discriminados por el dueño del hotel-, y segundo, de haberlo sido, solo hubiera sido otro acto discriminatorio de terceros hacia los actores, dado que es un hecho acreditado que ellos solo se besaron en público, y por ello, fueron discriminados por la demandada (...) Se resuelve que las partes fueron víctimas de discriminación, condenando al demandado a que en el futuro no vuelva a reiterar dicha conducta discriminadora, más una de 50 UTM y al pago de los gastos del juicio", finalizó la sentencia.

El rechazo al recurso de casación fue rechazado por los magistrados/as de la Cuarta Sala de la Corte Suprema Ricardo Blanco, Andrea María Muñoz S, María Angélica Cecilia Repetto y los abogados(as) Integrantes Leonor Etcheberry e Iñigo De La Maza.

La pareja fue asesorada por la Fundación Iguales.

#### Miguel Ángel Miranda Bustos

Finalmente, el 30 de enero del 2022 el Segundo Tribunal del Juicio Oral en lo Penal de Santiago condenó a Luis Alejandro Muñoz Huenán y Mario Orlando Pino Garrido a las penas de 15 años y 10 años y un día de presidio efectivo, en forma respectiva, por haber asesinado en febrero del 2020 al joven Miguel Ángel Miranda Bustos (23) solo porque éste intentó defender a su pareja de insultos y agresiones homofóbicas.

El fallo unánime de la presidenta del tribunal Valeria Alliende Leiva y de los/as magistrados/as Pablo Toledo González y Anaclaudia Gatica Collinet, aplicó además a

los asesinos la "inhabilitación absoluta perpetua para cargos y oficios públicos y derechos políticos y la inhabilitación absoluta para profesiones titulares mientras duren las condenas".

Lamentablemente, y pese a que el crimen solo tuvo lugar porque la víctima era homosexual, el tribunal aplicó a solo uno de los victimarios la agravante, pasando por alto la obvia y explícita complicidad de ambos con la homofobia.

El fallo confirmó que a eso de las 16:00 horas del 16 de febrero de 2020, "en la intersección de Chungará con Topocalma, comuna de Renca, Luis Muñoz Huenán acosó a Miguel Ángel Miranda Bustos y a su pareja C.M.R, increpándolos e insultándolos por considerar a ambos homosexuales".

Añadió que C.M.R "devolvió los insultos" y tras ello debió arrancar hasta su casa, puesto que "Muñoz Huenán comenzó a perseguirlo para lesionarlo con un elemento contundente".

Miguel Ángel intentó sin éxito calmar a Muñoz Huenán, "comenzando una pelea entre ambos a mano limpia"

"Momentos después Mario Pino Garrido extrajo un cuchillo y le propinó un corte en la cabeza a Miranda Bustos cuando le daba la espalda, para posteriormente pasarle dicha arma blanca a Muñoz Huenán, con la que éste lo apuñaló a la altura del hemitórax izquierdo, lesionando pericardio y ápex cardiaco, dándose a la fuga del lugar ambos sujetos".

Miguel Miranda Bustos falleció a las 17:08 horas del 16 de febrero del 2020 por herida cardiaca corto penetrante.

El tribunal no aplicó la agravante para Mario Pino Garrido, pues cosmideró que "no fue quien inició la agresión, no tuvo motivación homofóbica y no fue quien propinó la estocada mortal" En cambio, "a Muñoz Huenán lo perjudica la agravante del artículo 12 N° 21 del Código Penal; esto es, por haber obrado motivado por la orientación sexual de la víctima".

#### XII. - PODER JUDICIAL: CONTRADICTORIOS FALLOS SOBRE HOMOPARENTALIDAD

Fue el 5 de julio del 2017 cuando la jueza suplente del Séptimo Juzgado Civil de Santiago, María Soledad Oyanedel Rodríguez, marcó un hito al ordenar al Registro Civil que inscribiera a dos niños como hijos de dos padres, lo cual se hizo efectivo en 2020.

La sentencia sentó el precedente para otras similares, como ocurrió el 2020 con la jueza del Segundo Juzgado de Familia de Santiago, Macarena Rebolledo; que ordenó inscribir a un niño con dos madres; o con los/as magistrados/as de la Corte de Apelaciones de Iquique; Pedro Güiza Gutiérrez, Rafael Corvalán Pazols y Marilyn Fredes Araya; quienes reconocieron la calidad de madre de una mujer trans.

Sin embargo, al mismo tiempo que ello ocurría, la Tercera Sala de la Corte Suprema desconoció en otra sentencia del 20 de julio del 2020 que la doble maternidad o paternidad fuesen legales, aún cuando ninguna norma las prohíbe expresamente<sup>63</sup>.

Suma y sigue: por otro caso similar, el 23 de julio del 2021 Cecilia Vera y Cristina Ibars denunciaron al Estado de Chile ante la Comisión Interamericana de DDHH luego de que el Registro Civil y los tribunales se negaran en 2020 a reconocer el matrimonio que habían contraído en España y al vínculo de ambas madres con su hijo.<sup>64</sup>

Durante el 2021 los tribunales dictaron al menos cinco nuevos fallos que reconocieron la doble maternidad o paternidad, pero también se supo de otra sentencia que frente a un caso similar y con iguales argumentos rechazó la filiación de una pareja lésbica, entrando así una vez más el Poder Judicial en una abierta contradicción. Lo positivo es que este problema se resolvió definitivamente a fin de año con la aprobación del matrimonio igualitario.

#### • Las sentencias pro igualdad

El primer fallo conocido en 2021 fue dictado el 23 de abril por la jueza del Juzgado de Familia de Antofagasta, Andrea Francisca Cuello Hidalgo, que ordenó al Registro Civil inscribir a un niño de tres años como hijo de las convivientes civiles Danya Calle y Paola Fuentes.

"Si bien en el presente juicio se ha podido acreditar por las partes que son una familia, que el niño se siente parte integrante de esta, que tiene un círculo de cercanos que lo reconocen como tal en su día a día, existiendo las competencias parentales de ambas partes para seguir detentando el cuidado personal de su hijo como lo han venido haciendo desde antes, inclusive, de su nacimiento, no cabe más que concluir que el elemento que falta en el presente caso es el pronunciamiento judicial para reconocer dicha situación y por tanto dar protección legal al niño de autos como corresponde, aplicando normas internacionales que son plenamente vigentes en Chile y que vienen a concretar los derechos del niño", señaló el fallo.

Añadió que "al no reconocer la calidad de madre de una de las progenitoras, el niño se ve impedido de tener su filiación respecto de aquella, vulnerando así su derecho a la identidad, no permitiéndose que en el certificado de nacimiento del hijo figure ella como madre, privándole del adecuado desarrollo de su sentido de pertenencia y generación de vínculos respecto de toda su familia (...) lo que va en directa contravención al resguardo que el Estado de Chile se comprometió al suscribir la Convención Internacional de los Derechos del Niño, especialmente en su artículo 8"65.

Tres meses después, la jueza del Segundo Juzgado de Familia de Santiago, Claudia Reyes Dueñas, se lució pues en una misma semana reconoció en dos casos la doble maternidad.

El 22 de julio resolvió que un niño de 8 años es hijo de dos mujeres que habían contraído matrimonio en Francia y se unieron civilmente en Chile.

"A nivel legal el artículo 182 del Código Civil, que data de 1998 reguló escuetamente la reproducción humana asistida determinando que son el hombre y la mujer que se someten a ella, los padre y madre del hijo concebido y no admite impugnación de la filiación determinada de la forma antedicha. Como consta de las actas sobre la discusión parlamentaria se tuvo inicialmente la intención de legislar a continuación

<sup>[63]</sup> Todos los antecedentes sobre la histórica sentencia del 2017 y los fallos del 2020 se encuentran en el XIX Informe Anual de los Derechos Humanos de la Diversidad Sexual y de Género, publicado en movilh.cl

<sup>[64]</sup> Completos antecedentes sobre este caso en el XIX Informe Anual de los Derechos Humanos de la Diversidad Sexual y de Género, publicado en movilh.cl

<sup>[65]</sup> https://www.movilh.cl/wp-content/uploads/2021/05/sententencia-doble-maternidad-Movilh.pdf

sobre los diversos métodos o técnicas y reglamentar este tipo de filiación", señaló la sentencia.

"Sin embargo, por olvido o dejación, lo cierto es que hasta hoy nunca se completó la actividad tendiente a legislar al respecto, ni aun cuando se legisló sobre el Acuerdo de Unión Civil en el año 2015, Ley Nº 20.830 que suponía la existencia de familias compuestas de personas del mismo sexo que buscarían concretar su voluntad procreadora mediante el uso de técnicas de reproducción asistida, como también lo hacen las parejas heterosexuales", añadió.

"Estando acreditado en autos por la declaración de los seis testigos", el niño "detenta la posesión notoria de la calidad de hijo (...) y por aplicación a tal hecho del artículo 200 del Código Civil, esta sentenciadora tiene por suficientemente acreditada la filiación reclamada", concluyó<sup>66</sup>.

Cuatro día después, Reyes Dueñas ordenó al Registro Civil inscribir a una niña de dos años como hija de dos madres, en el marco de un proceso donde la familia fue representada por las abogadas del Movilh, Mónica Arias y Caroline Mac Innes<sup>67</sup>.

Las madres, que contrajeron el Acuerdo de Unión Civil en 2016, se habían sometido a un tratamiento de reproducción asistida, naciendo su hija en abril del 2019 en la comuna de La Florida.

Para la magistrada "el interés superior del niño es el principio rector que el juez de familia deber tener siempre como consideración principal en la resolución del asunto sometido a su conocimiento y se lo ha definido como el pleno respeto de los derechos del niño, como sujeto de derecho, como persona digna de respeto y consideración".

Explicó que "en Chile la norma del artículo 182 del Código Civil que regula las técnicas de reproducción asistida se refiere sólo "al padre y la madre del hijo concebido mediante ellas" dejando un vacío legal importante puesto que el legislador no prohibió a las parejas del mismo sexo someterse a estas técnicas, pero nada dijo respecto a la filiación de los hijos concebidos de esta forma. Asimismo, no hay norma expresa en nuestro ordenamiento sustantivo de familia que establezca fórmulas taxativas de filiación, ni que expresamente impidan una doble filiación materna".

Añadió que "es obligación de los órganos del Estado garantizar el principio de igualdad y no

discriminación y más específicamente el interés superior de la niña. Excluir esta norma de su aplicación a parejas del mismo sexo resultaría una discriminación arbitraria en su contra emanada de la orientación sexual de sus madres. En efecto, al no tener el reconocimiento legal de su familia; como si lo tendría asegurado un niño nacido en el seno de una familia heterosexual, a través de la misma técnica de reproducción asistida (TRA) a la que se sometió (una de ellas) junto a su conviviente civil; se afecta directamente el derecho esencial a la identidad (de su hija), tanto en su aspecto objetivo (nombre, apellidos, nacionalidad) como subjetivo (pertenencia al núcleo familiar en que es acogida, protegida y socializada)".

Reconocer la doble maternidad de la hija, añadió la jueza, "satisface plenamente el interés superior (de la niña) entendido en el caso sub lite como el respeto irrestricto a su derecho a la identidad, contemplado en el artículo 7 de la Convención Internacional de los Derechos del Niño, derecho personalísimo, inherente a toda persona, independiente de su edad, sexo o condición y que dice relación en el caso de autos con el derecho a que la persona que decidió traerlo a la vida, que lo cuida, cría, educa y vive con él desde su nacimiento, lo sea también frente a la ley, otorgándole su apellido y nacionalidad, que le permitirá gozar del todo los derechos civiles y patrimoniales que emanan de la calidad de hijo, obviando toda discriminación odiosa que pudiera afectarla en relación con otros niños en su misma condición en cuanto a su origen".

En el juicio los derechos de la niña fueron representados por un curador ad litem designado, el abogado del Servicio Nacional de Menores Jorge Saldaña, quien estuvo a favor de reconocer la doble maternidad.

Lajuezabasósufalloen "laprotección que le brinda la Constitución y la ley a toda familia, como se establece en el artículo primero de la Constitución y atendido el principio de igualdad ante la ley y no discriminación arbitraria consagrados en el artículo 19 No 2 de la Carta Fundamental y los tratados de derechos fundamentales (art 5 inc 2 de la CPE) que han sido ratificados por Chile, tal como el Pacto Internacional de Derechos Civiles y Políticos, art 23 No 1, Pacto Internacional de Derechos Económicos, Sociales y Culturales, art 10 No 1, Convención Americana sobre Derechos Humanos art 17 No 1 y en especial su interpretación formal contenida en la opinión consultiva 24 de la Corte Interamericana de Derechos Humanos que expresó que es necesario que los Estados garanticen el acceso a todas las figuras ya existentes en los ordenamientos jurídicos internos para asegurar la protección de todos los derechos de las familias conformadas por parejas del mismo

<sup>[66]</sup> https://www.pjud.cl/prensa-y-comunicaciones/docs/down-load/21142

<sup>[67]</sup> http://www.movilh.cl/documentacion/2021/Sentencia-doble-maternidad-Chile-Movilh.pdf

sexo, sin discriminación con respecto a las que están constituidas por parejas heterosexuales".

El 4 de noviembre fue el turno del Segundo Juzgado de Familia de Santiago que reconoció a un niño de seis años como hijo de dos madres Rocío Muñoz y Susana Peña, ambas representadas por la Clínica Especializada de Interés Público de la Universidad de Chile y la Clínica de Interés Público de la Universidad Diego Portales (UDP).

"El tribunal señaló que es una lástima que sea la vía judicial la que reconoce una situación que en los hechos es evidente y que debería ser reconocida por ley, en atención al derecho del mismo niño a su identidad, derecho que se manifiesta en el reconocimiento de la familia que lo acoge", señaló el 5 de noviembre la Universidad de Chile en un comunicado.

El día 24 del mismo mes la Jueza suplente del Juzgado de Familia de Talcahuano, Andrea Soledad Caro Vargas, también reconoció la doble maternidad de un niño nacido mediante técnica de reproducción humana asistida.

Para Caro Vargas el artículo 182 de la ley 19.585 que reconoce la filiación mediante técnicas de reproducción asistida debe extenderse a parejas del mismo sexo. "Al efecto y a fin de poder aplicar la norma legal antes dicha al caso de autos pareciera ser necesario efectuar un análisis más integrador de dicha norma legal con las Convenciones internacionales suscritas por nuestro país y la jurisprudencia y doctrina existente que tratan o regulan principios del derecho de familia, más aún si consideramos que sin duda progresivamente han devenido en un reconocimiento a un concepto amplio de familia no tan solo a las heterosexuales no pudiendo encasillarse en un género determinado la calidad de padre o madre", explicó el fallo<sup>68</sup>.

## • Funesto fallo e impacto del matrimonio igualitario

La arbitrariedad judicial en temas de homoparentalidad quedó en evidencia en 2021 con un fallo de la jueza titular del Juzgado de Familia de Valparaíso, Andrea Cordero Valdés, que refrendó la Corte de Apelaciones.

En virtud de prejuicios disfrazados de tecnicismos absurdos, la magistrada se negó el 5 de agosto del 2021 a reconocer la doble maternidad de unos mellizos hijos de una pareja lésbica unida civilmente.

Si bien la demanda de la doble maternidad usó los mismos argumentos que otras que sí ganaron otros juicios, Cordero Valdés calificó al proceso de "improcedente". A su juicio, la madre no biológica, no debía solo reclamar la maternidad. También debía impugnar la maternidad de la madre biológica. Aunque la jueza no dio razones, es claro que desde su punto de vista solo podría haber una madre, no dos.

Con el respaldo del Movilh la pareja apeló "Lo cierto y verdadero es que la demandante de autos no pretende impugnar la calidad de madre de la demandada respecto de los niños, quienes nacieron mediante técnica de reproducción asistida y que no cuentan con filiación paterna determinada; sino que pretende que el Juzgado de Familia de Valparaíso, ordene luego de un procedimiento ordinario, que se acoja la reclamación de maternidad y que se ordene por el tribunal una nueva inscripción de nacimiento, complementando el actual, declarando que los niños son hijos de ambas madres", indicó la apelación.Sin embargo, el 20 se septiembre la Cuarta Sala de la Corte de Apelaciones de Valparaíso confirmó con los votos del magistrado Alejandro German García Silva y del juez suplente Juan Carlos Francisco Maggiolo, la sentencia del Juzgado de Familia de Valparaíso. En contra se pronunció el magistrado Mario René Gómez Montoya.

De esa forma, el Poder Judicial nunca logró erradicar la homofobia y la discrecionalidad en los casos de homoparentalidad. Y se dice nunca, porque con la aprobación del matrimonio igualitario los derechos de filiación de las parejas del mismo sexo están explícita y plenamente garantizados, no quedando ya espacio para fallos funestos de los tribunales que desconocieron la igualdad legal y se negaron una y otra vez a ejercer controles de convencionalidad.

<sup>[68]</sup> https://www.diarioconstitucional.cl/wp-content/ uploads/2021/12/VerfalloJuzgadodeFamiliadeTalcahuano.pdf

#### XIII. - CHILE PROHÍBE POR LEY LAS TERAPIAS REPARATIVAS DE LA HOMOSEXUALIDAD TRANSEXUALIDAD

En 2021 fue promulgada de una de las leyes más significativas para los derechos humanos de las personas LGBTIQA+.

Se trata de la Ley 21.331 sobre el Reconocimiento y Protección de los Derechos de las Personas en la Atención en Salud Mental, la cual prohíbe las "terapias reparativas" de la orientación sexual o la identidad de género, una de las demandas más recurrentes de la diversidad sexual y de género desde que el Movilh inició públicamente tal lucha en 1991, dedicando especial fuerza a tal desafío desde el 2004.

El artículo 7 de la ley establece que "el diagnóstico del estado de salud mental debe establecerse conforme dicte la técnica clínica, considerando variables biopsicosociales. No puede basarse en criterios relacionados con el grupo político, socioeconómico, cultural, racial o religioso de la persona, ni con su identidad u orientación sexual, entre otros. Tampoco será determinante el antecedente de la hospitalización psiquiátrica previa de la persona que se encuentre o se haya encontrado en tratamiento psicológico o psiquiátrico".

Si bien el Minsal ya prohibía desde el 2016 estas horrorosas terapias, esta vez ello adquirió rango legal. Más aún, no solo se impiden las atenciones, pues también se prohíbe cualquier diagnóstico en salud que se base en la orientación sexual o identidad de las personas, entre otros aspectos. En otras palabras, sin diagnóstico, menos pueden haber terapias o tratamientos.

Suma y sigue: cualquier antecedente o certificado médico previo basado en esos criterios discriminatorios es, a partir de la ley, considerado ilegal, con lo cual se beneficia también a quienes en el pasado fueron afectados por estas brutales prácticas.

La norma fue promulgada el 23 de abril del 2021 y publicada en el Diario Oficial el 11 de mayo del mismo año.

Surgió de una moción parlamentaria presenta el 10 de marzo del 2016 por los/as diputados/as Fernando Meza Moncada (PRSD), Nicolás Monckeberg Díaz (RN), Javier Macaya Danús (UDI), Marcos Espinosa Monardes (PRSD), Loreto Carvajal Ambiado (PPD), Cristina Girardi Lavín (PPD), Enrique Jaramillo Becker (PPD), Miguel Ángel Alvarado Ramírez (PPD), Juan Luis Castro González (PS), Karla Rubilar Barahona (RN), Víctor Torres Jeldes (DC), Karol Cariola Oliva (PC), Marcela Hernando Pérez (PRSD), Alberto Robles Pantoja (PRSD), Sergio Espejo Yaksic (IND), Jaime Pilowsky Greene (DC) y Iván Flores García (DC).

En 2004, tuvo lugar la primera denuncia pública en Chile contra un caso concreto<sup>69</sup> de promoción de las terapias reparativas de la homosexualidad y la transexualidad, luego de que el Movilh repudiara la enseñanza de tales prácticas en la Universidad de Los Andes.

El mismo organismo LGBTIQA+ denunció y protestó luego contra conductas similares por la parte de la psicóloga Marcela Ferrer (2008)<sup>70</sup>, así como en la Universidad Católica (2012)<sup>71</sup>, la Universidad San Sebastián (2014)<sup>72</sup>, el Colegio Cumbres (2014)<sup>73</sup> y la Fundación Restauración (2017)<sup>74</sup>.

En 2008, y tras diversas críticas públicas del Movilh, el Colegio de Psicológicos se pronunció por primera vez contra las terapias reparativas<sup>75</sup>. Sin embargo, al año siguiente el Colegio "valoró"<sup>76</sup> que la Universidad de Los Andes enseñara y promoviera esos brutales procedimientos, aún cuando paradojalmente decía rechazarlos.

En medio de estas ambigüedades, el 26 de agosto del 2010 carreras de psicología de 8 universidades organizaron contra el Movilh una marcha hasta el Colegio de Psicólogos<sup>77</sup>, el cual debió al final oponerse totalmente a las terapias.

[69] https://www.movilh.cl/repudian-a-universidadde-los-andes-por-promover-en-un-seminario-la-cura-de-lahomosexualidad/

[70] https://www.movilh.cl/minorias-sexuales-protestaroncontra-psicologa-que-busca-curar-la-homosexualidad/

[71] http://www.movilh.cl/repudian-foro-de-terapiasreparativas-de-la-homosexualidad-en-la-universidad-catolica/

[72] http://www.movilh.cl/denuncian-que-universidad-san-sebastian-sigue-difundiendo-contenidos-homofobicos/

[73] http://www.movilh.cl/denuncian-que-docentes-delcolegio-cumbres-promueven-la-cura-de-la-homosexualidad/

[74] http://www.movilh.cl/piden-al-minsal-que-gestione-laclausura-de-una-fundacion-que-realiza-terapias-reparativas-de-lahomosexualidad/

[75] https://www.movilh.cl/colegio-de-psicologos-afirmapor-primera-vez-publicamente-que-la-homosexualidad-no-es-unaenfermedad/

[76] https://www.movilh.cl/movilh-acusa-inhumanacontradiccion-sobre-la-homosexualidad-en-el-colegio-de-psicologos/

[77] http://www.movilh.cl/ocho-universidades-protestancontra-las-terapias-reparativas-de-la-homosexualidad-enchile/?option=com\_content&task=view&id=682&Itemid=1 Sin embargo, el Ministerio de Salud rechazó una y una vez rechazar públicamente las terapias, pese a las continuas peticiones del Movilh. En 2016, el Minsal finalmente cedió<sup>78</sup>, prohibiendo las terapias reparativas y calificándolas de "una grave amenaza para la salud y el bienestar, inclusive la vida de las personas afectadas".

Desde el 2016 en adelante las denuncias sobre las existencia y/o promoción de las terapias se redujeron casi a cero, conociéndose solo un caso<sup>79</sup> en 2017 que tuvo una rápida reacción del Gobierno, aún cuando no se conocieron los resultados de sus gestiones.<sup>80</sup>

Finalmente, en 2021 las terapias fueron prohibidas por ley y ya no solo por política pública.

<sup>[78]</sup> http://www.movilh.cl/ministerio-de-salud-rechaza-porprimera-vez-las-terapias-reparativas-de-la-homosexualidad/

<sup>[79]</sup> http://www.movilh.cl/piden-al-minsal-que-gestione-laclausura-de-una-fundacion-que-realiza-terapias-reparativas-de-lahomosexualidad/

<sup>[80]</sup> https://www.movilh.cl/superintendencia-de-saludinvestigara-a-fundacion-que-practica-las-terapias-reparativas-dela-homosexualidad-en-chile/

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# Avances sociales culturales y privados

XX. Informe Anual de Derechos Humanos de la Diversidad Sexual y de Género en Chile

HECHOS 2021

Nuest

#### I.- INTRODUCCIÓN

Desde su origen este capítulo del Informe Anual de DDHH de la Diversidad Sexual y de Género estuvo dedicado a analizar y resaltar hechos pioneros, que marcaban un hito o explicitaban un positivo cambio de paradigma en la manera como se entendía la realidad de las personas LGBTIQA+ en Chile en los campos de la cultura, las artes, el espectáculo, el deporte, las empresas, los medios de comunicación y las familias o barrios.

A 20 años del Primer Informe Anual de DDHH este capítulo termina su vigencia. Como ya se ha venido analizando y describiendo en los estudios previos, la presencia LGBTIQA+ en la cultura, las artes, el espectáculo, el deporte, las empresas, los medios de comunicación o las familias o barrios pasó por la censura total y la visibilidad con prejuicios hasta la exposición desprejuiciada que asombraba hasta adquirir expresiones de cotidianidad, costumbre o "normalización", procesos explicitados ahora con especial vehemencia tras la aprobación del matrimonio igualitario.

No se trata, en ningún caso, de que la discriminación hubiese desaparecido en los campos analizados en este capítulo. Las marginaciones persistirán por tiempo indefinido. La diferencia es que las exclusiones ya no son la regla: están prohibidas por la ley, por políticas públicas y, principalmente, por la transformación sociocultural que ha presionado los cambios, tras ser impulsada por los movimientos sociales. La regla o lo común es dar señales antidiscriminatorias. Los hechos pioneros en los campos analizados en este capítulo ocupan un destacado lugar en los anteriores informes.

Por cierto siempre está el riesgo de que ocurran retrocesos gravitantes que deberán explicitarse y analizarse y, cuando ello suceda (ojalá así no sea) será necesario reflotar un capítulo como éste, toda vez que ello tendrá relación con los derechos humanos LGBTIQA+.

Para nada es extraño que a dos décadas de los informes anuales DDHH, este capítulo sea el primero que claramente cierra su etapa.

La cultura, las artes, el espectáculo fueron áreas pioneras en revelarse o constatar la homo/transfobia, problemática que lentamente los medios iban exponiendo cada vez con menos tolerancia y más crítica; mientras en el plano sociocultural y ciudadano el cambio fue mucho más acelerado; o menos lento si se quiere; que el Estado. La excepción es el deporte, donde aún quedan barreras por derribar, en especial el desigualitario acceso o visibilidad de las personas trans.

En el mundo privado, y salvo honrosas excepciones, solo las empresas, en particular las grandes, se

mantienen en grave deuda con los derechos LGBTIQA+. La responsabilidad social en este campo es débil.

Por un lado, las iniciativas que las empresas impulsanno van en ayuda de las personas u organizaciones LGBTIQA+ que menos recursos económicos o contactos tienen, privilegiándose vínculos de corte clasista con colectivos integrados por las élites. Por otra parte, las "acciones antidiscriminatorias" se desarrollan siempre con el fin de incrementar la venta de sus propios servicios o productos y alcanzar, junto a ello, masiva publicidad. Un oportunismo empresarial que por cierto afecta también a otras causas o sectores históricamente desaventajados y no solo a la diversidad sexual y de género.

En 2021 las artes, la cultura, el espectáculo y los medios continuaron con sus expresiones antidiscriminatorias, sensibilizando, educando y denunciando los abusos, lo cual siempre será necesario, aunque ya no se trate de apuestas donde lo LGBTIQA+ por sí solo sea lo relevante. Ese período, fue superado. Y día a día, se debe trabajar para que así continúe.

#### II.- EL REGRESO DE EVENTOS CULTURALES PRESENCIALES

Las artes, las culturas y el espectáculo han sido una de los terrenos más golpeados por el Covid-19 y si bien durante buena parte del 2021 los eventos siguieron desarrollándose en línea, algunas apuestas fueron presenciales debido a mejorías sanitarias, a lo que se sumaron más formas de visibilidad LGBTIQA+ en la televisión.

Tras dos años de receso obligado por la pandemia, el Festival Internacional de Cine LGBTIQA+ (Cine Movilh) volvió a la presencialidad con funciones entre el 13 y 15 de octubre en el Centro Cultural España.

El público eligió como mejor largometraje a "El Secreto de las Abejas" (Tell It To The Bees), dirigido por Annabel Jankel. En tanto, el filme español "Eran otros tiempos", dirigido por Alejandro Talaverón, ganó en la categoría "Mejor Documental" y el chileno "El Milagro", de la directora Daniela López Lugo, triunfó como mejor cortometraje.

La 13 versión del Festival de Cine Movilh, apoyado por la Fundación Interamericana, las embajadas Británica y de España además del British Council, fue inaugurada por la directora del Centro Cultural de España, Paula Palacio Noriega, y en días posteriores contó con la asistencia y discurso de la embajadora británica Louise de Sousa.

El mismo mes, entre el día 20 y 22, la Oficina de Diversidad y no discriminación de Ñuñoa produjo junto a OTD en la Sala de la Cultura de la comuna el denominado "Ciclo de cine trans, diálogos trans diversos: experiencias de vida trans desde la poesía, arte, performance y el cine", que incluyó la proyección de la cinta Naomí Campbell, dirigida por Camila José Donoso y Nicolás Videla.

Además, el 9 diciembre, y en el marco de la Conmemoración del Día Internacional de los Derechos Humanos, la Embajada del Reino de los Países Bajos proyectó con el apoyo del Movilh en el Centro Cultural España la obra "Respiro, las batallas de Maité Hontelé". En el conversatorio de la función intervinieron la embajadora Carmen Gonsalves, y la vocera del Movilh, Javiera Zúñiga.

En el terreno de las funciones online, el Centro Arte Alameda fue el escenario de diversas actividades para conmemorar el Día Internacional contra la Homofobia y la Transfobia. Junto a la Embajada de México, el 17 de mayo tuvo lugar el conversatorio "Arte Mexicano en la diversidad" donde participaron la artista trans Karla Wong, la directora del Centro Arte Alameda, Roser Fort, las académicas Ximena Gauché, Carla Peñaloza y Mercedes García Nava, más representantes de Iguales y el Movilh, entre otros. En el transcurso de mayo, el Centro Arte Alameda proyectó además el documental "La 34: La historia de la igualdad matrimonial en Irlanda", dirigido por Linda Cullen y Vanessa Gild, y la obra de teledanza "Chica Princesa" de Marcela Maga Inostroza.

A su vez, el Festival de Cine LGBTI Amor tuvo dos jornadas online. La primera fue una actividad de extensión denominada "Amor Festival – Réplica 2020", desarrollado entre 6 y el 9 de mayo en Matucana 100, mientras que desde el 27 de julio al 1 de agosto tuvo lugar la sexta edición del certamen, resultando ganadora la cinta argentina Canela, de Cecilia Valle.

Junto a los festivales, nuevas producciones audiovisuales, estrenadas en 2021 de manera online o presencial, abordaron diversas perspectivas de la realidad LGBTIQA+, mientras que Tengo Miedo Torero y la actriz Daniela Vega siguieron avanzando en el mundo de la cultura.

En los estrenos brilló "La nave del olvido", película escrita y dirigida por Nicol Ruiz que aborda la realidad lésbica en la edad adulta mayor.

Estrenada el 17 de septiembre en el Frameline International Festival (Estados Unidos), obtuvo el reconocimiento como mejor dirección en el Festival de Cine de Huelva (España) y Sanfic, entre otros reconocimientos.

Protagonizada por Rosa Ramírez, Romana Satt y Gabriela Arancibia, la cinta llegó a las salas chilenas el 13 de enero del 2022.

A su vez, los 25, 26 y 27 de junio se estrenó por Youtube "El fuego que llevamos dentro", una obra de tres capítulos que dirigió Sebastián Ayala en memoria de Nicole Saavedra, joven asesinada en 2016. En tanto, el 8 de abril fue difundido por Facebook el documental "Sexualidades fronterizas. Memorias migrantes LGBT+ en Chile" del Núcleo Diversidad y Genero de la Universidad de Chile.

En tanto, "Tengo miedo torero", cinta dirigida por Rodrigo Sepúlveda y basada en el libro homónino de Pedro Lemebel, fue estrenada en Amazon Prime y obtuvo tres nominaciones a los Cóndor de Plata: mejor película en co-producción con Argentina, música original (Pedro Aznar) y canción original ("Si no hablamos" de Pedro Aznar y Manuel García).

Por su parte, Vega fue jurado del Festival de Cine de Sundance 2021.

En el terreno teatral, "Bailando para ojos muertos", dirigida por Javier Casanga, se transmitió el 28 de enero en el Festival Quilicura Teatro Juan Radrigán, mientras que "La Ciudad sin ti", una adaptación de Claudia Pérez y Rodrigo Muñoz sobre las crónicas de Pedro Lemebel, fue transmitida el 15, 16 y 17 de julio en la plataforma virtual de Teatro Nescafé.

La obra "Las Convocadas: Manifiesto 8M2", digirida por Evaluna Valdivieso, se inspiró en Nicole Saavedra, como en María Pía Castro y Susana Sanhueza, asesinadas en 2008 y 2020 en forma respectiva. Sus funciones fueron proyectadas el 20, 21, 27 y 28 de marzo y el 3 y 4 de abril de manera online por el Teatro Sidarte.

En el terreno musical, y luego de tres años de receso debido al estallido social y al Covid-19 volvió a las calles "Santiago Parade, Open Mind Fest", el evento de música electrónica y perfomances contra la discriminación más masivo del país que produce desde el 2006 el Movilh y que en su versión 2021 contó con el apoyo del Ministerio de las Culturas, las Artes y el Patrimonio y reunió a más de 150 mil personas, la convocatoria más alta alcanzada en Chile por una actividad LGBTIQA+.

A la par, el evento Amik Fest, donde se presentan artistas LGBTIQA+. se desarrolló el 8, 9 y 10 de septiembre en Matucana 100, con las intervenciones de Kamon Kamon Kamon, Galacticx, Winters of Blue, Lolein, Barbacius y Noah Blanco.

Finamente, mientras en literatura destacó la publicación del libro "Un cuerpo equivocado", de la activista Constanza Valdés, en Televisión brilló "Las Gansas", un programa de temáticas LGBTIQA+ conducido por César Muñoz y Luis Aliste. Tras su paso por Vía X el programa llegó el 17 de abril a La Red, donde transmitió 32 episodios hasta el 11 de diciembre.

Ysibien los personajes LGBTIQA+ yano son extraños en en la pantalla chica, en 2021 destacaron "Demente" y "Edificio Corina", ambas apuestas dramáticas de Mega que contaron con relaciones lésbicas. En el primer caso, las actrices Ingrid Cruz y Patricia Rivadeneira, dieron vida a los personajes Javiera Cáceres y Flavia Betancourt, en forma respectiva, y, en el segundo, Vivianne Dietz y Hitzka Nudelman interpretaron a Rubí Cárdenas y Macarena Correa.

Lo mismo ocurre en la vida real, donde ya no asombra que personas públicas anuncien sus relaciones de pareja o sus procesos de transición corporal, siendo cubiertos tales hechos en similares condiciones que a los/ as famosos heterosexuales o cisgéneros.

Así ocurrió por ejemplo en 2021 cuando la arquera chilena Christiane Endler; quien el 17 de enero del 2022 ganó el premio The Best de la FIFA; contrajo matrimonio en Francia con su pareja Sofía Orozco en Francia, y cuando la actriz Fernanda Urrejola y Francisca Alegría anunciaron que darían similar paso. Por su lado, el coleccionista de arte Juan Yarur y su marido Felipe Lecaros hablaron por primera vez públicamente de su relación, y de su hija Cora, mientras que la actriz Lux Pascal (28) se refirió a su identidad de género y la transición iniciada en Miami en julio 2020.

Más aún, quien en el pasado señaló haber superado su homosexualidad, terminó reconociendo que ello era imposible. Es el caso del joven Alexander Núñez, más conocido como "Arenito", quien influenciado por las religiones señaló en 2017 a Chilevisión que "No creo en el amor de un hombre con un hombre. Yo que fui homosexual, nunca sentí amor por un hombre. Sentía atracción. Era algo físico, era por falencias".

Empero, el 22 de marzo del 2021 señaló por Instagram que "me sentí muy lastimado por mucho tiempo y permití que personas me lastimaran que se burlaran, que me llevaran a extremos de mucha angustia y depresión y yo dejé que eso pasara, pero aprendí que la vida se ve mas bella de colores. Elijo amar, elijo abrazar, elijo ser yo, sin miedo al que dirán sin miedo a la gente, sin miedo de ti. Dios nos ama igual aunque te duela religioso".

#### III. – EMPRESAS: ENTRE EL LAVADO DE IMAGEN Y LAS BUENAS SEÑALES

Las grandes empresas, salvo honrosas excepciones, no hicieron ningún aporte relevante para la promoción de los derechos humanos de la diversidad sexual y de género. La casi totalidad solo comenzó a visibilizar la realidad LGBTIQA+ en comerciales o actividades cuyo principal fin es la venta de sus productos y servicios y solo cuando tales prácticas ya no recibían ninguna crítica social.

Con la aprobación del matrimonio igualitario, un símbolo de un nuevo estado de la realidad sociocultural y política del país, se cerró un capítulo en la lucha por la igualdad de los derechos LGBTIQA+, sin que buena parte del empresariado hiciera previamente algún aporte para iniciativas o programas sociales que ayudara a quienes más ven vulnerados sus derechos en razón de su orientación sexual o identidad de género: LGBTIQA+ de escasos recursos económicos y que son víctimas de violencia o delitos homo/lesbo/bi/transfóbicos.

Buena parte del empresariado redujo su actuar en la temática solo a capacitar, de vez en cuando, a sus trabajadores/as en aspectos básicos, obligatorios y sin valor agregado, como son las leyes o las políticas publicas antidiscriminatorias, mientras que las organizaciones sin fines de lucro que atienden a la casi totalidad de las personas LGBTIQA+ que en Chile denuncian abusos, no recibieron en 30 años de lucha ninguna donación o aporte, con la excepciones de dos o tres entidades que en al menos dos ocasiones dieron pasos en tal sentido.

El aporte económico, por cierto, no es lo es todo. La promoción de la igualdad a través de campañas jugó un rol principal cuando se ejecutaron en momentos cuando nadie o pocos se atrevían y se corría el riesgo de la crítica social.

En contextos adversos, que es cuando las personas LGBTIQA+ más ayuda requieren, las campañas proigualdad se perfilan como un aporte que empuja a mejores condiciones de vida. Sin embargo, casi ninguna empresa dio pasos en ese sentido cuando se necesitaba y, por el contrario, solo se subieron al carro de la visibilidad luego de los avances conseguidos por organizaciones sin fines de lucro.

Excepciones hay. Un valioso ejemplo ha sido Metro, que en 2021 volvió a brillar. A una capacitación que el Movilh dictó a sus trabajadores/as el 17 de diciembre, se añadió la autorización para difundir gratuitamente en sus estaciones campañas pro derechos LGBTIA+, como ocurrió una vez más con motivo del Día contra la Homo/ Transfonbia al difundirse en todas sus estaciones la primera apuesta a favor de los derechos de migrantes de la diversidad sexual y de género<sup>1</sup>.

En el marco del Día del Orgullo, Metro iluminó además con los colores LGBTIQA+ el túnel de la combinación de la estación Plaza Egaña."¿Te imaginas lo aburrido que sería el mundo si fuéramos todos iguales? ¡Vale la pena celebrar la diversidad! #ConOrgullo aprendemos todos. #Pride2021", señaló el Metro a través de sus redes sociales.

En un ángulo similar el 22 de octubre el Movilh capacitó a Ripley, la primera tienda que en Chile abrió en 2007 sus listas de novios/as a parejas del mismo sexo, así como a MGC (15 de abril), Aramark Chile (11 de junio), Mac Cosméticos (18 de junio) y G&N Brands (13 de julio).

Las buenas prácticas se cruzaron con el exacerbado oportunismo comercial, pues el 22 de junio, a menos de un mes que el presidente Piñera diera suma urgencia a la tramitación del matrimonio igualitario y quedara en evidencia que la iniciativa se transformaría en ley antes de terminar su mandato, un grupo de treinta compañías chilenas y multinacionales publicaron un inserto a favor de la norma en El Mercurio, donde sus logos ocupaban el mismo o más espacio que el mensaje. Esto, en circunstancias que a ninguna institución o persona que impulsó el matrimonio igualitario las empresas apoyaron para desarrollar campañas con ese fin, menos en los momentos cuando era necesario.

Más lamentable aún fue el hecho de que "Human Rights Campaign", autodefinida como la "mayor ONG de diversidad sexual del mundo", creó un denominado Índice de Equidad en las empresas que en la práctica solo destaca a aquellas con las cuales se relaciona y/o de una u otra manera le aportan recursos económicos o redes de contacto.

Junto a la Fundación Iguales, Human Rights Campaign llegó el 2021 al extremo de premiar en Chile entidades como París<sup>2</sup> y Walmart<sup>3</sup>, sobre las cuales pesan graves denuncias por homo/transfobia.

<sup>[1]</sup> Más antecedentes sobre los migrantes LGBTIQA+ se encuentran en el quinto título del tercer capitulo.

<sup>[2]</sup> https://www.movilh.cl/cencosud-bloquea-contratacion-de-trabajador-solo-porque-gano-una-demanda-por-homofobia-laboral/

<sup>[3]</sup> https://www.movilh.cl/guardias-de-lider-agreden-e-insultana-pareja-por-su-orientacion-sexual/



# VI.

# Diversidad sexual en el derecho internacional y deudas de Chile

XX. Informe Anual de Derechos Humanos de la Diversidad Sexual y de Género en Chile

**HECHOS 2021** 

#### I.- INTRODUCCIÓN

El sistema internacional de Derechos Humanos a través de sus diversas instituciones ha sido fundamental para el avance de la igualdad y la no discriminación al interior de los países, mucho de los cuales han ido adecuando sus leyes o políticas a estándares universales.

Es cierto que el sistema internacional de DDHH llegó tarde, muy tarde, al debate sobre los derechos LGBTIQA+, a un punto que la ONU discutió por primer vez el tema en 2003 y recién en 2011 aprobó su primera resolución sobre la materia, paso similar al dado solo tres años antes por la Organización de Estados Americanos (OEA).

Pese a la injustificada tardanza, en los últimos 17 años el sistema internacional de DDHH ha contribuido a mejorar las condiciones que los Estados disponen para las personas LGBTIQA+ y ha hecho suya y pulido las definiciones, alcances o conceptualizaciones sobre diversidad sexual y de género surgidas desde los movimientos sociales.

En 2021 muestra de ello fue una audiencia de juicio contra el Estado de Chile en la Corte Interamericana de DDHH por prohibir a la docente Sandra Pavez hacer clases solo por ser lesbiana, a la cual se añadieron pronunciamientos de la CIDH, del Consejo de Europa y de Comités de la ONU contra la homo/transfobia religiosa, así como una inédita unidad de las iglesias chilenas para presionar al sistema internacional contra la mencionada profesora.

En otro ángulo destacaron dos informes sobre derechos LGBTIQA+ en el mundo publicados por el Experto Independiente sobre Discriminación y Violencia Basada en la Orientación Sexual o la identidad de la ONU, la creación de un Grupo de Países Amigos de la Causa LGBTIQA+ y el pronunciamiento conjunto de varios Estados a favor de los derechos intersex.

En América, la OEA aprobó una nueva resolución sobre derechos LGBTIQA+ y la Comisión Interamericana de DDHH (CIDH) se pronunció repetidamente sobre la necesidad e importancia de erradicar la homo/lesbo/bi/ transfobia.

El Banco Mundial, en tanto, lanzó su primer estudio sobre diversidad sexual y de género, al tiempo que respaldó actividades pro derechos LGBTIQA+ en Chile, al igual que la Organización Internacional para las Migraciones (OIM) y las embajadas.

Aunque no tiene relación directa con Chile, en 2021 la Unión Europea, a través de su Tribunal y parlamento, aprobó nuevas resoluciones que reconocen derechos de las parejas del mismo sexo en todos los países del bloque, tengan o no leyes pro-LGBTIQA+. En la práctica esto implica que cualquier persona LGBTIQA+ unida legalmente a una con nacionalidad en la UE tendrá varios de los derechos con que gozan los vínculos heterosexuales.

Buena parte de las recomendaciones del sistema internacional de DDHH apuntan a ir equiparando a nivel mundial o regional los derechos de las personas LGBTIQA+, en un contexto muy disímil que va desde países que sancionan con la pena muerte a las identidades de género u orientaciones sexuales diversas hasta Estados que permiten el matrimonio igualitario.

Chile, con la aprobación del matrimonio igualitario, ingresó al aún pequeño y selecto grupo de 30 países que permiten la plena igualdad a las parejas del mismo sexo en todo su territorio<sup>1</sup>. Esta nueva realidad, que reconfigura al mapa mundial, sin duda irá con el paso del tiempo permeando al sistema internacional de DDHH, en tanto deberá internalizarse que las leyes por sí solas no erradican la discriminación, requiriéndose una supervisión constante que actualice recomendaciones y, muy especialmente, sensibilice o presione a cambios en países donde ser LGBTIQA+ cuesta la vida.

<sup>[1]</sup> Alemania, Argentina, Australia, Austria, Bélgica, Brasil, Canadá, Chile, Colombia, Costa Rica, Dinamarca, Ecuador, España, Estados Unidos, Finlandia, Francia, Irlanda, Islandia, Luxemburgo, Malta, Noruega, Nueva Zelanda, Países Bajos, Portugal, Reino Unido, Sudáfrica, Suecia, Suiza, Taiwán y Uruguay. (México lo permite en 26 de sus 36 estados)

#### II.- HISTÓRICA AUDIENCIA EN CORTE INTERAMERICANA DE DDHH POR DISCRIMINACIÓN A DOCENTE SANDRA PAVEZ

El 12 y 13 de mayo se desarrolló en la Corte Interamericana de Derechos Humanos (Corte IDH) el juicio contra el Estado de Chile por impedir desde el 2007 a la ex monja y docente Sandra Pavez hacer clases en razón de su orientación sexual, tras una decisión de la Iglesia Católica que fue amparada por diversos fallos en nuestro país.

El 11 de septiembre del 2019, y tras 12 años de investigaciones, la Comisión Interamericana de Derechos Humanos (CIDH) responsabilizó al Estado de Chile por vulnerar la vida privada, la autonomía y el derecho al trabajo de Pavez, acusando que ésta fue víctima de desamparo legal, desigualdad y discriminación, por lo que elevó la denuncia a la Corte IDH.

La audiencia en la Corte IDH y el anuncio de la misma desencadenaron en 2021 una ola de episodios lesbofóbicos emprendidos por todas la iglesias de Chile en una inédita cruzada, mientras que la CIDH, algunos Comité de la ONU y el Consejo de Europa llamaron a no usar las religiones para discriminar a personas LGBTIQA+.

#### • La histórica audiencia

El juicio contra Chile se extendió por cinco horas, divididas entre el 12 y 13 de mayo. La audiencia online fue encabezada por la presidenta de la Corte IDH, Elizabeth Odio Benito. En la ocasión intervino Pavez y, a favor de ella, la Comisión Interamericana de Derechos Humanos (CIDH) y los abogados Ciro Colombara y Branislav Marelic, quienes siguieron el juicio junto a la docente y el Movilh.

En paralelo al juicio, activistas LGBTIQA+ del Movilh se manifestaron el 12 y 13 mayo en el frontis de la Corte Interamericana de Derechos Humanos, en San José de Costa Rica, acusando a Chile de "lesbofóbico" y de "estar en deuda con Sandra Pavez".

El Estado, encomendado por el ministro de Relaciones Exteriores, Andrés Allamand, justificó que a la docente se le siguiera negando el derecho a hacer clases, argumentando que ella siguió recibiendo un sueldo, pues se mantuvo como inspectora general de un establecimiento educacional. Este último punto fue uno de los más dolorosos para Pavez. "El Estado se limitó a consultarme si había recibido o no sueldos desde el 2007 a la fecha, como si eso fuera lo relevante. Lo grave es el daño psicológico que he sufrido luego de que me negaran el derecho a hacer clases y me impidieran ingresar a las aulas para educar", dijo.

La indolencia del Estado chileno llegó a tal nivel que invitó a exponer en el juicio a peritos que ni siquiera habían leído los fallos judiciales contra Sandra y, peor aún, que en sus presentaciones trataron al dictador Pinochet como "presidente", para validar el Decreto 924 que el régimen del genocida dictó en 1983, teniendo entre sus fines negar a docentes LGBTIQA+ el derecho a hacer clases de religión.

Con todo, Sandra se declaró satisfecha con las dos jornadas del juicio. "Tengo confianza en la Corte Interamericana de DDHH. Creo que ellos fallarán por la no discriminación. Espero que la sentencia tenga un impacto positivo en las y los docentes LGBTIQ+ de Chile y América", dijo.

Se esperan que la valentía y la perseverancia de Sandra; acompañada del trabajo jurídico de los abogados Colombara y Marelic y de una contundente denuncia de la CIDH; hagan historia para los derechos LGBTIQA+, con un resultado favorable en la Corte IDH que al cierre de este informe seguía analizando el caso.

De ganar, Sandra vencería la indolencia del Estado y la homofobia de las iglesias en beneficio de una educación laica y libre de discriminación. Los frutos, empero, no le devolverán su bien más preciado, pues en diciembre del 2021 Sandra jubiló, sin haber podido dictar clases nunca más desde el 2007.

Pavez sufrió el abuso luego de ejercer durante más de dos décadas su profesión, ganándose el cariño y el respeto de toda la comunidad educativa, incluidos colegas, estudiantes, apoderados y directivos que hace más de una década se movilizaron junto al Movilh para revertir la determinación de la Iglesia y de los tribunales.

#### Inédita arremetida lesbofóbica: todas las iglesias unidas

Los abusos contra Pavez se reeditaron en 2021. No solo el Estado se movilizó a nivel internacional para que se le siguieran impidiendo dictar clases en Chile exclusivamente en razón de su orientación sexual. Lo mismo hicieron los principales credos de Chile y ONG´ ultraconservadoras de diferentes países que presentaron ante la Corte IDH Amicus Curiae justificando que las religiones tienen el derecho de impedir a docentes hacer clases en Estado laicos solo por ser LGBTIQA+.

En un hecho inédito todas las iglesias de Chile se movilizaron unidas para que la Corte IDH fallara contra Pavez. Nunca antes Estado e iglesias se habían juntado y ahora lo hacían para legalizar la homofobia en un juicio internacional. Se trató de un hecho tan impactante, como doloroso, que revictimizó a Sandra

El amicus curiae fue presentado el 7 de mayo ante la Corte IDH por el Presidente de la Conferencia Episcopal del Chile, Santiago Silva; por el Presidente del Consejo Episcopal Latinoamericano (CELAM), Miguel Cabrejos; por el Arzobispo de Santiago de Chile, Cardenal Celestino Aós; por el Arzobispo Metropolitano de la Arquidiócesis Ortodoxa de Chile, Sergio Abad; por el Presidente de la Mesa Ampliada de la Unión Evangélica Nacional de Chile, Emiliano Soto; por el Primado de la Iglesia Anglicana de Chile, Héctor Zavala; por el Obispo de San Bernardo y Administrador Apostólico de Rancagua, Juan Ignacio González; por el Secretario Ejecutivo de la Mesa Ampliada de Organizaciones Evangélicas UNE Chile, Francisco Javier Rivera; por el Presidente del Directorio de la Comunidad Musulmana de Chile, Fuad Musa y por el Rabino Representante de la Comunidad Judía de Chile, Eduardo Waingortin.

La reacción de las iglesias en ningún caso se hizo cargo de la discriminación por orientación sexual, ni del daño causado a Sandra. Con total frialdad y falta de empatía, se centraron en acusar interferencia en la libertad religiosa; con arrogancia, señalaron que es solo deber suyo, y no del Estado, definir quiénes o no pueden hacer clases de religión incluso en colegios laicos, como es el caso de Sandra, y que defender lo contrario es propio de Estados totalitarios; con ninguna rigurosidad y motivadas por el odio hicieron similitudes entre la orientación sexual lésbica y las competencias profesionales; con miedo y cobardía, llegaron a decir que con la lucha de la docente estaba en juego la propia unidad de las religiones e iglesias. Y, también hubo traición, pues la Comunidad Judía de Chile y la Iglesia Anglicana de Chile se habían vestido hace años con ropajes LGBTIQA+, pero terminaron firmando uno de los documentos más lesbofóbicos de los cuales se tenga registro, lo que derivó en algunos casos en conflictos internos.

En efecto, en su escrito, las iglesias alegaron que "en el centro de este caso se cuestiona la autonomía de las comunidades religiosas para calificar, sin interferencia del Estado, la idoneidad de los profesores de clases de religión de carácter confesional. Si la Corte Interamericana acoge la demanda, múltiples derechos humanos de distintos actores se verán vulnerados, especialmente, la libertad religiosa. Al omitir estos derechos en su informe de fondo, la CIDH ignoró los principios de interdependencia, indivisibilidad e igual jerarquía de los derechos, reconocidos por el derecho internacional público en general, así como el derecho internacional de los derechos humanos".

"La libertad de religión ha sido reconocida como la primera de las libertades y cimiento de la sociedad democrática, contribuyendo a la conservación de la paz y de la estabilidad en las sociedades (...) De esto han sido conscientes los gobiernos totalitarios que siempre han buscado limitar a las comunidades religiosas, porque temen que el desarrollo de libertad de religión impulse otras libertades que erosionen sus regímenes", añadieron.

Para las iglesias chilenas, "dentro de la autonomía de las comunidades religiosas se incluye la posibilidad de estas de exigir a sus miembros un comportamiento en su vida privada de acuerdo con sus estándares doctrinales".

"La autoridad religiosa debe velar porque el docente sea consecuente en los puntos más cruciales de esa moral (derivada de creencias), ya que el profesor de religión "no solo enseña con su palabra, sino ante todo con su ejemplo"", añadieron, como si la orientación sexual de una persona fuese un problema o una "mala enseñanza".

Apuntaron que "el Estado nunca podría tener la competencia para definir la idoneidad de un profesor de religión en un modelo de clases confesionales" y consideraron que "el Estado no ha delegado una función pública en las comunidades religiosas, sino más bien se trata de una atribución que nunca perteneció al Estado. Mal puede decirse que el Estado está delegando una función que no tiene ni ha tenido, desde que existe una separación entre ambas entidades".

Obviaban así que el Decreto 924 del Ministerio de Educación que habilita a las iglesias a decidir quienes o no pueden hacer clases de religión, se originó bajo la dictadura de Augusto Pinochet, mucho antes de la Ley Antidiscriminatoria, aprobada en 2012.

Añadieron que "incluso dentro de asociaciones que no tienen carácter religioso es posible concebir un deber de lealtad con el ideario de dicha asociación, como ocurre con las empresas de tendencia. Así, por ejemplo, una ONG de derechos humanos no tendrá dentro de su equipo de defensores a alguien que en sus redes sociales privadas apoya regímenes dictatoriales, aunque se trate de un abogado con gran experiencia en litigación. O una institución medioambientalista no puede verse forzada a tener un encargado comunicacional que utilice abrigos de piel o sea aficionado a la caza de animales, aunque dicho empleado sea un profesional competente en el área de comunicaciones. Si esa coherencia es exigible a quienes trabajan en una asociación para mantener la credibilidad de su ideario, con mayor razón puede exigirse a quien está encargado de la enseñanza de una religión a niños y adolescentes".

"Respecto al ejercicio de la autonomía por parte de la peticionaria hay que advertir que, de acogerse la demanda, este honorable Tribunal estaría posicionando al Estado como árbitro de un conflicto de carácter religioso. Dicho conflicto consistiría en la disputa entre la peticionaria y la autoridad religiosa sobre el deber de coherencia para ejercer como profesora de clases de religión de carácter confesional. El reconocimiento de la autonomía de las comunidades debe llevar al Estado a aceptar el derecho de las comunidades a reaccionar, de acuerdo a sus reglas propias, a cualquier disidencia que pueda significar un riesgo para su unidad. El Estado debe abstenerse de actuar como árbitro entre las comunidades religiosas y personas o grupos disidentes dentro de ellas", finalizaron.

Luego de que el Movilh denunciara y repudiara la cruzada de odio, 276 ciudadanos/s judíos se revelaron contra la homofobia de la Comunidad de Judía de Chile. En una carta lamentaron "cómo se ha vinculado a los judíos y judías en Chile en contra de la docente lesbiana Sandra Pavez frente a la Corte Interamericana de Derechos Humanos".

"El documento presentado a la Corte IDH y firmado también en nombre de la Comunidad Judía, defiende y reclama, usando el principio de Amicus Curiae, una supuesta libertad religiosa que otorga el decreto 924 del Ministerio de Educación en su artículo 9, que establece que todo profesor de religión debe tener un certificado de idoneidad otorgado por la autoridad religiosa. Esta institucionalidad religiosa se traduce en el derecho de ejercer esta discriminación con total impunidad, quedando las personas desprotegidas frente a la ley, bajo el lema de religión libre, alegando que el Estado no puede interferir en la decisión sobre quién enseña la fe, dando lugar a la discriminación, acto inconstitucional y contrario a la Declaración Universal de Derechos Humanos y al Pacto de San José de Costa Rica, específicamente contra los principios de Libertad de pensamiento y de expresión, y de Libertad de conciencia y de religión", señalaron el 12 de mayo en el Diariojudio.com.

"Hoy, existe un privilegio que otorga la ley chilena a la cúpula del clero, el poder de determinar la idoneidad de la fe de los profesores de religión. Un privilegio para históricamente discriminar a ciertos sectores de la población a través del poder político de la fe. Este es uno de los elementos más claros de influencia y supremacía del poder religioso sobre el poder político en nuestro país, de esa antigua Iglesia y clero ultra conservador que estaba por sobre los líderes políticos, protegiéndolos además del abuso", redondearon.

"Sandra Pavez fue abusada en sus Derechos Humanos, y el Estado de Chile no tiene las herramientas legales para protegerla. Y ese abuso, que está siendo defendido fuertemente por la cúpula del poder político de la Iglesia, está además amparado hoy en nombre de la Comunidad Judía frente a la Corte IDH, y eso no lo podemos permitir, no en nuestro nombre", finalizaron.

#### • Campañas y Amicus Curiae del odio

Con anterioridad a la arremetida de las iglesias, el 23 de febrero del 2021, el grupo conservador estadounidense ADF Internacional había iniciado otra campaña lesbofóbica de recolección de firmas para que la Corte IDH fallara contra Pavez, mientras que profesionales e instituciones de diversos países presentaron Amicus Curiae contra los derechos de la docente.

La petición redactada por ADF Internacional, repudiada por el Movilh el 25 de febrero en Chile, señala que "la autonomía de las comunidades religiosas y el derecho de los padres a que sus hijos reciban una educación religiosa acorde con sus convicciones se encuentra en juego en el caso de Sandra Pavez".

La misiva añadió que Pavez "en 2008 llevó su caso a la Comisión Interamericana de Derechos Humanos, que le dio la razón afirmando que tiene derecho a hacer clases de religión católica aun contra la objeción de su iglesia, y que las comunidades de fe no pueden requerir de los profesores una conducta de vida fiel a sus creencias, ni aun en los colegios privados".

"Hoy el caso se encuentra ante la Corte Interamericana de Derechos Humanos (...) De su decisión dependerá si las escuelas Católicas, Judías, Musulmanas, Evangélicas o de cualquier otra denominación podrán procurar que sus educadores religiosos guarden sus deberes de fidelidad hacia la fe que voluntariamente dicen profesar, y si los Estados respetarán el derecho de los padres a que sus hijos reciban una educación religiosa que sea acorde con sus convicciones. Esperamos que la Corte no ignore el derecho humano básico a la libertad de religión", apuntó la carta de ADF Internacional.

Otras entidades llegaron con sus propios Amicus Curiae ante la Corte IDH. Fue el caso de la Confederación de Padres y Apoderados de Colegios Particulares Subvencionados de Chile que en el escrito presentado el 29 de abril por su presidenta, Erika Muñoz Bravo, llegó al extremo y al ridículo de argumentar que la orientación sexual de Sandra, un aspecto de su vida privada, afectaba el derecho de madres o padres sobre la educación de sus hijos/as.

"No defendemos prácticas discriminatorias contra las formas de vida de nadie, incluyendo la que ha elegido la señora Sandra Pavez, sino que solamente exigimos que los valores en los que creemos se transmitan a nuestros hijos, en los colegios que libremente elegimos, por personas que comulguen plenamente con ellos. La revocación del certificado de idoneidad no fue una práctica discriminatoria ni se basó en la pertenencia de la presunta víctima a la categoría de orientación sexual, sino a una falta de coherencia con lo que corresponde enseñar conforme con las convicciones de muchas confesiones cristianas. Por otro lado, al vulnerarse de cualquier forma los derechos de los padres y de los establecimientos educacionales, se afectarían de forma grave derechos reconocidos en Ia Convención, como la libertad de conciencia y religión y el derecho de los padres de educar a sus hijos en conformidad a sus propias convicciones", dijo (página 46 del Amicus Curiae).

En tanto los ultraconservadores ex jueces del Tribunal Europeo de Derechos Humanos, Javier Borrego Borrego, Giovanni Bonello y Vincent de Gaetano, apuntaron en un Amicus Curiae fechado el 30 de abril que la discriminación hacia Sandra estaba justificada pues "busca salvaguardar los derechos de las personas que comparten una fe y los de su iglesia, por un lado, y los derechos de los padres, por otro".

"La afectación de los derechos de la presunta víctima del caso, ocurre como consecuencia del reguardo de la libertad de religión, y los derechos que ella protege por parte del Estado", redondearon (página 23).

Otro Amicus Curiae del 30 de abril fue redactado por los profesionales chilenos Eduardo Fuentes, Claudio Pierantoni, Fernando Arancibia, Javiera Corvalán y Carlos Casanova, quienes alegaron que "los actos privados de la señora Pavez afectan su idoneidad para desempeñar ese trabajo porque la docencia no es un trabajo como cualquier otro. El proceso de enseñanza no es un traspaso mecánico de información. Por esa razón los docentes no pueden ser reemplazados por el mero acceso a libros o a internet" (página 17).

Por su parte, y desde Estados Unidos, los abogados Flavio Allegretti de Campos Cooper, Odacyr Carlos Prigol y Scott E. Isaacson, concluyeron en su Amicus Curiae del 23 de abril que "la diversidad es importante en muchas instituciones, pero exigir diversidad de creencias en una iglesia es como exigir diversidad de afiliación política en un partido político: por definición, el requisito no es compatible con los objetivos o el ethos de la organización" (página 9).

El docente argentino Juan Navarro Floria, añadió en otro Amicus Curiae del 2 de mayo que "es necesario explicar por qué no solamente es razonable sino que es necesario para la garantía de la libertad religiosa de las personas que el reconocimiento de la idoneidad para enseñar religión (cuando se trata de enseñanza religiosa confesional, tanto en escuelas de gestión privada como en escuelas de gestión estatal en los países que incluyen dentro de la currícula de ellas esa enseñanza confesional) sea dado por las iglesias y confesiones religiosas, y que esa certificación de idoneidad resulte vinculante para los estados" (página 39).

"La única forma de garantizar que se haga efectivo el derecho de los padres a que sus hijos reciban enseñanza de la religión conforme a sus creencias y convicciones, es garantizar que las personas encargadas de esa enseñanza (incluso en el ámbito escolar) transmitan dicha enseñanza de manera correcta y no distorsionada", apuntó (página 39).

A la par, el vicepresidente del Fondo Becket Pro Libertad Religiosa con sede en Washington, Eric Rassbach, señaló en su Amicus Curiae del 6 de mayo que la "Corte no debe encontrar violación de la Convención Americana en este caso. En su lugar, debería adoptar principios sobre la autonomía religiosa" (página 45).

Para las abogadas estadounidenses Angela Wu Howard y Asma Uddin "la posición de la Comisión implicaría que el Estado obligara a una iglesia a transmitir, en la enseñanza religiosa confesional, un mensaje contrario a las enseñanzas de esa iglesia. Esto es expresión obligada ("compeled speech"), coaccionada por el Estado" (Amicus Curiae, 27 de mayo, pagina 5).

Finalmente, el Centro Internacional de Derecho y Estudios de la Religión de Estados Unidos (ICLRS, por sus siglas en inglés), dijo en su Amicus Curiae del 6 de mayo del 2021 que "a lo sumo el caso concierne una mera diferencia de trato, más no una discriminación en los términos precisos en que lo contempla la Convención"<sup>2</sup> (pagina 28).

<sup>[2]</sup> En lado opuesto a estas intervenciones, personas y organismos de la sociedad civil de diversos países presentaron Amicus Curiae a favor de Sandra. Son los casos de la investigadora del Instituto de Investigaciones Jurídicas de la Universidad Nacional Autónoma de México (UNAM, ) Pauline Capdevielle; de La Línea de Investigación de Género, Derecho y Sociedad y el Grupo de Derechos Humanos de la Universidad Externado de Colombia; del abogado de la Campaña Nacional por un Estado Laico en Argentina, Pablo Suárez; de Colombia Diversa y de Synergia Iniciativa por los Derechos; de los ciudadanos colombianos Sandra Martínez, Luis Fernando Rodríguez, Luciana Rodríguez y José Miguel Rueda; del Director de la Clínica de Derechos Humanos de la Universidad de Santa Clara, Francisco J. Rivera Juaristi; de la ciudadana argentina Alba Rueda; de Abogad\*s por los Derechos Sexuales (AboSex) de Argentina (Abosex); de la Integrante de la Red de Litigantes LGBT de las Américas, Laura Saldivia Menajovsk y de la Fundación Mujeres x Mujeres de México, También presentaron un Amicus Curiae los/as investigadores/as del Semillero de Litigio ante Sistemas

Las campañas y los Amicus Curiae del odio explicitaron como los grupos anti-derechos distorsionan la verdad, buscan legitimar la discriminación y el odio contra las personas LGBTIQA+ e intentan torpedear el Estado laico, todo en el marco de una irracional y peligrosa lesbofobia.

A las cruzadas de odio en el extranjero, se sumaron en Chile sectores homo/transfóbicos que se pronunciaron repetidamente contra Pavez en columnas de opinión o cartas al director/a, como fue el caso del docente Hernán Corral.

"Ha pasado desapercibida (...) una amenaza más seria a la libertad de religión y a la autonomía de las iglesias. Se trata de la reclamación de Sandra Pavez en contra del Estado, apoyada por el Movilh y que, transformada en demanda de la Comisión Interamericana, será fallada por la Corte de San José de Costa Rica. La Sra. Pavez (...) pretende que las iglesias admitan como profesores de religión a personas que asumen una forma de vida que contradice la fe que dicen enseñar", señaló, (31 de marzo, El Mercurio).

"Aclaremos que no hay discriminación por orientación sexual, ya que ella ha podido ejercer esa función durante años siendo lesbiana y la Iglesia Católica no considera inmoral la tendencia homosexual y anima a las personas homosexuales a vivir según los principios cristianos", dijo faltando abiertamente a la verdad.

"Si la Corte condena a Chile, desconocerá la autonomía de todas las iglesias y confesiones religiosas para determinar qué personas pueden impartir clases de religión en la educación pública y lesionará el derecho de los padres a que sus hijos reciban formación religiosa en el credo que han elegido para ellos. Irá así contra derechos consagrados expresamente en la Convención que está encargada de hacer respetar, y esto no solo afectará a Chile sino a toda Latino por la extensión de la fuerza interpretativa que la doctrina del control de convencionalidad, elaborada por la misma Corte, atribuye a sus fallos", apuntó.

## • Reacción de la ONU, la CIDH y el Consejo de Europa

En este contexto, diversos referentes internacionales lanzaron en el marco del Día Internacional contra la Homo/Transfobia una inédita una declaración pública sobre la libertad religión.

El texto fue firmado por la Comisión Interamericana de DDHH, el Consejo de Europa, expertos/as en derechos Humanos, el Comité de los derechos de las personas con discapacidad, el Comité de los Derechos del Niño, el Comité contra la Tortura y el Subcomité para la Prevención de la Tortura y otros Tratos o Penas Crueles, Inhumanos o Degradantes de Naciones Unidas.

Las entidades llamaron "a los Estados, instituciones confesionales, personas ejerciendo liderazgos religiosos y otros actores involucrados, a considerar el impacto negativo que tienen las narrativas excluyentes o estigmatizantes sobre la violencia y la discriminación contra las personas lesbianas, gay, bisexuales, trans y de género diverso (LGBT). Las personas LGBT y de género diverso forman parte, desde siempre, de todas las tradiciones religiosas del mundo y, como todos los seres humanos, deben ser reconocidas como merecedoras de amor y pertenencia".

"La libertad, en general, y la libertad de pensamiento, conciencia y religión o creencias, en particular, son piedras angulares del marco internacional de derechos humanos. En ese sentido, debe reconocerse el derecho a la libertad de religión o creencias de todos los seres humanos durante su vida, incluido el de las personas LGBT. Las autoridades religiosas tienen la responsabilidad de garantizar que la religión y la tradición no se utilicen para promover la discriminación de las personas por su orientación sexual e identidad de género", apuntaron

"Sin embargo, las imputaciones de pecado a la conducta y decisiones de las personas LGBT en nombre de la religión se utilizan a menudo como justificación para la criminalización y la aplicación de otras medidas punitivas en sistemas legales que, en muchos casos, derivan de estructuras coloniales que se superpusieron a visiones culturales que aceptaban más a la diversidad", redondearon.

"Además, la incitación a la violencia y a la discriminación basadas en características personales por parte de personas que ejercen liderazgos religiosos ha sido documentada en varios casos. Tal incitación constituye discurso de odio y no se encuentra protegida ni por la libertad de expresión ni por la libertad de religión o de creencias", finalizaron.

Internacionales de Protección de Derechos Humanos de la Facultad de Derecho y Ciencias Políticas de la Universidad de Antioquia, del Programa de Acción por la Igualdad y la Inclusión Social de la Universidad de Los Andes y del Colectivo Feminista Bolívar en Falda: Valentina Ortiz Aguirre, Alejandro Gómez Restrepo, Jorge Andrés Pinzón Cabezas, Patricia del pilar González Callejas, Adrián Zarate Condori , Yeni Fernanda García Palacio, Manuel Darío Cardona, Mariajosé Mejía García, Juan David Álvarez Jaramillo, Nathalia Rodríguez Cabrera,Sara Méndez Niebles, Talia Basmagi Londoño, Estefanía Echeverri Betancur, María Paula Barbosa Rodríguez y María Fernanda Garcés Flórez.

#### • El Caso

El Caso Pavez se remonta al 25 de julio del 2007 cuando por orden del entonces obispo de San Bernardo, Juan Ignacio González Errázuriz, el Vicario para la Educación del Arzobispado, René Aguilera Colinier, revocó a Pavez el certificado de idoneidad que le iba a permitir seguir haciendo clases de religión en el Colegio Municipal Cardenal Antonio Samoré, donde ejercía desde 1985.

Lo anterior luego de que la maestra confirmara que era lesbiana y se negara a someterse a terapias psicológicas y psiquiátricas ofrecidas por la Iglesia para revertir su orientación sexual. A tanto llegó el acoso de la Iglesia, que en diversas ocasiones, incluidas las noches, sacerdotes visitaron el domicilio de Sandra para obligarla a revertir su homosexualidad, llegando al extremo de decirle que había dañado la memoria de su fallecida madre con su orientación sexual.

El clero actuó amparado en el Decreto 924 del Ministerio de Educación, un instrumento dictado en 1983 y aún vigente que "reglamenta las clases de religión en establecimientos educacionales" y faculta a las iglesias a decidir quiénes pueden o no impartir la cátedra, incluso en colegios laicos.

Por tal razón el Movilh presentó un recurso de protección ante la Corte de Apelaciones de San Miguel, el cual fue rechazado el 27 de noviembre del 2007, siendo la sentencia ratificada el 17 de abril del 2008 por la Corte Suprema. Ambos tribunales estimaron que no se había incurrido en ilegalidad, ni en discriminación, teniendo como argumento el Decreto 924.

Tras ello Pavez, con el patrocinio de los abogados Ciro Colombara, Branislav Marelic y el Movilh, denunció a Chile ante la CIDH<sup>3</sup>.

<sup>[3]</sup> Completos antecedentes sobre le génesis de este caso en el V Informe Anual de Derechos Humanos d ela Diversidad Sexual y de Género, publicado en movilh.cl

#### III. – ONU: EXPERTO PRESENTA DOS INFORMES, PAÍSES UNIDOS POR LA CAUSA LGBTIQA+ Y FESTEJO POR EL MATRIMONIO IGUALITARIO EN CHILE

Los 47 y 48 Períodos de Sesiones del Consejo de Derechos Humanos y el 76 Período de Sesiones de la Asamblea General de las Naciones Unidas; celebrados entre junio y octubre del 2021; se convirtieron en escenarios de gran debate a favor de la causa LGBTIQA+.

Si bien desde el 2016 la Asamblea General de Naciones Unidas no ha aprobado ninguna nueva resolución sobre los derechos LGBTIQA+; a diferencia de la Asamblea General de la OEA donde ello ocurre todos los años desde el 2008; lo concreto es que los países más sensibles se unieron de manera extra-oficial para emitir declaraciones a favor de las personas con género diverso, llegando incluso 27 de éstos a conformar un Grupo de Amigos de la causa, asociación que tiene en sus países líderes a Chile.

Por su lado, el Experto Independiente sobre Discriminación y Violencia Basada en la Orientación Sexual o la identidad de Género de Naciones Unidas, Víctor Madrigal-Borloz, presentó dos fundamentados y detallados informes sobre la situación de los derechos humanos LGBTQA+ que, de paso, desmenuzan las estrategias de los discursos y grupos de odio.

Finalmente, en un plano más local, la ONU festejó la aprobación del matrimonio igualitario en Chile.

#### • Experto LGBTIQA+ al Consejo de Derechos y a la Asamblea General

El Mandato del Experto Independiente sobre Discriminación y Violencia Basada en la Orientación Sexual o la identidad de Género de Naciones Unidas surgió de una resolución aprobada en 2016 por la Asamblea General de la ONU<sup>4</sup>.

Entre otras funciones se encomendó al Experto elaborar informes sobre la realidad LGBTIQA+ en el mundo.

En 2017 el primer experto, Vitit Muntarbhorn, presentó dos informes, denominados "Diversidad en la humanidad, humanidad en la diversidad" y "Acepta la diversidad e impulsa a la humanidad"<sup>5</sup>.

En 2021, su sucesor, Víctor Madrigal-Borloz, presentó dos nuevos estudios, tras recopilar antecedentes con los Estados y agentes de la sociedad civil.

El informe "El Derecho a la inclusión"<sup>6</sup> fue expuesto en el 47 Período de Sesiones del Consejo de Derechos Humanos de la ONU, y el denominado "Protección contra la violencia y la discriminación por motivos de orientación sexual o identidad de género"<sup>7</sup>, en el 76 Período de Sesiones de la Asamblea General de Naciones Unidas.

"El derecho de la inclusión" analiza la situación mundial de los DDHH en torno al género, la identidad y la expresión de género, describiendo el tratamiento dadas a dichas temáticas, y a la de orientación sexual, en el Derecho Internacional y en los Estados.

Lo anterior teniendo a la vista que "la noción de que existe una norma de género, de la que varían o se apartan las identidades y expresiones, se basa en una serie de ideas preconcebidas que deben ser puestas en cuestión si se aspira a que toda la humanidad disfrute de los derechos humanos", señala el informe (página 2).

Tras describir algunos de los avances y desafíos de los Estados en materia de igualdad para las personas con género diverso, Víctor Madrigal-Borloz concluyó que los países necesitan asumir dos deberes centrales para erradicar el odio hacia los/as LGBTIQA+: "prevenir, enjuiciar y castigar la violencia y la discriminación

<sup>[4]</sup> Todos los detalles en el XV Informe Anual de los Derechos Humanos de la Diversidad Sexual y de Género, publicado en movilh.cl

<sup>[5]</sup> Contenidos y análisis de los informes se encuentran en el el XV Informe Anual de los Derechos Humanos de la Diversidad Sexual y de Género, publicado en movilh.cl

<sup>[6]</sup> https://www.movilh.cl/wp-content/uploads/2021/12/El-derecho-a-la-inclusion-LGBTIQ-ONU.pdf

<sup>[7]</sup> https://www.movilh.cl/wp-content/uploads/2021/12/exclusion-LGBTI-ONU.pdf

basadas en la orientación sexual y la identidad y la expresión de género y, en su caso, ofrecer reparación a las víctimas" y "reconocer la libertad de todo ser humano para determinar los límites de su existencia, incluida su identidad y expresión de género" (página 19).

Mientras algunos países de la ONU siguen desconociendo que los derechos de las personas LGBTIQA+ son parte del sistema internacional de DDHH, Madrigal-Borloz defiende lo contrario.

"El uso de los términos género e identidad y expresión de género en el derecho internacional de los derechos humanos incluye a todas las personas, comunidades y poblaciones (...) Los conceptos de género, sexo e identidad y expresión de género están relacionados, pero pueden invocarse como motivos de protección de manera independiente", explica (página 20).

"El propio lenguaje inclusivo de la Declaración Universal de Derechos Humanos no solo nos obliga a todos a comportarnos de ese modo con todos los demás seres humanos nacidos libres e iguales en dignidad y derechos, sino que parece ser el núcleo de la preservación y salvaguarda del patrimonio común construido por nuestros mayores, y del extraordinario poder de un movimiento que ha conseguido tanto y que actualmente está en peligro", redondeó (página 20).

Luego el informe da especial relevancia al abordaje interseccional de la discriminación, a una educación integral en materia de género y sexualidad para mermar los abusos y al trabajo conjunto con los derechos de las mujeres.

El Experto recomienda particularmente a los Estados que "garanticen el reconocimiento del derecho a la integridad corporal y mental, a la autonomía y a la libre determinación", "el reconocimiento legal de la identidad de género", la "adopción de políticas públicas y sistemas de acceso a la justicia", la "implementación de sistemas de recopilación y análisis de datos que permitan un análisis interseccional de la violencia y la discriminación", la "puesta en marcha de medidas para detectar las violaciones de los derechos humanos cometidas en relación con la orientación sexual y la identidad de género, que vayan acompañadas de la investigación de los hechos" y el "apoyo a las organizaciones de la sociedad civil que estén dirigidas por personas LGBT o intersexuales o que las atiendan, mediante sólidas oportunidades de financiación y formación para el fomento de la capacidad" (páginas 21 y 22).

Por su lado, el informe "Protección contra la violencia y la discriminación por motivos de orientación sexual o identidad de género", que es complementario al anterior, se concentra en describir y analizar los rechazos

a la inclusión de las temáticas de género en el sistema internacional de derechos humanos.

Destaca especialmente por advertir sobre la presencia de grupos y discursos de odio y por identificar sus estrategias, entre esas, el levantamiento del concepto "ideología de género".

"Las narrativas y medidas excluyentes relacionadas con el género y la identidad de género aprovechan las ideas preconcebidas, el estigma y los prejuicios y aumentan el riesgo de perpetuar la violencia y la discriminación", mientras que la "ausencia de una respuesta a esta reacción puede llegar a constituir una violación de las obligaciones contraídas por los Estados en virtud del derecho internacional de los derechos humanos", parte señalando (página 4).

Luego advierte un "auge repentino de los líderes políticos y grupos religiosos ultraconservadores que utilizan sus plataformas para promover la intolerancia, deshumanizar a las personas por motivos de orientación sexual, identidad de género o expresión de género y fomentar el estigma y la intolerancia entre sus partidarios" (página 4).

También alerta que" desde ciertas esferas se está pidiendo separar los enfoques basados en los derechos humanos aplicados a la orientación sexual de los enfoques basados en la identidad de género, con el objetivo último de que las personas trans y de género diverso no estén protegidas por las normas y reglas internacionales de derechos humanos, y de cuestionar el reconocimiento jurídico de la identidad de género basado en la autoidentificación" (pagina 4).

En clara concordancia con los señalado por algunos movimientos LGBTIQA+, para Madrigal-Borloz "la resistencia al reconocimiento de la protección del género, la identidad de género y la expresión de género en el marco de las normas internacionales de los derechos humanos suele describirse como la resistencia a la imposición de la llamada "ideología de género", una fórmula lingüística empleada de manera simbólica para referirse de modo acusatorio a las interpretaciones progresistas de los derechos humanos y describir una serie de resentimientos tan variados como la oposición al matrimonio igualitario, el reconocimiento de la identidad de género, la educación integral sobre género y sexualidad y la interrupción voluntaria del embarazo, entre otras cosas . No hay una narrativa única de la "ideología de género" y esa etiqueta existe en gran medida para oponerse a los enfoques inclusivos de los derechos humanos. El concepto también aparece en narrativas adoptadas por grupos que operan en diversos contextos culturales y sociales para popularizar mensajes hostiles a la incorporación generalizada de la igualdad de género. Las narrativas de la "ideología de género" evocan una conspiración mundial y una estrategia coordinada destinada a destruir

el orden político y social . Además, por lo lo maleable, el concepto ha facilitado la promoción de ideas y políticas restrictivas" (página 5).

Es preciso, considera , "oponerse al mundo de absolutos que propugnan las narrativas anti-género. Las ideas preconcebidas sobre las que se construye ese orden se basan en que la naturaleza humana debe clasificarse según un sistema binario masculino/ femenino en función del sexo asignado al nacer; que las personas, según el mismo criterio, encajan perfectamente en ese sistema sin necesidad de ningún otro" (página 7).

Junto al concepto "ideología de género", el experto identifica como otras estrategias de los grupos anti-derechos y de los discursos de odio a la negación de la existencia de personas LGBIQA+; a la defensa del "Estado natural", donde "la familia patriarcal y heteronormativa es considerada la única que aporta valor al legado nacional de un país" (página 10); a los "valores tradicionales", entendidos como contrario a mujeres y LGBTIQA+", a la difusión de falsos efectos negativos en los niños/as ante el avance de la igualdad, y, por último, a la capacidad y posibilidad de acceder a altas financiaciones.

"El andamiaje financiero que está detrás del llamado movimiento mundial "anti-género" recibe aportes de personas adineradas, organizaciones sin fines de lucro e instituciones religiosas", explica (página 14).

Dado que "las narrativas anti-género plantean un riesgo significativo para la promoción de los derechos de las mujeres y pueden fomentar la violencia y la discriminación por motivos de orientación sexual o identidad de género" (pagina 15), el experto propone diversas medidas.

Entre otras recomienda "hacer frente a los actos de violencia discriminatoria y los delitos de odio por motivos de orientación sexual o identidad de género, así como la incitación a cometerlos, a través de todas las medidas necesarias en la legislación", "analizar cuidadosamente la retórica y las prácticas excluyentes y cuestionarlas con información basada en pruebas", redoblar "la determinación para resistir los intentos de eliminar el concepto de género del lenguaje de los tratados mundiales y regionales y de otros instrumentos internacionales", "analizar la reacción negativa con respecto a la incorporación de marcos de género en el derecho internacional de los derechos humanos", y "adoptar un marco para hacer frente al discurso de odio" (páginas 26 y 27).

#### Estados amigos de la causa LGBTIQ+ y declaración centrada en derechos trans

El Grupo de Estados Amigos del Mandato del Experto Independiente sobre Orientación Sexual e Identidad de Género (OSIG) fue anunciado el 25 de junio en el diálogo donde Madrigal-Borloz presentaba su informe ante el 47 Período de Sesiones del Consejo de Derechos Humanos de las Naciones Unidas.

Junto con apoyar la labor del Experto Independiente en OSIG y gestionar que el Consejo de Derechos Humanos avance en iniciativas pro derechos LGBTIQA+, el Grupo de Estados Amigos tiene como otros objetivos realizar declaraciones, organizar o patrocinar eventos, gestionar esfuerzos diplomáticos y respaldar la labor de los movimientos sociales a favor de la igualdad y de la no discriminación.

El Grupo es liderado por Argentina, Chile, Uruguay y está integrado además por Australia, Austria, Bélgica, Canadá, Costa Rica, Dinamarca, Grecia, Finlandia, Alemania, Islandia, Israel, Irlanda, Italia, Liechtenstein, Luxemburgo, Malta, México, Noruega, Países Bajos, Portugal, Reino Unido, Estados Unidos, Suecia y Suiza.

Si bien el Grupo de Estados Amigos no es un asociación formal u oficial, el hecho de que surja en el contexto de reuniones formales de la ONU explicita claramente su interés por sensibilizar al bloque para que actúe de manera más decidida y periódica a favor de los derechos LGBTIQA+, una tarea nada fácil, pues en el seno de Naciones Unidas hay países que nada y poco han avanzando en la temática y/o que son derechamente opositores a la diversidad sexual y de género.

La primera declaración del Grupo de Amigos, en el seno del 47 Período de Sesiones del Consejo de Derechos Humanos de las Naciones Unidas, estuvo dedicado a los derechos de las personas trans, en particular de las mujeres.

En el texto, leído por el Estado de Chile, se advirtió que el "estigma contra las mujeres trans en toda su diversidad prevalece y muchas mujeres transgéneros corren un mayor riesgo de sufrir violencia, asesinatos y otras violaciones y abusos de los derechos humanos y están expuestas a ellos".

"Los estudios muestran que ha habido un aumento constante en el número global de asesinatos reportados de personas trans y personas no conformes con el género, con al menos 3.664 asesinatos documentados desde 2008, de los cuales el 97% tenían mujeres transgénero como víctimas. Estos actos de violencia a menudo no se investigan adecuadamente y los perpetradores no rinden cuentas", señaló.

Por esa, y otras razones, "hacemos un llamado a los Estados Miembros, con carácter de urgencia, a respetar, proteger y cumplir los derechos humanos de las personas transgénero, especialmente las mujeres transgénero dada la marginación histórica de la población, a investigar violaciones y abusos de derechos, a garantizar la rendición de cuentas, implementar leyes y políticas efectivas contra la discriminación y a brindar a las víctimas acceso directo a un recurso efectivo y servicios de apoyo"<sup>8</sup>, finalizaron.

#### Declaración de 53 Estados por Derechos Intersex

En tanto, durante el 48 Período de Sesiones del Consejo de Derechos Humanos de las Naciones Unidas, celebrado entre el 13 de septiembre y el 11 de octubre, Austria leyó en representación de 53 Estados una declaración a favor de las personas intersex, en especial de los/as niños/as.

"Las personas intersexuales continúan sufriendo discriminación en muchas áreas de la vida, particularmente en educación, salud, empleo, seguridad social, deportes, lugares de detención y acceso a servicios públicos", señalaron.

"Para abordar estos desafíos, existe una necesidad urgente de combatir la discriminación basada en las características sexuales y abordar sus causas fundamentales, como los estereotipos de género, la difusión de información inexacta, el estigma, el tabú y la patologización. Por estas razones, también existe una clara necesidad de concienciar sobre los derechos humanos de las personas intersexuales", apuntaron.

"Las personas intersexuales también deben estar protegidas de la violencia y los Estados deben garantizar la rendición de cuentas por estos actos. Las leyes deben proteger adecuadamente a las personas intersexuales de los delitos de odio, incluidos los alimentados por el discurso de odio", dijeron.

"También es necesario tomar medidas para proteger la autonomía de los niños y adultos intersexuales y sus derechos a la salud y a la integridad física y mental para que vivan libres de violencia y prácticas nocivas. Las cirugías médicamente innecesarias, los tratamientos hormonales y otros procedimientos médicos no vitales invasivos o irreversibles sin su consentimiento libre, previo, pleno e informado son perjudiciales para el pleno disfrute de los derechos humanos de las personas intersexuales.", enfatizaron.

"Hacemos un llamado a todos los estados miembros para que tomen medidas para combatir la violencia y la discriminación contra las personas intersexuales, desarrollen políticas en consultas cercanas con los afectados, garanticen la rendición de cuentas, reviertan las leyes discriminatorias y brinden a las víctimas acceso a reparación. También hacemos un llamado a la Oficina del Alto Comisionado para los Derechos Humanos y a los Procedimientos Especiales de este Consejo para que continúen abordando y amplíen la acción contra la violencia y la discriminación por características sexuales dentro de sus mandatos y en su trabajo", finalizaron<sup>9</sup>.

## • La ONU y el matrimonio igualitario en Chile

Otro de los pronunciamientos de la ONU tuvieron especial relación con Chile, luego de que el 7 de diciembre el Congreso Nacional aprobara el matrimonio igualitario y, dos días después, el presidente Sebastián Piñera lo promulgará<sup>10</sup>.

El 8 de diciembre la ex presidenta y alta comisionada para los Derechos Humanos de la ONU, Michelle Bachelet, señaló por Twitter que "celebro el #MatrimonioIgualitario en Chile, que asegura el reconocimiento y la protección de todas las familias, sin discriminación en base a la orientación sexual o identidad de género. Es un paso importante para el país y espero que otros seguirán este ejemplo".

Un día más tarde, la Oficina para América del Sur del Alto Comisionado de las Naciones Unidas para los Derechos Humanos (Acnudh) festejó "la promulgación en Chile de la ley que reconoce el matrimonio igualitario para todas las personas, sin distinción de sexo, orientación sexual o identidad de género, y destaca la vigencia en el país de la ley que reconoce y da protección a la identidad de género."

<sup>[8]</sup> https://www.movilh.cl/wp-content/uploads/2021/12/declaracion-paises-amigos-LGBTI-onu.pdf

<sup>[9]</sup> https://www.movilh.cl/wp-content/uploads/2021/12/Intersex-ONU-declaracion.pdf

<sup>[10]</sup> Todos los análisis y antecedentes sobre este avance histórico se encuentran en el cuarto capitulo.

"Chile, el séptimo país latinoamericano en legalizar el matrimonio igualitario, reafirma –una vez más– su compromiso con los estándares internacionales de derechos humanos en materia de igualdad y no discriminación, al modificar su Código Civil permitiendo que todas las personas puedan acceder al contrato de matrimonio y, con ello, al reconocimiento legal y sin discriminación de los diversos tipos de familias existentes", puntualizó la Acnudh.

#### IV.- LA OEA POR LA INCLUSIÓN DE PERSONAS LGBTIQA+ EN EL "DESARROLLO ECONÓMICO" Y EL FESTEJO EN LA CIDH POR EL MATRIMONIO IGUALITARIO EN CHILE

El sistema interamericano de Derechos Humanos continuó en 2021 con sus gestiones para la promoción de la no discriminación a personas LBTIQA+.

Por un lado la Asamblea General de la Organización de los Estados Americanos (OEA) aprobó una nueva resolución sobre DDHH, incorporando un título especial sobre las personas LGBTIQA+ y, por otro, la Comisión Interamericana de DDHH (CIDH) siguió emitiendo declaraciones públicas favorables a la igualdad, entre esas, una referente a la aprobación del matrimonio igualitario en Chile.

#### Nueva resolución

Durante su 51 Asamblea General; celebrada entre el 10 y 12 de noviembre de 2021 en Guatemala, la OEA aprobó una nueva resolución sobre "Promoción y protección de los Derechos Humanos" (AG/RES. 2976 (LI-O/21)<sup>11</sup> que, por sexto año consecutivo, añadió un título sobre la realidad LGBTIQA+<sup>12</sup>.

Denominado "Derechos humanos y prevención de la discriminación y la violencia contra personas LGBTI", el acápite mantiene la línea de resoluciones previas en orden a condenar los abusos y violencia en razón de la orientación sexual o identidad de género y exhortar a los Estados a que "continúen fortaleciendo

<sup>[11]</sup> https://www.movilh.cl/wp-content/uploads/2021/12/Resolucion-OEA-DDHH-2021.pdf

<sup>[12]</sup> En 2008 la OEA aprobó por primera vez una resolución sobre orientación sexual e identidad de género. Tras ello, y hasta el 2014, dio luz verde a otras seis resoluciones que abordaban de manera específica la situación de las personas LGBTIQA+. En tanto, desde el 2016 la temática LGBTIQA+ fue incorporada en una resolución más amplia que también trata los derechos humanos de otros sectores sociales. La historia o antecedentes de cada una de estas resoluciones se encuentran en los respectivos Informes Anuales de la Diversidad Sexual y de Género, publicados en Movilh.cl

sus instituciones y sus políticas públicas para eliminar las barreras que enfrentan las personas LGBTI en el disfrute de los derechos humanos y libertades fundamentales" y adopten medidas para "prevenir, investigar, responsabilizar, sancionar y erradicar" la discriminación.

Especialmete significativo es que se instó a los Estados a garantizar "la igualdad ante la ley"; lo cual puede ser un llamado a modificar, crear o derogar legislaciones; y a asegurar en el contexyo de la pandemia "el acceso, sin discriminación alguna, a los servicios de salud equitativos, oportunos y de calidad".

En uno de sus puntos más relevantes, la OEA llamó a implementar acciones "para incluir a las personas LGBTI en el desarrollo económico y garantizar su acceso equitativo al mercado laboral", un aspecto donde la casi totalidad de los países poco y nada han avanzado. Es el caso de Chile, por ejemplo, donde la inclusión explícita de las personas LGBTIQA+ en el desarrollo económico simplemente no existe.

Además la resolución encomendó "al Consejo Permanente que organice, con los recursos existentes y en coordinación con la Secretaría de Acceso a Derechos y Equidad, una sesión extraordinaria sobre "Derechos humanos y prevención de la discriminación y la violencia contra las personas LGBTI en las Américas" con especial atención en el acceso a la salud en el contexto de la pandemia de la situación de las personas trans y de género diverso".

Finalmente se acordó pedir a la CIDH "un reporte de seguimiento sobre el informe "Violencia contra las personas LGBTI", de 2015, y que, en colaboración con otras instancias y agencias, como la Organización Panamericana de la Salud (OPS), que también informe sobre la discriminación médica y las prácticas médicas degradantes, especialmente en relación a las personas intersex".

#### Declaraciones de la CIDH y el matrimonio igualitario en Chile

La Comisión Interamericana de DDHH (CIDH) ha jugado un gran rol para la promoción de los derechos de las personas LGBTIQ+, ya sea denunciando ante la Corte Interamericana de DDHH a los países por prácticas homo/bi/transfóbicas o pronunciándose en coyunturas de alto simbolismo.

Así es como cada año emite declaraciones públicas con motivo del Día Internacional contra la Homo/Bi/Transfobia (17 de mayo), del Día del Orgullo (28 de junio), del Día Internacional de la Visibilidad Trans (31 de marzo) o del Día Internacional de la Visibilidad Lésbica (26 de abril), entre otros.

El 31 de marzo del 2021 la CIDH enfatizó que "la identidad y expresión de género de las personas, incluyendo las no binarias, son categorías protegidas contra la discriminación, a la luz de los estándares interamericanos de derechos humanos".

Acto seguido llamó a los Estados "a garantizar el derecho a la identidad y expresión de género de las personas no binarias, mediante la implementación de mecanismos legales sencillos y expeditos que posibiliten registrar o cambiar componentes esenciales de su identidad en los registros públicos y en sus documentos de identificación".

Luego, en el contexto del "Día Internacional de la Visibilidad Lésbica" instó a los Estados a "actuar en observancia de su deber de debida diligencia reforzada, adoptando medidas destinadas a proteger la vida, salud, integridad personal y demás derechos humanos de las mujeres lesbianas y quienes son percibidas como tales".

Lo anterior porque las "mujeres lesbianas de distintos Estados de la región han sido sometidas a actos de violencia con el intento de modificar o suprimir su orientación sexual o expresión de género. Según lo relatado por algunas mujeres lesbianas", esto incluye "abusos verbales sistemáticos, situaciones de hacinamiento, aislamiento por largos períodos de tiempo, privación de comida, obligación de desnudarse y portar vestimentas consideradas deseables, violaciones sexuales y aplicación de electroshock, entre otros actos contrarios a los derechos humanos. La Comisión resalta que, según la información disponible, estas prácticas son, frecuentemente, administradas en instituciones religiosas y clínicas, incluyendo oficinas psicológicas y psiquiátricas". Finalmente el 9 de diciembre, y con motivo de la aprobación y promulgación del matrimonio igualitario en Chile, la CIDH salió a recordar que tal avance se enmarcaba en el cumplimiento de un Acuerdo de Solución Amistosa (ASA), tras una demanda interpuesta por el Movimiento de Integración y Liberación Homosexual (Movilh).

En efecto, el 15 de mayo del 2012 el Movilh; representado por Rolando Jiménez, demandó al Estado de Chile ante la CIDH por prohibir el matrimonio a tres parejas del mismo sexo que habían solicitado una hora al Registro Civil para contraer el vínculo.

En 2016; y bajo la administración de la entonces presidenta Michelle Bachelet; el Estado, la CIDH y el Movilh firmaron el ASA donde Chile comprometió el ingreso de un proyecto de ley al Congreso Nacional y la aprobación del mismo<sup>13</sup>.

"La CIDH celebra la aprobación y promulgación de la ley que reconoce el matrimonio igualitario y la protección de las familias diversas en Chile, llevada a cabo el 7 y 9 de diciembre respectivamente", dijo le entidad.

Añadió que "la aprobación responde a los compromisos del Estado de Chile en el marco del acuerdo de solución amistosa", caso número 946-12<sup>14</sup>.

"La ley, además de reconocer el matrimonio igualitario, fortalece las protecciones jurídicas de las familias diversas, incluyendo garantías para la igualdad y no discriminación en los ámbitos de filiación y régimen de cuidados, entre otros. Al respecto, la CIDH destaca la inclusión de períodos de descanso laboral pre y post natal sin discriminación basada en orientación sexual o identidad de género, así como la derogación de la obligación de divorcio para las personas trans que ejerzan su derecho a la rectificación de los registros públicos", señaló.

A estos pronunciamientos de la CIDH se suma la elaboración y/o publicación de estudios. Es el caso del "Informe sobre Personas Trans y de Género Diverso y sus Derechos Económicos, Sociales, Culturales y Ambientales".<sup>15</sup>

El texto; lanzado en noviembre del 2020 por la Relatoría Especial de la CIDH sobre Derechos Económicos, Sociales, Culturales y Ambientales; aborda la la situación de las personas trans en América en los campos de la educación, la salud, el trabajo y la seguridad social, además de analizar el impacto del Covid-19.

"Sigue existiendo un largo camino para satisfacer completamente a las necesidades de protección y reconocimiento de las personas trans y de género diverso en la región. De hecho, los efectos de la exclusión estructural en la que son forzadas a vivir sólo serán eliminados con un trabajo continuo, considerando los altísimos niveles de persecución, violencia y discriminación que aquejan a las personas trans y de género diverso. Esta situación ha sido, histórica y ampliamente naturalizada y, rara vez, cuestionada hasta el presente", señaló el informe (página 177).

Consideró que "una de las herramientas más importantes con la que cuentan los Estados, para revertir situaciones de exclusión histórica y sistemática son las medidas de acción afirmativa", (página 178).

Por último, y entre otros puntos, el Informe recomendó "adoptar todas las medidas necesarias para garantizar el estándar de debida diligencia en la prevención, investigación, sanción y reparación de la discriminación y violencia contra las personas trans.", "adecuar el marco normativo" y "elaborar e implementar políticas y programas para promover el respeto" así como generar "campañas informativas de sensibilización y concientización en los medios de comunicación públicos y privados sobre diversidad corporal, sexual y el enfoque de género" (página 183).

También sugirió "combatir los discursos de odio o con fundamentos discriminatorios, en particular asegurar que el discurso público y los mensajes emitidos por autoridades, especialmente aquellas de más alto rango, cuiden de no estigmatizar o discriminar a las personas trans y de género diverso" (página 185).

<sup>[13]</sup> Todos los antecedentes en el XIV Informe Anual de los Derechos Humanos de la Diversidad Sexual y de Género, publicado en movilh. cl

<sup>[14]</sup> Más antecedentes en el Capítulo IV

<sup>[15]</sup> https://www.movilh.cl/wp-content/uploads/2021/12/Personas-Trans-CIDH.pdf

#### V.- JUSTICIA Y PARLAMENTO EUROPEO RECONOCEN DERECHOS A HIJOS/AS DE PAREJAS DEL MISMO SEXO EN TODA LA UE

Un histórico fallo emitió el 14 de diciembre el Tribunal de Justicia de la Unión Europea (TJUE) al reconocer los derechos de los/as hijos/as de pareja del mismo sexo en todo el bloque, incluso en aquellos países donde no hay matrimonio igualitario, ni otras legislaciones favorables a las familias homoparentales, mientras que el Parlamento hizo lo suyo al llamar a los Estados a respetar las sentencias pro derechos LGBTIQA+ y declarar a toda la región como zona de libertad para la diversidad sexual y de género.

El pronunciamiento del TJUE surgió luego de que Bulgaria se negara a entregar una cédula de identidad a S.D.K, niña nacida en 2019 en España, donde es reconocida como hija del matrimonio compuesto por K.D.K y la ciudadana búlgara V.M.A.

En concreto, el Municipio de Sofía negó la cédula por "falta de información acerca de la identidad de la madre biológica de la menor y en el hecho de que la mención en un certificado de nacimiento de dos progenitores de sexo femenino era contraria al orden público búlgaro, que no permite los matrimonios entre dos personas del mismo sexo", se lee en el fallo de la TJUE<sup>16</sup>.

El conflicto fue elevado por el propio Tribunal de lo Contencioso-Administrativo de Sofía al TJUE por sospechar que la negativa del municipio podría "obstaculizar el ejercicio del derecho de libre circulación de la menor y, por ende, el pleno disfrute de sus derechos como ciudadana de la Unión", indica el fallo.

Al respecto el TJUE sentenció que "en el caso de un menor ciudadano de la Unión cuyo certificado de nacimiento expedido por las autoridades competentes del Estado miembro de acogida designa como progenitores a dos personas del mismo sexo, el Estado miembro del que el menor es nacional está obligado, por una parte, a expedirle un documento de identidad o un pasaporte sin exigir la expedición previa de un certificado de nacimiento por sus autoridades nacionales y, por otra parte, a reconocer, al igual que cualquier otro Estado miembro, el documento procedente del Estado miembro de acogida que permita al menor ejercer con cada una de esas dos personas su derecho a circular y residir libremente en el territorio de los Estados miembros".

"En la medida en que S.D.K. tiene la nacionalidad búlgara, las autoridades búlgaras están obligadas a expedirle un documento de identidad o un pasaporte búlgaro en el que conste su apellido tal como resulta del certificado de nacimiento expedido por las autoridades españolas", con lo cual la niña podrá "ejercer su derecho de libre circulación con cada una de las dos madres", añadió el Tribunal junto con aclarar que ello implica "reconocer el vínculo de filiación", al menos para tales efectos.

Aclaró, en ese orden, que "tal obligación no supone que el Estado miembro de que se trate contemple en su Derecho nacional la parentalidad de personas del mismo sexo ni que reconozca, con fines distintos del ejercicio de los derechos que el Derecho de la Unión confiere a la menor, el vínculo de filiación entre ella y las personas mencionadas como progenitoras en el certificado de nacimiento emitido por las autoridades del Estado miembro de acogida".

#### Resoluciones del Parlamento Europeo

Ya en 2018 el TJUE había fallado a favor del derecho de circulación y residencia en todos los países del bloque de cualquier cónyuge del mismo sexo casado/a con un/a ciudadano/a de la Unión Europea<sup>17</sup>, luego de negarse esa posibilidad al rumano Relu Adrian Coman y al estadounidense Robert Clabourn Hamilton, quienes contrajeron matrimonio en Bruselas en 2010.

En la práctica muchos países de la UE siguen obstaculizando el cumplimiento de la sentencia del 2018, aspecto que animó al Parlamento de la Unión Europea a aprobar el 14 de septiembre del 2021 una resolución que insta a todos los Estados miembros a respetar los derechos de las parejas del mismo sexo, cuenten o no con leyes sobre la materia.

La resolución<sup>18</sup>; aprobada por 367 votos a favor, 161 en contra y 123 abstenciones; pidió a la Comisión

<sup>[16]</sup> https://www.movilh.cl/wp-content/uploads/2021/12/Fallohijos-de-parejas-del-mismo-sexo-en-la-union-europea.pdf

<sup>[17]</sup> Más antecedentes en el XVII Informe Anual de los Derechos Humanos de la Diversidad Sexual y de Género, publicado en movilh.cl

<sup>[18]</sup> https://www.movilh.cl/wp-content/uploads/2021/12/Parlamento-Europeo-y-Derechos-LGBTIQA.pdf

Europea que adopte "medidas concretas para garantizar la libre circulación de todas las familias, incluidas las arcoíris, en consonancia con la sentencia recaída en el asunto Coman y Hamilton, que afirma que el término «cónyuge» utilizado en la Directiva sobre la libre circulación también es aplicable a las parejas homosexuales".

De igual modo pidió a la "Comisión que examine si los Estados miembros cumplen la sentencia Coman y Hamilton y que adopte medidas de ejecución, en virtud del artículo 258 del TFUE, contra quienes la incumplen", como es el caso de Rumania.

"No todos los Estados miembros brindan a las personas LGBTIQ protección jurídica frente a la discriminación", además de que se "han producido retrocesos, como la retórica hostil de políticos electos, las oleadas de la violencia homófoba y transfóbica y la proclamación de las denominadas «zonas sin LGBTI»", advirtió el Parlamento Europeo.

Por ello, insistió "en que la Unión debe adoptar un enfoque común para el reconocimiento de los matrimonios y las uniones homosexuales" y pidió "a los Estados miembros que introduzcan legislación pertinente para garantizar el pleno respeto del derecho a la vida privada y familiar sin discriminación y a la libre circulación de todas las familias, incluidas medidas para facilitar el reconocimiento del género legal de los progenitores transgénero".

También en 2021 el Parlamento Europeo aprobó por 492 votos a favor, 141 contra y 46 abstenciones una resolución que declara desde el 11 de marzo a todo el territorio como "zona de libertad para las personas LGBTIQA+"

La resolución fue en respuesta a la ola de violencia contra personas LGBTIQA+ en Hungría y Polonia. En el primer país, el Parlamento aprobó una enmienda constitucional que impide la adopción homoparental y niega la existencia de persona trans y en el segundo se han venido declarando desde el 2019 "zonas libres de ideología LGTBIQ" en unas 100 regiones.

#### VI. - BANCO MUNDIAL: PRIMER INFORME SOBRE DERECHOS DE LAS PERSONAS LGBTIQA+ Y RESPALDO A MEDIDAS EN CHILE

"Igualdad de Oportunidades para las minorías sexuales y de género" se denominó el primer informe del Banco Mundial que aborda las leyes y políticas públicas que reconocen o niegan a derechos a las personas LGBTIQA+, mientras que, por otro lado, la entidad apoyó en Chile algunas de las iniciativas pro igualdad organizadas por el movimiento de la diversidad sexual y de género.

#### • El informe

Lanzado en septiembre del 2021, el documento da especial relevancia a los derechos en Educación, Trabajo, "el acceso a los servicios públicos y la protección social, la inclusión cívica y política, y la protección contra los delitos de odio", señaló un resumen de la iniciativa<sup>19</sup>.

Para su análisis, el Banco Mundial consideró la realidad de 16 países: Bangladesh, Canadá, Costa Rica, India, Indonesia, Jamaica, Japón. Kosovo, Líbano, México, Mozambique, Nigeria, Sudáfrica, Túnez, Ucrania y Uruguay.

Aún cuando Chile no está en el listado, las conclusiones del Informe bien pueden extenderse a nuestro país, y a otros, en tanto resaltan la importancia de las reformas legales para igualdad de derechos, así como en la necesidad de perfeccionar y mejorar lo avanzado, toda vez que la erradicación contra la discriminación sigue siendo un desafío, en particular tras los efectos de la pandemia

"Las reformas regulatorias pueden jugar un papel esencial para ayudar a lograr la igualdad de oportunidades para las personas miembros de la comunidad LGBTI y no dejar a nadie atrás en el proceso de recuperación de la crisis provocada por el COVID-19", señala el Banco Mundial.

<sup>[19]</sup> Al cierre de este informe el documento del Banco Mundial solo estaba disponible en inglés, existiendo un resumen en español: https://www.bancomundial.org/es/news/feature/2021/09/24/laws-matter-for-sexual-and-gender-minorities

"Queda mucho por hacer para diseñar e implementar leyes y políticas que garanticen la igualdad de oportunidades para las personas miembros de la comunidad LGBTI", apuntó.

En tal plano "los marcos jurídicos inclusivos pueden desempeñar un papel fundamental para superar la brecha en relación con la igualdad que enfrentan las personas LGBTI en el mundo. Por ejemplo, la capacitación obligatoria de los maestros y la entrega de mejores materiales educativos y planes de estudio podrían ser posibles soluciones (...) La educación inclusiva puede ayudar a eliminar el lenguaje discriminatorio y abrir vías de oportunidades de empleo para las personas LGBTI", apuntó la entidad.

Al mismo tiempo advirtió que "la pandemia de COVID-19 también puso en primer plano la vulnerabilidad de las minorías sexuales y de género. Cuando los Gobiernos implementaron las medidas de confinamiento, las minorías sexuales y de género enfrentaron un riesgo desproporcionado de violencia interpersonal. La escasez de datos en muchos países hace invisibles dichos problemas, aumentando los riesgos para las personas afectadas. Se pone de relieve que la recopilación y el análisis de datos son esenciales para identificar y combatir la discriminación"<sup>20</sup>, explicó el Banco Mundial.

Añadió que "si bien un mayor número de países ha tomado medidas importantes para lograr la igualdad de las minorías sexuales, en la mayoría de ellos aún no se ha conseguido el reconocimiento legal y la protección de las personas transgénero".

Entre otras medidas el Informe propone "proporcionar capacitación a los profesionales de los servicios públicos para comprender mejor las necesidades relacionadas con la orientación sexual e identidad de género, derogar leyes que violan los derechos de las minorías sexuales y de género, y exigir legalmente a los empleadores que respeten la privacidad de sus empleados", indicó el Banco Mundial en su web.

El Banco Mundial espera realizar en el futuro nuevos estudios que incluyan la realidad de países no considerados en su primer informe.

#### Medidas en Chile

En el transcurso del año, el Banco Mundial dio además por primera vez su espaldarazo a la Campaña Arcoíris, una iniciativa emprendida por el Movilh desde el 2012 y que insta a organismos públicos o privados a desplegar la bandera LGBTIQA+ o iluminar sus sedes con los colores de la diversidad durante el Día Internacional contra la Homo/Transfobia (17 de mayo)<sup>21</sup>.

Junto con adherir a la campaña en mayo, el Banco Mundial apoyó una edición especial de la misma<sup>22</sup> que tuvo lugar entre fines de noviembre y comienzos de diciembre con el objetivo de instar a la aprobación del matrimonio igualitario que en ese momento se votaba en el Congreso Nacional.

De esa manera, el Banco Mundial visibilizó e hizo público en Chile su apoyo a la plena igualdad de derechos para las personas LGBTIQA+.

<sup>[20]</sup> Sobre los efectos del Covid- 19 en la población LGBTIA+ de Chile revisar el título VI del primer capitulo, así como el el XIX Informe Anual de Derechos Humanos de la Diversidad Sexual y de Género publicado en movilh.cl

<sup>[21]</sup> Más sobre esta campaña en el III Capítulo.

<sup>[22]</sup> Más sobre la edición especial de la campaña en el IV Capítulo

#### VII.- ROL DE LAS EMBAJADAS, DE LA OIM Y DE OTROS ORGANISMOS DE DDHH EN CHILE

Las embajadas, históricas aliadas de la causa LGBTIQA+ en Chile, intensificaron en 2021 su respaldo a gestiones contra la discriminación por orientación sexual o identidad de género, mientras el movimiento de la diversidad sexual y de género local apoyó la lucha que se dio en Colombia contra la odiosa normativa que impide a gays y bisexuales donar sangre.

En similar sentido, la Organización Internacional para las Migraciones (OIM) contribuyó al desarrollo de diversas actividades de promoción de los derechos de extranjeros/as LGBTIQA+ en Chile.

#### • Embajadas

Las embajadas se lucieron con dos nuevas sumatorias a la Campaña Arcoíris. La primera vinculada al Día Internacional contra la Homo/Transfobia (17 de mayo) y la segunda relacionada con el matrimonio igualitario, al tiempo que participaron de la Marcha del Orgullo, impulsaron actividades de visibilidad y debate y, el Reino del Países Bajos, apoyó la reimpresión del cuento "Nicolás tiene dos papás".

Desde el 2012 que el Movilh viene impulsando la Campaña Arcoíris con fin de que organismos públicos o privados desplieguen la bandera LGBTIQA+, iluminen sus frontis con los colores de la diversidad o desarrollen campañas cada 17 de mayo. A esta tradicional acción, el Movilh sumó entre noviembre y diciembre del 2021 una edición especial del Banderazo Arcoíris en apoyo a la aprobación del matrimonio igualitario que en esos momentos se votaba y discutía en el Congreso Nacional.

El 17 de mayo, se plegaron a la Campaña Arcoíris las embajadas de Alemania (cuyo embajador es Christian Hellbach), Argentina (Rafael Bielsa), Australia (Todd Mercer), Austria (Stephan Vavrik), Bélgica (Geert Crie), Canadá (Patricia Peña), Costa Rica (Adriana Murillo Ruin), Dinamarca (Jens Godtfredsen), Estados Unidos (Baxter Hunt), (Enrique España Ojeda), Finlandia (Eija Rotinen), Francia (Roland Dubertrand), Irlanda (Paul Gleeson), Israel (Marina Rosenberg), México (Francisco Javier Olavarría), Noruega (Jostein Leiro), Perú (Jaime Pomareda), Reino Unido (Louise de Sousa), Reino de los Países Bajos (Harman Idema), (Suecia (Oscar Stenström) y la Unión Europea (León de la Torre).

Entre diciembre y noviembre, en respaldo al matrimonio igualitario, adhirieron a la campaña Argentina, Australia, Austria, Canadá, Costa Rica, Dinamarca México, Reino de los Países Bajos (cuya embajadora es Carmen Gonsalves) y Reino Unido.

Además, con motivo del 30 aniversario del Movilh y del Día Internacional del Orgullo, que se celebra cada 28 de junio, las embajadas de Argentina, Reino Unido, Costa Rica y Estados Unidos enviaron un saludo al movimiento LGBTIQA+.

También en el marco del Día del Orgullo, el Ministerio de Asuntos Exteriores y Cooperación de España organizó entre el 28 y el 1 de julio por segundo año consecutivo el evento online "Armarios Abiertos" para debatir sobre infancia, afrodescendientes, indígenas, migrantes, refugiados y realidad trans

En tanto, el 13 noviembre, expusieron y/o participaron de la primera Marcha del Orgullo<sup>23</sup> tras las pandemia los/as embajadores/as de Australia, Todd Mercer; de Canadá, Michael Gort; de Costa Rica, Adriana Murillo; de México, Francisco Javier Olavarría; de Italia, Mauro Battocchi; del Reino de los Países Bajos, Carmen Gonsalves y de Suecia, Oscar Stenström; así como el Encargado de Prensa de la Embajada de Alemania, Jakob Horn; el Ministro Jefe de la Embajada de Argentina, Javier Lareo; la Consejera Política y de Cultura de la Embajada de Dinamarca, Trine Danklefsen; el Encargado de Negocios de la embajada de España, Jorge Paralta Momparler; la Consejera de Asuntos Políticos y Económicos de la Embajada de Estados Unidos, Mariju Bofill y el Encargado de Misión de la Embajada de Nueva Zelanda, Nick Meehan.

En un ángulo similar y en el marco de una actividad coordinada en Chile por las embajadas de Dinamarca, Finlandia, Suecia y Noruega, un total de 23 delegaciones extranjeras<sup>24</sup> llamaron junto a Iguales y el Movilh<sup>25</sup> a sumarse a la conmemoración online del World Pride, desarrollado entre el 12 y 22 de agosto.

"Ningún país puede jactarse de estar libre de discriminación ni violencia contra las personas LGBTI", señalaron las embajadas.

<sup>[23]</sup> Más antecedentes sobre esta marcha, la más masiva por los derechos LGBTIQA+ desarrollada en Chile, se encuentran en el capítulo VII

<sup>[24]</sup> A esas cuatro embajadas, se sumaron las de Australia, Austria, Bélgica, Costa Rica, Croacia, España, Estados Unidos, Francia, Gran Bretaña, Grecia, Irlanda, Italia, Noruega, Panamá, Portugal, Reino de los Países Bajos, Italia y la Unión Europea

<sup>[25]</sup> https://www.youtube.com/watch?v=wRBM-83MXHE

México, en tanto, destacó al lanzar su política "Zona Segura" mediante la cual sus embajadas, oficinas consulares y el Instituto de los Mexicanos en el Exterior (IME), garantizan que las personas puedan realizar sus trámites consulares con la certeza de que tendrán una atención amable y sin discriminación. Además, en el marco del Día Internacional contra la Homofobia y la Transfobia, la embajada de México desarrolló el conversatorio "Arte mexicano en la diversidad" que contó con la participación de la artista trans Karla Wong, así como de representantes de Iguales y del Movilh.

A lo expuesto se sumaron otras reuniones y espacios culturales y de debate.

Tras reunirse el Movilh el 28 de octubre con la Embajadora del Reino de los Países Bajos la entidad diplomática impulsó dos actividades: el 9 de diciembre, y con el apoyo del Centro Cultural España y el Movilh, proyectó de manera presencial el documental "Respiro, las batallas de Maité Hontelé". Acto seguido, la entidad aportó económicamente al Movilh para la reimpresión de tres mil ejemplares del cuento "Nicolás tiene dos papás", proyectándose que la distribución gratuita de los libros a familias y establecimientos educacionales inicie en 2022.

En paralelo, el 22 de marzo el Movilh se reunió con el secretario de la Embajada de Argentina, Juan Pablo Fasano, para dialogar sobre experiencias en políticas públicas públicas pro LGBTIQA+, mientras que el 20 de mayo la Embajada de Irlanda organizó un conversatorio sobre el matrimonio igualitario en su país, teniendo como expositores a Iguales y BeLonGto.

A su vez, el 16 y el 17 de junio la Embajada de Canadá y la Asociación LGBTI Apolgbt de Brasil organizaron el "Foro de Derechos LGBTQ2", contando con panelistas de ese país, de Argentina y Chile. De este último participaron representantes de Iguales y Movilh, así como la alcaldesa electa de Melipilla Lorena Olavarría.

"Retos de instancias de apoyo para la diversidad" se llamó otro cónclave organizado el 29 de junio por el Centro de Estudios Mexicanos en alianza con la Cancillería de Chile y donde fueron panelistas el Movilh, Casa Frida y Casa de Muñecas.

Finalmente, el 21 de diciembre el Movilh expuso en el curso formativo 'Diversidad sexual y de género: incorporando la Agenda de Derechos LGBTI al trabajo de la AECID", organizado por Fundación Triángulo de España.

La ponencia, dirigida al personal de la Agencia Española de Cooperación Internacional para el Desarrollo (Aecid), abordó la importancia que ha tenido para las luchas del movimiento LGBTIQA+ en Chile el apoyo de ese país europeo<sup>26</sup>.

#### • La OIM y los derechos LGBTIQA+

La OIM, cuyo jefe de Misión en Chile es Richard Velásquez, se caracterizó en 2021 por su permanente respaldo a las actividades que emprende Movilh a favor los migrantes y refugiados LGBTIQA+ gracias al apoyo de la Fundación Interamericana.

En tal sentido, la OIM promovió el primer llamado a fondos concursables coordinados por el Movilh y, por otro, brindó asistencia humanitaria; como alimentos, dinero o subsidios, a personas y familias extranjeras con integrantes LGBTIQA+<sup>27</sup>.

#### Apoyo a lucha LGBTIQA+ en Colombia

El 24 de septiembre, el Movilh presentó un escrito ante la Corte Constitucional de Colombia con el fin de que ese país elimine las prohibiciones que impiden a las personas donar sangre en razón de su orientación sexual.

El escrito se enmarcó en el caso de una pareja gay a la cual en enero del 2021 el Banco de Sangre del Hospital Universitario Fundación Valle del Lilí le impidió donar, basado en la Resolución 3212 del 2018 del Ministerio de Salud y lineamiento técnico, el cual consideraba a los hombres que tienen sexo con hombres como un "grupo de riesgo".

El 11 de junio del 2021 el Juzgado Octavo de Familia de Oralidad de Cali-Valle sentenció que la conducta del Banco de Sangre era discriminatoria, sin embargo, solo acogió la acción presentada contra el Hospital Universitario Fundación Valle del Lilí y no las que también responsabilizaban Instituto Nacional de Salud y el Ministerio de Salud y Protección Social. Por ello, el 17 de junio del 2017 la pareja apeló.

<sup>[26]</sup> El Movilh participó además el 19 de junio en el foro internacional "Derechos LGBTIQ en Latinoamérica organizado por UCR Diversidad Caba Santa Fe. En la ocasión, expusieron activistas y profesionales de Argentina, Chile, Uruguay y Brasil.

<sup>[27]</sup> Todo los antecedentes sobre el despliegue a favor de los derechos de refugiados y migrantes LGBTIQA+ en Chile se encuentran en el tercer capítulo de este informe.

En su presentación a favor de la pareja afectada, la abogada del Movilh, Mónica Arias señaló a la Corte Constitucional de Colombia que "la normativa que regulaladonación desangre en Colombia, especialmente el Lineamiento Técnico para la selección de donantes de sangre en lo referente a la exclusión de Hombres que tienen sexo con Hombres, es atentatorio contra el derecho a la igualdad y no discriminación, basándose en una distinción sólo en razón a la orientación sexual de las personas, inobservando la obligación del Estado de respeto y garantía que establece el sistema universal e interamericano de derechos humanos".

"La discriminación entonces hace referencia no a una mera distinción sino al trato de inferioridad, exclusión o estigmatización dado a una persona o grupo de personas por motivos raciales, sexuales, entre otros. Discriminar a una persona o a una colectividad consiste en privarle activa o pasivamente de gozar de los mismos derechos que disfrutan otros", enfatizó el Movilh.

Finalmente, el Instituto Nacional de Salud modificó el Lineamiento técnico para la selección de donantes de sangre en Colombia, cesando así en todos los bancos con la discriminación hacia población de Hombres que tiene Sexo con otros Hombres y las mujeres trans.

Se espera que en el transcurso del 2022 la Corte Colombiana dicte una sentencia que asegure aún más el positivo vuelco ya dado por el Instituto Nacional de Salud.

En 2013, y tras una ardua lucha de una década emprendida por el Movilh, el Ministerio de Salud de Chile eliminó las restricciones que impedían a las personas donar sangre en Chile<sup>28</sup>.

<sup>[28]</sup> En 2013, y tras una ardua lucha de una década emprendida por el Movilh, el Ministerio de Salud eliminó las restricciones que impedían a las personas donar sangre en Chile. Todos los antecedentes de este histórico avance se encuentran en el XII Informe Anual de los Derechos Humanos de la Diversidad Sexual y de Género en Chile, publicado en movilh.cl



# VII.

# Política y movimientos sociales

XX. Informe Anual de Derechos Humanos de la Diversidad Sexual y de Género en Chile

**HECHOS 2021** 

# I.- INTRODUCCIÓN

El término de un Gobierno y el inicio de otro nunca había sido tan significativo para Chile desde la recuperación de la Democracia porque coincide con un cambio de era sociopolítica, cultural y económica que ocurre tras un estallido social y en medio de una pandemia y de un proceso que avanza hacia la creación de una nueva Carta Magna.

En el caso de la población LGBTIQA+, termina un largo y difícil período, felizmente con la conquista y consolidación de la casi totalidad de sus demandas históricas y de una ciudadanía mayoritariamente sensible y favorable a la plena igualdad de derechos para este grupo humano, a un punto que todo lo avanzado en 2021, más que provocar asombro o impacto en la ciudadanía fue interpretado como lógico, como lo que debía sí o sí ocurrir. La demora del Estado había sido exagerada.

Al unísono, se abre una nueva etapa en un ambiente que política, social y culturalmente se aprecia más amable y respetuoso de sus diversidades y donde los desafíos serán proteger o perfeccionar lo conquistado, producir medidas para prevenir y erradicar las discriminaciones interseccionales y crear, sobre las sólidas bases ya existentes, medidas que resuelvan temas pendientes o los nuevos problemas que naturalmente vayan surgiendo, como en todo proceso humano. Nunca olvidar, que la homo/lesbo/bi/tranfobia persiste y, más grave aún, sigue cobrando vidas.

La administración de Sebastián Piñera llegó a su fin, con la particularidad, quizás única en el mundo, de que la figura presidencial tuvo dos caras.

Durante la casi totalidad de su gestión, Piñera fue indiferente y homofóbico, al mismo tiempo que algunos agentes gubernamentales remaron en sentido contrario y, posibilitaron durante su mandato el avance de políticas públicas o leyes pro derechos LGBTIQA+.

En los últimos nueve meses, el mandatario dio un giro radical, posibilitando que deudas históricas como la diversidad sexual y de género fuesen saldadas, lo cual sumado a los esfuerzos antidiscriminatorios provenientes de otros frentes dan por resultado que entre 2018 y 2022 sea aprobaran ocho leyes pro-derechos LGBTIQA+, el número más alto desde iniciada la lucha por los derechos de la diversidades sexual y de género en Chile.

Las singularidades son que el avance de leyes y políticas públicas bajo el Gobierno de Piñera encontraron poca o nula resistencia ciudadana, un reflejo de que la sociedad está mucho más adelantada que el Estado en dichas temáticas. A su vez, el Congreso Nacional, con una mayoría discursivamante favorable a estos derechos desde hace más de una década, rompió con su apatía histórica. Y lo hizo bajo una administración de Derecha en La Moneda, aún cuando pudo hacerlo antes.

Dado que la ciudadanía y los pueblos eran hace años favorables a la casi totalidad de las medidas aprobadas o implementadas en 2021, surge otra particularidad: fue tanta la espera e injustificado el excesivo atraso, que pasó a ser obvio para casi todo el país que las leyes y políticas públicas merecían aprobarse. Y fueron tantos los anuncios y promesas que se hacían, pero nunca se cumplían, que cuando finalmente llegaron a su meta, hasta los sectores homo/transfóbico expresaron una debilitada o muy focalizada resistencia.

El Estado de Chile llegó tan tarde que quienes estuvieron en el Poder Legislativo y Ejecutivo durante tanto tiempo con promesas incumplidas, literalmente secuestraron hasta la emociones e interés ciudadano por las conquistas alcanzadas en 2021.

Solo como ejemplo, en ningún país del mundo la aprobación del matrimonio igualitario provocó un debate tan débil o de corta duración como en Chile. La noticia y los comentarios ciudadanos fueron de pocos días. Tan atrasadas llegaron las autoridades a resolver temas maduros hace más de una década en el país, que hasta la masiva y nacional emoción ciudadana frente un avance histórico se robaron.

Y la madurez del país es tal que 32 personas abiertamente LGBTIQA+ accedieron a cargos públicos de alta relevancia, sin que su orientación sexual o identidad de género fuese una temática que importara. Salvo al movimiento LGBTIQA+ que destacó el hecho porque ocurría por primera vez en masa y porque con ello se enviaba un señal poderosa de que las diversidades sexuales y de género ya no serían sometidas a cuestionamientos masivos, ni menos nacionales, en razón de sus identidades, importando solo sus capacidades y propuestas.

Y este resultado también era lógico. En el pasado, lejano y cercano, hubo autoridades LGBTIQA+. La diferencia es que una mayoría ciudadana, y consecuentemente sus autoridades, mantenía oculta su orientación sexual o identidad de género.

En la actualidad, ya con buena parte de las personas haciendo visibles sus diversidades y siendo Chile uno de los países líderes en este tema<sup>1</sup>, quienes postulan a cargos públicos ya no tienen necesidades o razones de peso para mantener en reserva su orientación sexual o identidad de género. Menos aún al considerar la existencia de leyes que protegen de la discriminación y que el costo político de ser abiertamente LGBTIQA+ fue cero, al menos en las elecciones del 2021.

<sup>[1]</sup> Más información sobre este tema en el punto II, título V del primer capitulo.

Así es como, resultaron electos/as 8 convencionales constituyentes, 2 alcaldes/as, 15 concejales, 4 congresistas, 1 presidenta de un partido, más 2 ministros/ as LGBTIQA+. designados/as por el presidente electo Gabriel Boric.

Con ello, la señal brindada a las actuales y futuras generaciones es clara: la supuesta incompatibilidad entre las orientaciones sexuales o identidades de género con determinados oficios, además de falsa ya no tiene credibilidad.

Conviene ahora avanzar en reparar y hacer justicia para todos/as quienes fueron impedidos de ejercer alguna función solo por ser LGBTIQA+, en particular a la docente Sandra Pavez impedida desde el 2007 en Chile de hacer clases solo por lesbiana.

El gobierno de Gabriel Boric, que arrancó el 11 de marzo del 2022, es un nuevo comienzo, que a diferencia de los 90, en materia LGBTIQA+ tiene bases sólidas y conquistas históricas para avanzar a mejores condiciones de vida y derrumbar de una vez las desigualdades estructurales que persisten desde la recuperación de la democracia.

En 2021 destaca también porque los movimientos LGBTIQA+ volvieron a las calles, tras dos años impedidos por la pandemia, lo cual dio paso a la Marcha del Orgullo más masiva desarrollada hasta ahora en la historia del país. El proceso se cruzó con los 30 años de lucha ininterrumpida del movimiento LGBTIQA+ en Chile, lo cual fue conmemorado con el lanzamiento de un archivo histórico.

Al mismo tiempo surgieron nuevas voces, como la de Cristóbal Paz, el primer niñe no binario que dio públicamente su testimonio en su calidad de activista LGBTIQA+, mientras que Coyhaique conmemoró su primera Marcha del Orgullo.

Este capítulo finaliza con el reconocimiento a figuras pioneras en sus respectivos campos en apoyar la causa LGBTIQA+ y que fallecieron en 2021: la periodista Constanza "Tati" Penna, el ex diputado Antonio Leal y el abogado Antonio Garretón. Gracias a ellos/as por toda su entrega.

# II-. EL GOBIERNO FRENTE A LOS AVANCES: LOS 4 AÑOS DE SEBASTIÁN PIÑERA

Describir y analizar la realidad de los derechos humanos LGBTIQA+ bajo el Gobierno de Sebastián Piñera (2018–2022) y la manera como el Ejecutivo se involucró o no con la temática es complejo, pues la figura presidencial es gravitante y tiene dos momentos: uno previo al 1 de junio del 2021 y el otro, posterior a esa fecha, cuando el mandatario dio suma urgencia a la tramitación del matrimonio igualitario, posibilitando con ello la aprobación y promulgación de una ley que marca un antes y un después en la historia del país en materia antidiscriminatoria.

Sin ir más lejos, y por primera vez en la historia de los Informes Anuales de Derechos Humanos de la Diversidad Sexual y de Género, en 2020 Piñera se convirtió en hasta ahora el único presidente en ser incluido en el Ranking Anual de la Homofobia y la Transfobia, de la mano del Ministro de Justicia y Derechos Humanos, Hernán Larraín, quien durante la casi totalidad del mandato fue la voz que representó el rechazo gubernamental al matrimonio igualitario.

El Ministerio de Justicia una y otra vez se negó a cumplir con el Acuerdo de Solución Amistosa (ASA) firmado por el Estado de Chile ante la Comisión Interamericana de Derechos Humanos (CIDH) para la aprobación del matrimonio igualitario y el impulso de otras diversas leyes y políticas públicas pro derechos LGBTIQA+. La misma cartera se movilizó además en repetidas ocasiones para restar o debilitar los derechos LGBTIQA+ en las normas o políticas públicas que iban debatiéndose a nivel ciudadano o legislativo.

En 2018 la cartera movió sus redes para negar expresamente en la Ley de Identidad de Género que los menores de 14 años trans pudiesen rectificar su partida de nacimiento; pese a que ello nunca había estado prohibido; y para que en la reforma a la ley de adopciones se privilegiara a parejas heterosexuales, en desmedro de las homosexuales, un peligro aún latente en el proyecto que discute el Congreso Nacional. Como si poco fuera, la cartera eliminó del Plan Nacional de Derechos Humanos el compromiso de "impulsar" el matrimonio igualitario.

Paradoja: solo por una decisión de Piñera; no comunicada previamente a Larraín, finalmente fue el mismo Ministerio de Justicia el que desde junio del 2021 debió gestionar el avance del matrimonio igualitario. Solo desde ese momento, la subsecretaria de DDHH, Lorena Recabarren, comenzó a promocionar una ley que antes de asumir en el cargo siempre había apoyado, mientras Larraín simplemente aceptó una orden presidencial que nunca ha compartido.

¿Qué sucedió?, ¿qué estaba pasando? Piñera, cuyo primer mandato (2010–2014) había sido fructífero para la causa LGBTIQA+, llegó a su segundo período decidido a caminar de la mano de corrientes ultradiscriminadoras y fundamentalistas que poco y nada cuestionó, privilegiando un diagnóstico totalmente alejado de la realidad del país y realizando cálculos electorales tan errados como la visión que tenía de Chile. Y ello perduró hasta el cable a tierra del Estallido Social de octubre del 2019, cuando se explicitó que las políticas gubernamentales no eran para nada representativas del país, tampoco de la causa LGBTIQA+.

En otras palabras, y felizmente, la fuerza que la ultra-derecha venía tomando en distintos países y que el Gobierno en versión sui géneris buscaba imprimir a su gestión, no sería tolerada en Chile y, por el contrario, fue rechazada con tal fuerza que sobre el Ejecutivo de turno caería buena parte de la responsabilidad de los 30 largos años de desigualdad estructural del país.

En este transitar, al interior del Gobierno desde el inicio hubo fuerzas favorables a los derechos LGBTIQA+, ninguna las cuales tenían relación con Evópoli. Pese a que este partido pretendió vestirse con ropajes liberales, resultó ser el que más hilos movió a favor de las corrientes más homo/transfóbicas del Ejecutivo encabezadas históricamente por buena parte de la UDI.

Los respaldos más bien provinieron de independientes de Derecha, de las corrientes más liberales de RN o de personas que habían militado en ese partido. Sin embargo, ninguna de esos sectores tenía el control sobre la agenda LGBTIQA+ más significativa y acorde a los nuevos tiempos, en tanto la conducción del ASA fue entregada al Ministerio de Justicia o, si se quiere, fue negociada con la UDI y, de pasada, secuestrada por Larraín.

El balance final sobre el quehacer del Gobierno en temas LGBTIQA+ es de luces y sombras.

Las sistemáticas violaciones a los derechos humanos cometidas por agentes del Estado en el marco del Estallido Social y que cobraron vidas y dejaron brutales secuelas, son hechos que toda persona e institución; sea o no LGBTIQA+; debe repudiar y contribuir desde sus frentes a alcanzar justicia, sancionar responsables y reparar a las víctimas.

Doble es el dolor al recordar que los abusos contra las personas LGBTIQA+; y frente a los cuales muchos agentes gubernamentales o fueron responsables o guardaron silencio; también vinieron de la mano de torturas policiales contra activistas de la diversidad sexual y de género, sin que hasta ahora exista justicia o reparación. Al mismo tiempo, empero, bajo la segunda administración de Piñera la lucha por la igualdad y la defensa de los derechos humanos de las personas LGBTIQA+ cumplió un ciclo, al conseguirse logros históricos que marcan un antes y un después, dejando en el pasado desigualdades que a comienzos de los 90 solo en sueños se creía desaparecerían.

#### Los avances

En el ámbito legislativo, bajo la administración de Piñera se aprobaron y promulgaron 8 nuevas leyes que entre sus contenidos protegen a las personas LGBTIQA+ y sancionan la homo/trans/les/bifobia: la Ley 21.120 de Identidad de Género (2018), la Ley 21.212 que Modifica el Código Penal, el Código Procesal Penal y la Ley 18.216 en Materia de Femicidio (2020), la Ley 21.325 de Migración y Extranjería (2020)<sup>2</sup>, la Ley 21.400 de Matrimonio Igualitario (2021), la Ley 21.369 que regula el acoso sexual, la violencia y la discriminación de género en el ámbito de la educación superior (2021), la Ley 21.367, que suprime la causal de divorcio culposo por homosexualidad (2021) , la Ley 21.331 sobre el Reconocimiento y Protección de los Derechos de las Personas en la Atención en Salud Mental, que prohíbe las "terapias reparativas" de la homo/ transexualidad (2021) y la Ley del Sistema de Garantías de la Niñez (2022)3.

En términos más simples, en cuatro años fueron aprobadas más leyes que en los 8 años previos a la segunda administración de Piñera y, de paso, más legislaciones que en toda la historia de lucha por los derechos LGBTIQA+<sup>4</sup>. A esto se añade la ley 21.150 que crea el Ministerio de Desarrollo Social y la Familia<sup>5</sup>, que si bien no menciona explícitamente a las personas LGBTIQA+, tiene un impacto positivo en las mismas; en especial en las parejas del mismo sexo y sus hijos/as, pues reconoce que las relaciones parentales no se dan solo por la sangre o lazos legales, sino también por los afectos.

Por cierto que la incorporación de las temáticas LGBTIQA+ en todas las normas fue impulsada e ideada desde los movimientos de la diversidad sexual y de género, mientras otras leyes, como ocurre con el matrimonio igualitario, no nacieron desde el Gobierno de

<sup>[2]</sup> La historia sobre todas estas leyes se encuentran en los respectivos Informes Anuales de los Derechos Humanos de la Diversidad Sexual y de Género, publicados en movilh.cl

<sup>[3]</sup> Todos los antecedentes de las leyes aprobadas en 2021 y 2021 se encuentran en el cuarto capítulo.

<sup>[4]</sup> Ley Antidiscriminatoria 20.609 (2012), Ley 20.750 que permite la introducción de la televisión satelital terrestre (2014), la Ley 20.830 sobre Acuerdo de Unión Civil (2015), la Ley 20.940 que Moderniza el Sistema de Relaciones Laborales (2016), Ley 20.968 que Tipifica los Delitos de Tortura y de Tratos Crueles, Inhumanos y Degradantes (2016).

<sup>[5]</sup> Más antecedentes en el punto 3 del capítulo IV del XVIII Informe Anual de DDHH de la Diversidad Sexual y de Género, publicado en www.movilh.cl

Piñera. También es verdad, y el matrimonio igualitario es la prueba más concreta de ello, que el Congreso Nacional de mayoría opositora por múltiples razones decidió con sus votos que el momento para aprobarla tales leyes era bajo el Gobierno de Piñera, aún cuando pudo hacerlo en el pasado, pues contaba con la mayorías para ello<sup>6</sup>. Sin duda, el Estallido Social también golpeó al indiferente Congreso Nacional y a sectores que, autodefinidos como progresistas, no usaron el poder democrático cedido por los pueblos para cumplir con sus promesas.

A los cambios legislativos se suman las políticas públicas, todas importantes, en especial las surgidas en aquel período gubernamental cuando las fuerzas más reacias a la igualdad tenían el control y obstaculizaban toda señal pro-LGBTIQA, contribuyendo a ser caldo de cultivo de una ola de violencia y discriminación que fue en ascenso.

Si en 2018 nada hubo a favor de los derechos LGBTIQA+ de parte del Gobierno, en 2019, la Subsecretaría de Prevención del Delito, con Katherine Martorell a la cabeza, se perfiló como la única entidad gubernamental que contribuyó con los movimientos LGBTIQA+ a dar asistencia jurídica y psicológica gratuita a las víctimas de la homo/lesbo/bi/transfobia, junto con impulsar en 2021 el primer estudio estatal y nacional sobre la violencia o delitos que pesan sobre las personas en razón de su orientación sexual, identidad o expresión de género.

A su vez el Departamento de Extranjería y Migración, dirigido por Álvaro Bellolio, lanzó el primer instructivo sobre los derechos de las personas trans extranjeras (2020); el Ministerio de Desarrollo Social y de la Familia, con Sebastián Sichel a la cabeza, implementó un protocolo que garantiza la no discriminación por orientación sexual o identidad de género en los programas dirigidos a las personas sin casa (2019); la Superintendencia de Salud, coordinada por el Intendente de Fondos y Seguros Previsionales, Manuel Rivera, dio vida a una circular que impide a las isapres patologizar a las personas trans (2019) y el Sename, cuya directora es Rosario Martínez Marín, publicó su primera "Política para el abordaje de la diversidad sexual y de género en niñas, niños y adolescentes" (2021).

Por su lado, y desde junio del 2021 en adelante, la subsecretaria Recabarren jugó en el Congreso Nacional un rol gravitante para mejorar el proyecto de ley de matrimonio igualitario, mientras el Instituto Nacional de la Juventud (Injuv) produjo una encuesta nacional que indagó sobre el número de personas LGBTI menores de 29 años existentes en Chile, además de colaborar, al igual que el Minsal, en políticas de prevención del VIH en población con orientaciones sexuales o identidades de género diversas, jugando en este plano un trabajo muy importante de coordinación con la sociedad civil el Centro Regional de Información y Apoyo para la Prevención del VIH (Criaps).

El Ministerio de las Culturas, las Artes y el Patrimonio, liderado por Consuelo Valdés, apoyó durante todo su período la exposición y el acceso ciudadano a expresiones artísticas con temáticas LGBTIQA+, mientras que la Ministra del Deporte, Pauline Kantor, respaldó públicamente la inclusión de atletas trans en clubes federados en un período donde había altas resistencia al tema (2019).

El Ministerio Secretaría General de Gobierno, en tanto, publicó en 2021 la Segunda Encuesta Estatal sobre Discriminación, incorporando la realidad LGBTIQA+. Resalta en este plano que el jefe de la cartera, Jaime Bellolio, desempeñó un rol político gravitante para mover la brújula del Ejecutivo a favor de los derechos de la diversidad sexual y de género, al igual que lo hizo la Ministra de Desarrollo y la Familia, Karla Rubilar.

Las acciones del director del Observatorio de Participación Ciudadana y No Discriminación, Camilo Cayuqueo, también contribuyeron a los cambios, pese a lo debilitada de la institucionalidad que debió encabezar, toda vez que desde su creación ha carecido de los medios económicos y técnicos necesarios para cumplir su labor.

Otras iniciativas del Ejecutivo si bien no innovaron, ni crearon nuevas políticas, si fueron actualizándose o cumpliendo con las leyes y normas que iban aprobándose. Son los casos de un protocolo de la Superintendencia de Educación que garantizó la autonomía de estudiantes trans a partir de los 14 años (2021) y la posibilidad de registrar el nombre social de las personas trans en el sitio de Fonasa (2021). En 2020, en tanto, nació una circular de la Dirección del Trabajo sobre derechos trans; las plataformas electrónicas del Minvu fuero corregidas para que las parejas del mismo sexo pudiesen postular a subsidios habitacionales; el Minsal lanzó recomendaciones para acompañar a niños/as, niñas y adolescentes trans (NNA) en su proceso de transición, mientras Gendarmería estrenó un protocolo sobre derechos trans, que más bien respondió a las exigencias de al menos 9 fallos de tribunales que sancionaron a la entidad pro brutales casos de homo/transfobia en las cárceles. En 2022, en tanto, un nuevo dictamen de la Dirección del Trabajo garantizó a los hombres trans embarazados los mismos derechos que a las mujeres gestantes7.

Por último, y durante todo el período, el Estado apoyó tanto en la OEA como en la ONU resoluciones o declaraciones favorables a los derechos LGBTIQA+ a un

<sup>[6]</sup> Completo análisis sobre este punto se encuentra en el título II del cuarto capítulo donde se aborda la aprobación del matrimonio igualitario.

<sup>[7]</sup> Este avance será abordado en mayor detalle en el próximo Informe Anual de Derechos Humanos de la Diversidad Sexual y de Género, por corresponder al año 2022

punto que en 2021 Chile fue uno de los países que lideró la creación del denominado Grupo de Estados Amigos del Mandato del Experto Independiente sobre Orientación Sexual e Identidad de Género (OSIG) de Naciones, siguiendo así con la línea que desde el 2003 impera en la Cancillería.

#### Las deficiencias

Los mayores problemas de la administración de Piñera se relacionaron con la persistencia en desatender acuerdos, exigencias o recomendaciones internacionales en materia LGBTIQA+, en especial las contempladas en el ASA: no derogó los artículos 365, ni 373 del Código Penal, ni menos respaldó la creación de una institucionalidad antidiscriminatoria, negándose a patrocinarla en la reforma a la Ley Zamudio que tramita el Congreso Nacional. Tampoco en nada avanzó para la derogación del Decreto 924 del Mineduc o para la implementación de políticas a favor de mujeres lesbianas, bisexuales o trans, todos compromisos asumidos por el Estado en el ASA.

Además, el Gobierno nunca implementó políticas públicas focalizadas en identidad de género y orientación sexual en el contexto del Covid-19, como fue recomendado por la CIDH o la ONU.

En este plano, resalta el funesto desempeño del Ministerio de Relaciones Exteriores que, con Andrés Allamand a la cabeza, nada le importó al ASA, además de llegar al extremo de justificar hasta el último momento en la Corte Interamericana de Derechos Humanos que Chile tuviese el "derecho" de impedir a una docente, Sandra Pavez, dictar clases solo por ser lesbiana<sup>8</sup>.

A la par el Fondo Nacional de Salud (Fonasa) rechazó sistemáticamente otorgar códigos a las prestaciones de cambio corporal de las personas trans, pese a compromisos que desde el 2013 han asumido todos/as los/as ministros/as de Salud en este campo, siendo más dramático el hecho de que el Gobierno nada hizo para enfrentar las sistemáticas violaciones a los derechos humanos cometida por Gendarmería contra internos/as LGBTIQA+, y que el 2021 derivaron en el suicidio de una persona, o por Carabineros, cuyos abusos además de sistemáticos, no derivan en sanciones contra los responsables, ni menos en reparaciones para las víctimas, aún cuando cada atropello fue informado a tiempo al Alto Mando.

Lo mismo ocurrió con la Armada que en 2020 legitimó las torturas contra un estudiante de la Escuela Naval Playa Ancha de Valparaíso, sin que el Ministerio de Defensa nada hiciera al respecto, a diferencia de lo ocurrido en 2021 cuando la cartera sí salió públicamente a criticar a la rama por impartir contenidos homo/ transfóbicos entre los uniformados/as, pero sin conocerse hasta ahora sanciones al respecto.

Finalmente, el Registro Civil mostró una insensibilidad e inoperancia brutal al negarse a reconocer durante años la doble maternidad y paternidad, pese a que desde el 2017 había al menos un fallo de tribunales que lo obligaba en tal sentido.

<sup>[8]</sup> Más antecedentes sobre este caso en el segundo título del sexto capítulo.

# III. – LAS ELECCIONES Y DESIGNACIONES A CARGOS PÚBLICOS MÁS DIVERSAS: CUANDO LAS CAPACIDADES SE IMPONEN

En el mismo año cuando el Estado debió rendir cuentas ante la Corte Interamericana de Derechos Humanos por impedir desde el 2007 a la docente Sandra Pavez hacer clases en Chile solo por ser lesbiana<sup>9</sup>, las personas abiertamente LGBTIQA+ accedieron como nunca antes en la historia a importantes cargos públicos, tanto por elección popular como por designación del futuro gobierno que encabeza desde el 11 de marzo del 2022 Gabriel Boric.

Lo ocurrido a Pavez y los hechos del 2021 dan cuenta de dos Chile.

Uno donde las orientaciones sexuales, las identidades o las expresiones de género diversas se consideraban incompatibles con el ejercicio de muchos oficios, en especial en Educación, y prohibitivas para cargos públicos. Un país donde solo el hecho de ser candidato/a a un cargo estatal provocaba rechazos y escándalos de días y semanas seguidas, a nivel nacional e internacional.

El nuevo Chile, que se fue forjando lentamente desde la década los 90 y alcanza su clímax en 2021, vino a decir todo lo contrario: ser abiertamente LGBTIQA+ no es incompatible con el ejercicio de ninguna profesión u oficio. Más aún se puede ser candidato/a a cargos públicos y ello ya no causará impactos, rechazos o debates públicos, masivos o mediáticos de días o semanas como ocurría en el pasado. Incluso más, si un/a candidato/a triunfa, el impacto será significativo para la causa LGBTIQA+ cuando sea pionero en su tipo, mientras sectores ajenos al Movimiento de la Diversidad, lo destacaran ligeramente, sin provocar mayores debates o comentarios a nivel masivo o público, pues se entiende que las capacidades y habilidades no tienen relación con ello.

Y esto ocurre como resultado lógico de un largo proceso. Se pasó de un momento donde nadie se atrevía a decir públicamente que era LGBTIQA+, a otro donde un puñado que inicialmente lo reconoció y dio el paso para que más, cada vez muchos/as más siguieran ese camino. Mantener en reserva la orientación sexual o identidad de género para postular a un cargo público simplemente no hubiese estado a la altura del proceso cultural actual, menos al considerar que Chile es uno de los países donde más las personas de la diversidad reconocen lo que son. De un total de 27 países encuestados en 2021, en Chile el 11% se declara "no heterosexual", mientras que el promedio de todas las naciones consultadas fue de 9%<sup>10</sup>.

Por tanto el mínimo esperable era que quienes postularan a cargos públicos, fueran parte de esa realidad, más aún al considerar la existencia de leyes que protegen de la discriminación y al tener a la vista los efectos del estallido social,

Quedaron así en el pasado los escándalos, abusos, ataques de odio, descréditos y las oposiciones de partidos y de altas autoridades a la primeras candidaturas a concejalías que lanzaron los movimientos LGBTIQA+ en la década de los 90 y que tuvieron como foco del rechazo y del desprecio homófobo al histórico activista gay Rolando Jiménez.

Esas candidaturas eran testimoniales y una herramienta para despercudir a la sociedad y ampliar el debate sobre los derechos LGBTIQA+ y, en particular, para enfatizar que las orientaciones sexuales, identidades o expresiones de género no eran incompatibles con el ejercicio de ninguna función. Son candidaturas que sentaron las bases para la transformación cultural en el terreno electoral y, como en todo campo, los pioneros, son a su vez víctimas de los más crueles ataques y atropellos.

Del total rechazo, se avanzó a las posibilidades reales de acceder a cargos públicos, aunque siempre provocando asombros o debates nacionales que duraban días, en medio de coletazos homo/transfóbicos, pero que felizmente eran cada vez más débiles.

Hicieron ahí historia Alejandra González Pino, la primera persona LGBTIQA+ en acceder a un cargo público al ser electa como concejala por Lampa en 2004.

A esta histórica mujer trans, siguieron Miguel Garcés en Antuco y Jaime Parada, en Providencia, hombres abiertamente gays electos en 2012, mientras en el mismo año ocupó similar cargo Zuliana Araya en Valparaíso. En 2013, en tanto, Claudio Arriagada se convirtió en la primera persona abiertamente LGBTIQA+ en llegar al Congreso Nacional tras ser electo diputado.

<sup>[9]</sup> Todos los antecedentes de este histórico caso se encuentran en el segundo título del sexo capítulo.

<sup>[10]</sup> Completos resultados de esta investigación se encuentran en el punto II.V del pimer capítulo

En 2021 el acceso a cargos públicos vino en masa, si se compara con la historia previa, y con la fortuna de que las candidaturas o designaciones ya no fueron desacreditadas por su orientación sexual o identidad de género y, cuando resultaron electas o nombradas, no generaron impactos nacionales que acaparaban portadas, debates diarios en radios o TV, ni manifestaciones de grupos homo/transfóbicos. Todo lo contrario, la casi totalidad del país se movió entre la felicidad o la indiferencia: la orientación sexual o identidad de género de los/as postulantes o designados no fue tema durante las candidaturas. Lo mismo ocurrió con los programas o campañas presidenciales que incluyeron de manera positiva la temática LGBTIQA+.

El cambio sociocultural de 30 años de lucha ininterrumpida de los movimientos LGBTIQA+, sumado al estallido social del 2019 que impactó en todos los niveles de la sociedad, había por fin vuelto irrelevante la orientación sexual, identidad de género o expresión de género, importando solo y exclusivamente la calidad de las propuestas y capacidades de las personas,

Ahora ocupar un cargo público LGBTIQA+ se resalta y releva positivamente. En una sociedad con altos índices de discriminación en otros planos (ya no los electorales) y que aún no repara a víctimas de la homo/lesbo/bifobibia del pasado, como ocurre con la docente Pavez; la llegada a espacios de poder es una señal de cambio, de apertura y, muy especialmente, un mensaje de aliento y esperanza para las actuales y nuevas generaciones que ya no necesitan mantener en reserva su orientación sexual o identidad de género para ocupar puestos de relevancia.

Muy especialmente, estas transformaciones son una gran advertencia para quienes persisten en discriminar, en particular a aquellos/as LGBTIQA+ que trabajan en temáticas vinculadas a la educación y a niños, niñas o adolescentes, uno de los lugares donde persisten los prejuicios e ignorancia.

## Convención Constitucional: 8 personas LGBTIQA+ electas y cuatro asumen altos cargos

En términos de representatividad y, por su cierto de su labor, la Convención Constitucional (CC) es el órgano más significativo en la historia del país, donde confluye buena parte de las diversidades de Chile: la primera composición paritaria del mundo, la representación de pueblos indígenas y la más alta irrupción de independientes conocidas en un proceso electoral en nuestro país.

En la CC están depositadas las esperanzas de cambios estructurales por un mejor país y con su histórico trabajo podrían erradicarse desigualdades históricas, como las que afectan a los sectores más discriminados o desaventajados y que ahora tienen voz para incidir directamente en la construcción de un país más democrático y respetuoso de sus diversidades

El 15 y 16 de mayo, cuando se eligieron los/as 155 convencionales, fue también histórico, pues 8 de los/as electos/as son abiertamente LGBTIQA+,

Se trata de Bessy Gallardo Prado (D8), Jeniffer Mella Escobar (D5); Valentina Miranda (D8); Pedro Muñoz (D24), Javier FuschLocher Baeza (D21), Gaspar Domínguez Donoso (D26), Tomás Laibe Saez (D27) y Rodrigo Rojas Vade (D13), aunque este último debió presentar obligadamente su renuncia el 5 de septiembre tras descubrirse que había engañado al país cuando era candidato con un falso diagnóstico médico de cáncer. Un triste, repudiable y lamentable episodio.

Gallardo Prado obtuvo el 2.12% de los votos (9.596) como independiente-Pro en la Lista del Apruebo; Mella Escobar el 5,3% (13.365), como independiente en la Lista Apruebo Dignidad; Miranda Arce el 2,4% (10.922), como militante del PC en la Lista Apruebo Dignidad; Muñoz Leiva el 9.79% (11.173) por el PS en la Lista del Apruebo; FuschLocher Baeza el 3.53% (5.952) en la Lista Independientes por Una Nueva Constitución; Domínguez Donoso el 4,87% (6.400) como Independiente No Neutrales en la Lista Independientes Nueva Constitución; Laibe Saez el 3,11% (4.292 votos) por el PS en la Lista del Apruebo y Rojas Vade el 8,4% (19.312 votos) como independiente por la Lista del Pueblo.

El 4 de julio fue otro momento histórico. Por un lado, Elisa Loncón fue electa presidenta de la CC, asumiendo así el máximo cargo una mujer mapuche, de la mano de Jaime Bassa, como vicepresidente. Más aún, dos de los 8 LGBTIQA+, Muñoz Leiva y Rojas Vade, asumieron las vicepresidencias adjuntas, al presentarse con el respaldo de 21 convencionales.

El 5 de enero del 2022, los/as constituyentes LGBTIQA+ llegaron a sus más altos cargos, pues con 122 sufragios Domínguez Donoso fue electo vicepresidente, para acompañar la labor de la nueva presidenta María Elisa Quinteros. A su vez, Tomás Laibe se quedó con la vicepresidencia adjunta.

Los/as convencionales LGBTIQA+ conformaron el 23 de junio del 2021 una Red para el abordaje conjunto de estrategias destinadas a erradicar la discriminación y a garantizar la igualdad social y legal.

En el texto, los/as constituyentes dijeron que aspiran a "transformar las estructuras patriarcales" que perpetúan la discriminación contra las personas y colectivos LGBTIQA+, se comprometieron con "una igualdad sustantiva y no meramente formal" para "ser protagonistas en este proceso refundacional" y garantizaron un "trabajo horizontal" con todas las organizaciones y bases LGBTIQA+.

El 28 de junio, y con motivo del Día del Orgullo, los/ as convencionales LGBTIQA+ se reunieron de manera online con unas 30 organizaciones de la diversidad sexual y de género de todo el país. Mums, OTD Chile, Todo Mejora, Rompiendo El Silencio, Corporación Humanas, AcciónGay, Mogaleth, Valdiversa, Diversa Patagonia y Movilh, entre otros, participaron del encuentro donde expusieron sus puntos de vistas.

Algunos constituyentes sostuvieron además reuniones especiales; online o presenciales; con colectivos LGBTIQA+ de regiones, o se plegaron a actividades organizadas por los mismos, como la Marcha del Orgullo en Santiago (13 de noviembre), la celebración por la aprobación del matrimonio igualitario en Plaza de la Dignidad (7 de diciembre) o el "Primer Encuentro sobre Discriminación Interseccional: desafíos tras el matrimonio igualitario y el nuevo Gobierno", (22 de enero del 2022), todos eventos organizados por el Movilh.

Bajo la presidencia de Elisa de Loncón, quien también se sumó a la Marcha del Orgullo, se dieron otras dos importantes señales. El 4 de agosto, al cumplirse un mes de la primera sesión de la Convención Constitucional, el Ex Congreso Nacional de Santiago; donde sesiona el órgano; amaneció con 27 banderas que representan parte de la diversidad sociocultural del país, entre esa la LGBTIQA+; mientras que el 5 de noviembre, Loncón, Muñoz y Gaspar se reunieron con el Movilh para recibir sus propuestas. En la ocasión el Movilh propuso garantizar la no discriminación, reconocer la diversidad familiar y terminar con el binarismo de los sexos, de manera que la nueva Carta Magna hable de personas, antes que de hombres y/o mujeres, enviando posteriormente las mismas sugerencias a la Comisión de Derechos Fundamentales de la CC.

La propuesta causó diversos debates, así como el rechazo del docente Hernán Corral, quien el 15 de noviembre señaló en El Mercurio que "la teoría de las diversas formas de familia envuelve una contradicción lógica. Si no existe un concepto de lo que es la familia, no es posible reconocer tipos o formas de familia: ¿cómo se sabe si hay diversos tipos de sillas si no se tiene un concepto de silla? Lo que sucede es que quienes sostienen la pluralidad de formas de familia han reemplazado el concepto de familia fundado en el matrimonio por otro que es tan impositivo como el anterior: la familia como afectividad entre personas de distinto o del mismo sexo".

Posteriormente, el 22 de diciembre, Iguales sugirió a la Comisión de Derechos Fundamentales de la Convención Constitucional similares propuestas a las de Movilh, añadiendo la idea de autonomía personal.

En tanto, Rompiendo el Silencio expuso el 25 de agosto en la Subcomisión de Marco General de DDHH, Ambientales y de la Naturaleza "con foco en la reparación y reconocimiento para lesbianas"; el mismo día lo hizo el Sindicato Amanda Jofré en la Subcomisión de Verdad Histórica, Reparación Integral y Garantías de no Repetición, donde denunció los atropellos transfóbicos; mientras el 3 de noviembre fue el turno de OTD en la Comisión de Sistema Político de la Convención Constitucional, a la cual sugirió "la implementación de un sistema unicameral en Chile".

Finalmente, brilló el trabajo Disidencias Unidas Recomponiendo Alianzas Sexopolíticas (D.U.R.A.S), definida como una " articulación de más de 42 organizaciones, colectivos y movimientos LGBTIQ+ de 9 regiones del país", pues recolectó con éxito hasta el 1 de febrero del 2022 firmas para dos iniciativas Populares de Norma, alcanzando las 15 mil rúbricas necesarias para ser debatida por la CC.

La iniciativa por el "derecho a la identidad", que incorpora a las "características sexuales, identidad y expresión de género, u orientación sexual", obtuvo 18.058 firmas; mientras la referente al reconocimiento de la pluralidad de las familias alcanzó las 18.051 rúbricas.

Al cierre de este informe la CC aún discutía los contenidos de la Carta Magna, sin entrar aún en la redacción y votación de su articulado final.

# Dos alcaldes/as, 15 concejales/as y 4 congresistas y una presidenta de partido abiertamente LBTIQA+

El mismo día que 8 LGBTIQA+ eran electos/ as constituyentes, similar suerte corrieron otras 17 personas en el terreno municipal con la elección de dos alcaldes/as y 15 concejales/as.

La historia la marcaría Lorena Olavarría Baeza (CS), la primera feminista y disidente visible en ser electa alcaldesa en Melipilla con el 30,01% (10.079 votos), y Johnny Piraino Meneses (independiente), el primer hombre abiertamente gay en ocupar igual cargo en La Calera, con el 34,18% (6.538 votos).

Además como concejal de Viña del Mar fue electo el PC Pablo González Vega (con 2501 votos, equivalentes al 2,02%); en Collipulli la PS Juliana Bustos Zapata (950 votos; 12,17%); en Buin la PC Tamara Aguilera Cartagena (1.700 votos; 5,16%); en Valparaíso, la PPD Zuliana Araya Gutiérrez (7.708 votos; 7,09%); en Maipú el RD Bladimir Muñoz Acevedo (5453 votos; 2,98%) y la Comunes Camila Quiroz Viveros (5.567; 3,04%); en Ñuñoa, la RD María Lorenzini (4.408 votos, 4,19%) y en Coquimbo el CS Ignacio Plaza Ramírez (844 votos, 1,41%).

En tanto, en Molina fue electo el PS Cristián Martínez Hernández (602 votos, 3,36%); en Ovalle la OC Fanny Vega Araya (1.420 votos, 4,61%); en Temuco el PC Carlos Sepúlveda Vergara (2095 votos, 2.62%); en Quillota la PC Daniela Cisternas Meriño (1181 votos; 4,08%); en La Serena la Frevs Pamela Caimanque Espejo (3.648 votos, 5,51%); en Los Cisnes la DC Almedra Silva Millalonco (188 votos, 7,79%) y en Sierra Gorda el PS Carlos Sepúlveda Lazo (180 votos, 14,63%).

La concejala Quiroz destaca muy especialmente, pues el 1 de diciembre fue electa por el Consejo de su partido como presidenta de la directiva transitoria de Comunes, siendo la primera persona LGBTIQA+ en ocupar un cargo de esas características<sup>11</sup>. Un hito de la mayor relevancia, en tanto históricamente los partidos han relegado a su militantes LGBTIQA+ a espacios o cargos de segundo plano y, cuando participaban de elecciones, los ponían como "adorno" al final de las listas.

A las municipales, siguieron el 21 de noviembre las elecciones parlamentarias donde nuevamente se hizo historia.

En efecto, Marcela Riquelme Aliaga (Distrito 15), Camila Musante Muller (Distrito 14) y Francisca Bello (Distrito 6) se convirtieron en las primeras mujeres abiertamente lesbo/bisexuales en ser electas diputadas, mientras que Emilia Schneider Videla (Distrito 10) en la primera persona trans en correr igual suerte. Este último cargo fue el que más interés despertó, dada la alta vulnerabilidad de quienes tienen una identidad de género diversa.

Riquelme Aliaga (CS) fue electa con 11.493 votos (5.79%), Schneider Videla (Comunes) con 26.130 votos (5.72%), Musante Muller (IND-comunes) con 12.335 votos (3.79%) y María Francisca Bello (CS) con 8.757 votos (2.47%).

Finalmente, el 20 diciembre los/as convencionales y las parlamentarias LGBTIQA+ se reunieron para analizar el "avance en materias constitucionales que atañen a la comunidad LGBTQAI+", señaló por twitter el convencional Pedro Muñoz.

"En esta reunión nos fijamos cuatro objetivos, visibilizar las distintas expresiones y necesidades de las diversidades sexuales en Chile; avanzar en la representación en los distintos organismos y poderes públicos; fortalecer la colaboración entre representantes convención y diputades disidentes y construir espacios de crecimiento bajo lógicas nuevas y novedosas de hacer política, donde fluya la colaboración, respeto y solidaridad, la empatía y el apoyo", señaló María Francisca Bello por Instagram.

<sup>[11]</sup> En 2021 Diego Calderón Gajardo, dirigente abiertamente gay, se presentó como candidato para presidir la Democracia Cristina. Obtuvo el 16,02% de los votos el 23 de enero del 2022, sin lograr acceder al cargo. Años antes, en 2017, Rolando Suárez, otro dirigente abiertamente gay, fue candidato a la presidencia de Revolución Democrática (RD).

# Elecciones presidenciales: aperturas sin polémicas y primeros/as ministros/ as LGBTIQA+

Si las candidaturas y elecciones de personas LGBTIQA+ a la Convención Constitucional, a cargos municipales o parlamentarios/as no causaron gran debate debido a los cambios socioculturales, lo mismo ocurrió con los programas presidenciales y con la histórica designación de los/as primeros ministros/as de la diversidad sexual y de género.

En las presidenciales o parlamentarias de años pasados, el debate era mayúsculo. Al comienzo, porque se hablaba por primera vez de la temática LGBTIQA+ y, en elecciones posteriores, porque los programas incluían, también de manera pionera para la época, debates de alto impacto como la plena igualdad legal para las familias homoparentales o las personas LGBTIQA+.

Ya no siendo la visibilidad de la temática LGBTIQA+ algo nuevo en las campañas y programas presidenciales o parlamentarios y habiéndose ya avanzado en las leyes y políticas, vinculantes, en las elecciones del 2021 el tema no causó debate masivo o de larga duración, siendo en realidad los movimientos de la diversidad sexual y de género los que más resaltaron estos puntos.

Tampoco produjo mayor interés que la Lista del Pueblo nombrara en agosto a Cristian Cuevas Zambrano como su (pre-)candidato presidencial, un hecho que sería histórico para la causa LGBTIQA+, pues se trataba del primer aspirante a La Moneda abiertamente gay. Lamentablemente, fue la propia Lista del Pueblo que en un cuestionado proceder, y por diferencias políticasideológicas entre sus integrantes, le quitó el respaldo a dicha candidatura.

Por el contrario lo que sí causó cierto debate fue la existencia de dos (pre) candidatos/as de Derecha que se oponían al matrimonio igualitario, Joaquín Lavín (UDI) y José Antonio Kast (PR), este último con una larga trayectoria homo/transfóbica y con posiciones abiertamente fascistas.

"Yo tengo una concepción cristiana de la vida, creo en el matrimonio entre hombre y mujer, que además es una institución milenaria"<sup>12</sup>, señaló Lavín una y otra vez con esas o similares palabras hasta que perdió en las primarias, ganando el proceso Kast. La homo/transfobia de Kast alcanzó una de sus mayores expresiones el 15 de noviembre en el debate presidencial televisado.

HECHOS 2021

Al ser consultado por la periodista Constanza Santa María sobre si la distribución del libro "Nicolás tiene dos papás" en jardines infantiles significaba "adoctrinar a la fuerza a un niño", Kast respondió afirmativamente.

"En la medida que no esté el acuerdo de los padres sí, porque los padres son los primeros educadores Y eso es lo que nosotros hemos planteado en la ley de educación sexual integral que se rechazó por mayoría en el Congreso. Hemos hecho una diferenciación con la ley de protección la niñez que también cuestionamos porque se vulnera a los principales educadores que son los padres", dijo.

Santa María preguntó luego si con esa postura "¿no se vulnera a los niños que tienen este tipo de familias, al no integrarlas, al no enseñar que existe diversidad de familias". Kast replicó que "existe libertad de proyectos educativos. Los papás deben tener el derecho de elegir el proyecto educativo que quieren para sus hijos y el Estado los está vulnerando. Los vulneró en la ley de inclusión, lo han vulnerado distintas normas legales que se han aprobado en el Congreso con mi voto en contra y, por tanto, no soy partidario que se entregue esos libros, donde los padres no quieren que se entregue. De hecho, se retiró por los reclamos de los mismos padres"<sub>13</sub>.

Remató con que "hay lobby gay. En el Congreso, a la salida de cualquiera de las salas estaban todos los activistas del lobby. Yo no tengo ningún problema con el mundo homosexual porque respeto la dignidad de las personas, cosa distinta es cuando se hace un lobby permanente para tratar de influir en las personas. Eso lo hacen distintas representaciones en distintos ámbitos, van y se instalan y presionan a los parlamentarios".

La postura de Kast fue muy diferente a la de los/ as candidatos/as Eduardo Artes, Marco Enríquez-Ominami, Yasna Provoste, Sebastián Sichel y Gabriel Boric, quienes apoyaron que el cuento se usara como materia educativo en las aulas y como parte del currículum escolar.

Como resultaba lógico, al pasar Kast a segunda vuelta, todos los movimientos LGBTIQA+ se cuadraron con Boric, quien hizo historia el 21 de diciembre al transformarse en el presidente electo más joven de Chile. A sus 35 años ganó la segunda vuelta con el 55,87% equivalente a 4.620.671 sufragios, la más alta

<sup>[12] 24</sup>horas.cl. 13 de julio, 2021.

<sup>[13]</sup> Este hecho es totalmente falso. El libro jamás de retiró de algún colegio.

adhesión alcanzada por un aspirante a La Moneda desde la existencia del voto voluntario.

El programa de Boric, que el 26 de junio recibió aportes de los diversos movimientos LGBTIQA+ del país, promete un "Plan Nacional de Derechos Sociales LGBTIAQ+" para erradicar la discriminación o desigualdades por orientación sexual o identidad de género en distintos ámbitos.

"La población LGBTIAQ+ enfrenta desigualdades en los ámbitos de la salud, la educación, el trabajo o los cuidados. Consideramos que la dignidad se construye garantizando la provisión pública de derechos, por ello impulsaremos un plan que garantice la protección y promoción de los derechos sociales de las diversidades y disidencias sexogenéricas. Será la primera etapa de una política de largo alcance y constituye un abordaje de puntos prioritarios que deberán ampliarse posteriormente", señala el Plan.

El tal sentido, resalta que "fomentaremos acciones afirmativas que garanticen el derecho al empleo, trayectorias laborales de calidad y frenar el acoso laboral de personas LGBTIAQ+ a través de programas de formación y capacitación laboral. Desde el Estado desarrollaremos protocolos y circulares que garanticen las políticas de no discriminación e impulsaremos el Cupo Laboral Trans, garantizando su empleabilidad en al menos un 1% en sector público".

A la par "impulsaremos una ley integral trans que garantice el fin de las exclusiones, discriminaciones e injusticias históricas de las que han sido víctimas las personas trans" y "promoveremos la participación de la población LGBTIAQ+ en las instancias de representación sindical, incluyendo negociaciones colectivas, independientemente del régimen laboral", añade el programa.

Junto a ello, agrega que "resguardaremos una educación no sexista e inclusiva. Fomentaremos programas de escuelas libres de discriminación para la diversidad sexual. Se contará con datos oficiales de violencia hacia personas LGBTIAQ+ en comunidades escolares y se acompañará a aquellas con peores indicadores".

Para tales efectos, "se promoverá una ley de educación no sexista, innovación curricular y formación en diversidad sexual a profesionales de la educación. También se incorporará un enfoque de garantía de derechos de la diversidad sexual en la formación inicial y continua de docentes y de quienes asuman funciones directivas en los centros educativos".

En paralelo, "reformularemos la circular sobre niñez trans en espacios educativos, exigiendo

protocolos de no discriminación y de integración" y "promoveremos una transición hacia establecimientos escolares integrados en términos de las identidades de género de sus estudiantes", apuntó.

Del mismo modo, el Gobierno de Boric dice que impulsará "políticas que garanticen discriminación cero en el acceso a la salud". Para ello, "incorporaremos una canasta de prestaciones trans-no binaries como garantía explícita en salud, desde la perspectiva del cuidado, que contemple atención de especialistas, cirugías, fármacos y atención psicológica", "se desarrollarán campañas de visibilización de atención inclusiva en centros de salud y se impulsarán acciones formativas del personal" y se enfatizará el cumplimiento de las circulares 21 y 34 del Minsal sobre derechos trans.

También "se garantizará el cumplimiento de la circular 18" del Minsal de manera que se mantenga la prohibición de someter a cirugías a recién nacidos intersex, "se incorporará un enfoque transversal de género e inclusión de personas LGBTIAQ+ en el currículum de las carreras de la salud" y "se promoverá la investigación con un enfoque biopsicosocial en la atención en salud para la comunidad LGBTIAQ+, en especial personas trans y no binarias", finaliza

Si bien el programa no se hace cargo de deudas históricas y de compromisos internacionales asumidos por Chile en materia LGBTIQA+; como son la derogación de los artículos 365 y 373 del Código Penal y del Decreto 924 del Mineduc, la reforma a la Ley Zamudio y la creación de una institucionalidad antidiscriminatoria; y, en muchos casos se refiere a normas o políticas públicas ya existentes, destaca por su alta sensibilidad con la temática, lo cual eventualmente permitiría añadir demandas excluidas, y por innovar con el cupo laboral trans y posicionarse a favor de una ley de educación sexual integral.

En su primer discurso como presidente electo, Boric agradeció el 19 de diciembre a las "disidencias y diversidades, que han sido larga, largamente discriminadas en esta campaña y vieron amenazados los pocos logros que han tenido. En nuestro gobierno, quiero que sepan que la no discriminación, y detener la violencia contra las diversidades y las mujeres, junto a las organizaciones feministas, va a ser fundamental".

Una de las mejores y más históricas noticias para la causa LGBTIQA+ llegaría el 21 de enero del 2022, cuando el docente Marco Antonio Ávila Lavanal y la profesora, Alexandra Benado Vergara, se convirtieron en las primeras personas abiertamente LGBTIQA+ en ser designadas por Boric como ministros/as. De esa manera, el presidente da una de las señales más poderosas contra la homo/transfobia que se tenga registro.

Ávila Lavanal (44), militante de Revolución Democrática, es profesor de castellano y magíster en educación e innovación. Fue director de establecimiento educacional y coordinador nacional de educación media del Ministerio de Educación entre 2015 y 2018.

Benado Vergara, independiente de 45 años, integró la selección chilena de fútbol, así como la Comisión de Fútbol Femenino y la Copa del Mundo Femenina de la Fifa.

Bajo la administración de la presidenta Michelle Bachelet, Ávila Lavanal, jugó un importante rol para que las temáticas LGBTIQA+ fueran incorporados en textos educativos, en el marco del cumplimiento del Acuerdo de Solución Amistosa que el Estado de Chile y el Movilh firmaron ante la CIDH. Gracias a ello en 2018 fue lanzado el más amplio dossier con textos a favor de estudiantes LGBTIQA+.

En tanto, en 2016, y mientras trabajó en el Departamento de Deportes de la Municipalidad de Providencia, Benado Vergara contribuyó a que el Movilh pudiera desarrollar en la comuna la Primera Corrida por la Diversidad Familiar.

Pero Boric llegó más lejos, pues de los 24 ministros/as que designó 14 son mujeres, 10 hombres, 8 independientes, solo 4 superan los 60 años y el promedio de edad es de 49 años, con lo cual a partir del 11 de marzo del 2022 inició un nuevo ciclo para todo el país, con esperanzas de un mejor y mayor respeto a todas sus diversidades.

# IV.- MOVIMIENTO LGBTIQA+: LA MARCHA MÁS MASIVA Y EL NIÑE NO BINARIO

La lucha por la igualdad de los movimientos LGBTIQA+ estuvo cruzada en 2021 por la pandemia y por un nutrido proceso electoral<sup>14</sup>.

Todos los movimientos LGBTIQA+, sin excepción, desarrollaron actividades virtuales como conversatorios, foros, seminarios y eventos culturales, pero a diferencia del 2020, una parte aprovechó las mejores condiciones sanitarias para salir nuevamente a las calles, tras dos años de prohibiciones debido al Covid-19.

La re-ocupación de los espacios públicos fue el principal sello de las movilizaciones LGBTIQA+ en 2021, proceso expresado en la Marcha del Orgullo más masiva desarrollada en la historia del país, en el estreno de una columna de Migrantes LGBTIQA+ y en la ejecución del Primer Desfile en Coyhaique.

Especialmente destacó Cristóbal Paz, el primer niñe no binario en dar públicamente su testimonio, tras transformarse en activista de la diversidad sexual y de género, así como el lanzamiento de un archivo histórico sobre la realidad LGBTIQA+ en Chile, producido en el marco del 30 aniversario del Movilh.

#### • El niñe no binario

La Agrupación por la Diversidad Sexual e Inclusión (Adisi), fundada el 26 de agosto en Diego de Almagro, Región de Atacama, destacó por iniciar una labor pionera en su comunidad y, muy especialmente porque entre sus integrantes se encuentra Cristóbal Paz, el primer niñe no binario que contó públicamente su testimonio el 22 de septiembre en El Diario de Atacama.

Con el respaldo de su familia y de Adisi, el niñe de 12 años señaló que al inicio "yo pensé que era gay y se lo dije a mi mamá. Luego pensé que era trans, se lo dije, y no era trans. Ahora sé que soy no binario y se lo dije

<sup>[14]</sup> Junto con elegir convencionales constituyentes, el país votó por candidatos/as al Congreso Nacional, a las Gobernaciones, a los municipios, a Consejos Regionales (Cores) y a la Presidencia.

igual. Mi mamá es muy abierta de mente. Mi papá igual. En realidad toda mi familia respeta mi opinión".

"Cuando recién estábamos entrando a clases en 2020, me cambié de colegio. Al principio no pasaba nada cuando un niño decía que era gay, una niña decía que era lesbiana o que era trans. No pasaba nada. Pero cuando no se sabe qué es una persona, los molestan de maricas, de niñitas de cristal, no entiendo porque. Como que cuando uno no se identifica con una diversidad lo molestan más, es raro".

Recordó que en el pasado sufrió marginaciones en el colegio. "Las peleas partían por discriminación. No solo me discriminan a mí, también a mi prima y a dos niños más".

Es por ello, puntualizó, que "falta más inclusión, en lenguaje e infraestructura. En algunos lados puede que se use lenguaje inclusivo, pero que no tengan un rampla para personas en silla de ruedas y viceversa. No tengo algún profesor que hable lenguaje inclusivo, nunca lo he escuchado".

El testimonio de Cristóbal Paz marcó así un antes y un después en la visibilidad de los derechos de niñes y adolescentes no binarios y, sin duda, se perfiló como un mensaje de aliento para escolares que sufren la discriminación.

Tras su testimonio, el niñe ha continuando apoyando actividades contra la discriminación de la mano de Adisi, cuyo presidente, Alejandro Villa Biott, se reunió con el Movilh el 28 de septiembre para dialogar sobre la lucha del movimiento en el norte de Chile.

## • El regreso a las calles y la Marcha más masiva

Sin excepción, y desde el comienzo de la pandemia, todos los movimientos LGBTIQA+ se posicionaron desde internet, la plataforma privilegiada y "obligada" de la lucha por la igualdad y la no discriminación y de las actividades de sensibilización.

Con el correr de los meses, empero, tales esfuerzos fueron perdiendo interés ciudadano. El estrés por los confinamientos, las incertidumbres que aún persisten sobre la duración de la pandemia y la hipervirtualidad cansaron a las personas que pedían a gritos volver a ocupar los espacios físicos, no solo en el campo del activismo, sino en todos los planos de sus vidas.

Apenas se abrieron posibilidades de desarrollar eventos en la vía pública, gracias a mejores condiciones sanitarias, hubo colectivos que tomaron las banderas y las hicieron flamear donde todos/as querían: en las calles.

Al respecto, el sur de Chile brilló.

Con el financiamiento del Ministerio Secretaría General de Gobierno, Valdiversa desarrolló el 9 de octubre el "Picnic Comunidad Virtual" en el Parque Saval, donde quienes se venían comunicando por redes pudieron reunirse presencialmente después de mucho tiempo para participar de conversatorios y música a favor de la no discriminación.

La Red de la Diversidad Sexual de Natales (Diversinat), de la Región de Magallanes, produjo, por su lado, la "Marcha Fúnebre Simbólica" en Puerto Natales que recordó a las víctimas del odio (29 de noviembre), y una intervención urbana donde invitó a transeúntes a escuchar testimonios reales de violencia homo/lesbo/bi/transfóbica (25 de junio).

El 27 de junio tuvo lugar la Marcha del Orgullo convocada por la Red Coloride junto a diversos grupos feministas y de mujeres en Punta Arenas, mientras en la misma ciudad la Fundación Akáinix produjo el 26 de noviembre un "Encuentro de Familias, niñes, chiques y mapadres".

Coyhaique, en tanto, hizo historia al convocar Patagonia Diversa el 9 de julio a la Primera Marcha del Orgullo en la zona. Días antes, el 29 de junio, Mogaleth realizó una manifestación en Puerto Montt, también con motivo del Día del Orgullo.

En la Región de Valparaíso, el estreno de las actividades presenciales en pandemia corrió por cuenta de la Corporación Féminas Diversas en Acción que organizó el 21 de febrero en San Felipe la Caravana LGBTIQ+. A su vez, Prevención Viña convocó en Viña del Mar a la Caravana Sobre Ruedas por la Diversidad (28 de junio) y en Valparaíso los colectivos Acción Gay y Afrodita, entre otros, recordaron el 4 de septiembre a las víctimas de la Divine con un evento cultural y artístico en el Parque Italia.

En la Región Metropolitana, Rompiendo el Silencio, Mums, la Marcha Disidente por la Memoria, Disidencias en Lucha, Sididencias en Red, Bicidencias y Mapa LGBTIQ+, entre otros, conmemoraron el Orgullo con diversas actividades online, pero también con una presencial: una bicicletada que a fines de junio recorrió diversas calles.

El 28 de diciembre, en tanto, el Parque Forestal, fue el escenario de un evento cultual por motivo de la inauguración del memorial de Mónica Briones Puccio, artista y escultora lesbiana, asesinada en 1984. Organizado por el Colectivo Mónica Briones, con el apoyo del Municipio de Santiago, en el acto participaron artistas como la banda Horregias y Teatro La Crisis, así como la alcaldesa Irací Hassler.

El tradicional homenaje que el Movilh rinde a cada año a las víctimas fatales de la homo/lesbo/bi/ transfobia en el Memorial por la Diversidad, ubicado en el Cementerio General, volvió a ocurrir el 27 de marzo, luego de que el 2020 fuera imposible debido a la pandemia. En el lugar, se recordó a las 54 víctimas fatales del odio conocidas hasta ese momento<sup>15</sup>.

# Histórica Marcha del Orgullo: la más masiva y la primera columna de migrantes LGBTIQA+

Si bien se tenía proyectado realizar en Santiago la Marcha del Orgullo en junio, como es tradición, ello no fue posible, postergándose la manifestación para el 13 de noviembre.Demandando la plena igualdad social y legal y el fin de los crímenes y ataques de odio, más 150 mil personas se plegaron a la XXI Marcha del Orgullo convocada por el Movilh y que esta vez tuvo como contexto el 30 aniversario de la organización.

La columna, la más masiva convocada por el Movimiento LGBTIQA+, recorrió la Alameda, desde la Plaza de la Dignidad hasta la Plaza Los Héroes, luego de dos años de receso debido a Covid-19. Fue encabezada por familias homoparentales que portaron un pasacalle con la leyenda "igualdad y social para todas las familias. Nuestr@s hij@s merecen respeto".

A la par, se sumó por primera vez a la Marcha una columna de migrantes LGBTIQ+, quienes protestaron bajo la consigna "Diversidad sin fronteras. Alzando nuestra voz como migrantes LGBTIQA+".

Junto a ellos/s destacó una delegación de 15 embajadas que han colaborado con la causa LGBTIQA+ en Chile, así como la presencia de la presidenta de la Convención Constitucional, Elisa Loncón, y de convencionales Constituyentes LGBTIQA+.

En el camión-escenario de la Plaza de la Dignidad, hablaron el vicepresidente adjunto de la Convención Constitucional, Pedro Muñoz, los convencionales constituyentes LGBTIQA+ Gaspar Domínguez, Bessy Gallardo, Tomás Laibe y Pedro Muñoz y la alcaldesa de Melipilla, Lorena Olavarría, la primera edil de la diversidad.También dieron sus mensajes los/as embajadores/as de Australia, Todd Mercer; de Canadá, Michael Gort; de Costa Rica, Adriana Murillo; de México, Francisco Javier Olavarría; de Italia, Mauro Battocchi; del Reino de los Países Bajos, Carmen Gonsalves y de Suecia, Oscar Stenström. Junto a ellos/as, asistieron del Encargado de Prensa de la Embajada de Alemania, Jakob Horn; el Ministro Jefe de la Embajada de Argentina, Javier Lareo; la Consejera Política y de Cultura de la Embajada de Dinamarca, Trine Danklefsen; el Encargado de Negocios de la embajada de España, Jorge Paralta Momparler; la Consejera de Asuntos Políticos y Económicos de la Embajada de Estados Unidos, Mariju Bofill y el Encargado de Misión de la Embajada de Nueva Zelanda, Nick Meehan.

Contando con el respaldo del Ministerio de la Cultura, las Artes y el Patrimonio, junto la Marcha se desarrolló el evento Santiago Parade, Open Mind Fest, el evento de música electrónica y perfomances contra la discriminación más masivo que se desarrolla al aire libre desde el 2006.

En el escenario de cierre, que desbordó las calzadas de la Alameda, se partió con un sentido homenaje a las víctimas fatales de la homo/lesbo/bi/transfobia<sup>16</sup> y con la proyección en pantallas de archivos históricos de la lucha sistemática del movimiento LGBTIQA+<sup>17</sup>.

Aunque no empañó la marcha, grave resultó que un reducido grupo de 10 encapuchados/as se infiltrara para agredir a los asistentes y boicotear la protesta, violencia que fue impedida por los propios asistentes que los expulsaron del lugar.Los/as agresores/as en un primer momento intentaron impedir el avance en la marcha de las familias homoparentales con sus hijos/as, así como de las delegaciones diplomáticas, las cuales debieron caminar en "fila india" durante algunos segundos. Luego los/as victimarios/as lanzaron botellas y agua sobre los camiones-escenarios. Algunas latas de spray las portaban encendidas.

Una de las situaciones más críticas ocurrió cuando al finalizar la marcha, impidieron que un camiónescenario continuara con su acto, cortando los cables de electricidad, poniendo con ello en riesgo la seguridad y vida de las personas. Este momento, que incluyó barricadas, fue grabado por algunos manifestantes, siendo la propia ciudadanía la que logró expulsar a un reducido grupo que se oponía a la lucha por el matrimonio igualitario y al carácter festivo con que

<sup>[15]</sup> https://www.movilh.cl/homenajean-a-54-victimas-de-la-homofobia-y-transfobia-en-el-memorial-de-la-diversidad/

<sup>[16]</sup> https://www.instagram.com/p/CWOqJXggpXq/

<sup>[17]</sup> El 7 de diciembre, y con motivo de la aprobación del matrimonio igualitario, el Movilh convocó a otra masiva manifestación que reunió a unas 5 mil personas en la Plaza de la Dignidad. Más antecedentes, en el segundo título del cuarto capítulo

algunas personas conmemoran el Orgullo, alegando que la marcha debe "tener otros contenidos". Por cierto, el que ellos/as de manera autoritaria y violenta pretendían imponer a miles de personas.

## • El impacto de las elecciones en el Movimiento

Finalmente, otra características del 2021 se relaciona con las elecciones a cargos públicos: mientras un puñado de movimientos LGBTIQA+ mantuvieron su total independencia política-partidaria, otros privilegiaron la militancia de sus activistas trabajando en la carrera electoral con los comandos, lo cual de una u otra manera mermó el número de actividades o procesos relacionados exclusivamente con el combate contra la homo/lesbo/bi/transfobia, al compararse con años anteriores.

Hubo así un impacto en la continuidad del tradicional quehacer de aquellos/as colectivos que postularon a cargos públicos a miembros/as de sus directorios/as o voceros/as o apoyaron candidatos/a de partidos donde militaban sus activistas, toda vez que su trabajo habitual entró en una pausa mucho más extendida que la provocada por la pandemia en algunas organizaciones.

#### • Los 30 años del Movilh

En el marco de su 30 aniversario, el Movilh lanzó el 28 de junio un histórico archivo de prensa sobre la realidad LGBTIQA+ en nuestro país que corre entre 1875 y el 2011.

El archivo fue el resultado de un intenso trabajo de recopilación y digitalización de archivos de prensa escrita sobre la historia y el devenir del Movilh, desde 1991 a la fecha, así como respecto al tratamiento que los medios daban previo a ese año a la realidad LGBTIQA+.

El archivo, disponible en las direcciones movihhistorico.cl e historialgbtiq.cl, puso como fecha límite de recopilación al 2011, en tanto ese año se consolidaron con fuerza en Chile la prensa digital y las actuales redes sociales que permiten conocer información de manera periódica, acelerada y que sigue en línea, siendo su acceso fácil y rápido.

En cambio, los antecedentes anteriores al 2011 referentes al activismo LGBTIQA+ están prácticamente desaparecidos de internet, ya sea porque los medios de comunicación los han ido perdiendo y/o borrando o porque la mayoría de las noticias fueron cubiertas por la prensa escrita.

En un período como el actual, donde la desinformación es superior a la información y las noticias falsas son cotidianas, se puso así a disposición de todas las personas interesadas una buena parte de la historia LGBTIQA+ en Chile con el fin de que conozcan la trayectoria de la lucha por la igualdad.

La mayor cantidad de archivos abarcan el período que va entre 1991 y el 2011, un período que inicia sumergido en la total homo/lesbo/bi/transfobia y termina con una mayoría ciudadana favorable incluso a la unión legal entre parejas del mismo sexo. Se trata del período donde nacen y florecen todos los debates de cada una de las denuncias, demandas y propuestas que ha tenido el activismo LGBTIQA+ posteriormente.

# V.- SENSIBLES FALLECIMIENTOS

En el año perdieron la vida importantes figuras para la causa LGBTIQA+.

El 14 de abril falleció la periodista Constanza "Tati" Penna, quien jugó un relevante papel para promover desde las comunicaciones los derechos humanos de las personas LGBTIQA+.

La profesional se cuadró en forma pionera con los derechos de la diversidad y apoyó al Movilh en sus inicios, en una época cuando nadie o muy pocos se atrevían a hacerlo. En una época cuando era impopular y no se recibía ningún aplauso por apoyar la causa e incluso había miedo o rechazo de la casi totalidad de las propias personas LGBTIQA+ en Chile para el combate contra la homo/transfobia, en tanto la discriminación estaba naturalizada y era asumida como algo normal e inalterable.

En 2006, y al cumplir 15 años de trayectoria, Movilh había incluido a Penna en el "Ranking de Honor de las personas pioneras en apoyar la causa LGBTIQ+ en Chile".

El 17 de noviembre, en tanto, partió el ex diputado Antonio Leal, con quien el Movilh dio las primeras luchas legislativas por la plena igualdad legal, con todos los costos políticos y el amplio y mayoritario rechazo social que en el pasado significaba apoyar la causa.

En temáticas de derechos humanos, Leal fue un visionario. Desde muy temprano entendió e internalizó que las demandas LGBTIQA+ eran un tema de derechos humanos, en un contexto donde la casi totalidad de la Izquierda, y toda la Derecha, se negaban a ese reconocimiento.

En 1993<sup>18</sup> Leal expuso en el primer seminario sobre derechos LGBTIQA+ organizado en Chile, en 1996<sup>19</sup> apoyó las primeras candidaturas de personas LGBTIQ+ al Congreso Nacional, e impulsó junto al Movilh la despenalización de la homosexualidad<sup>20</sup> en 1999. Del mismo modo, junto a Leal el Movilh presentó al Congreso Nacional en 2003<sup>21</sup> y en 2009<sup>22</sup> los primeros de proyectos de unión civil; en 2008<sup>23</sup> el primer proyecto de Ley de Identidad de Género y en 2009<sup>24</sup> el primer proyecto contra la homo/transfobia laboral, mientras en 2003<sup>25</sup> se dio a conocer la primera versión de la Ley Antidiscriminatoria.

A la par, y desde la década de los 90, Leal apoyó la lucha contra corrientes neonazis que operaban en Chile. A tal punto, que en 2006<sup>26</sup> denunció junto al Movilh ante el TC la existencia de 10 grupos neonazis.

Por estas, y otras razones, el Movilh incluyó en 2006 a Leal en un Ranking de Honor

El 12 de diciembre partió otro grande, el abogado Antonio Garretón. Con su apoyo el Movilh impulsó el debate sobre los derechos humanos de personas LGBTIQA+ en la ONU. Además, él fue una de las primeras autoridades en distribuir el Informe Anual de los DDHH de la Diversidad Sexual y de Género en el sistema internacional de DDHH.

Especial mención merece la colaboradora trans del Movilh–Los Lagos, Valentina Vera López (32), quien falleció el 27 de enero en Puerto Montt, tras dedicar buena parte de su vida a la lucha contra la transfobia.

Finalmente, y aunque estuvo alejada de la lucha del Movimiento LGBTIQA+ chileno y su campo de acción es el espectáculo, el 5 de julio falleció la cantante italiana Raffaella Carrá, quien remeció el conservadurismo de nuestro país en plena dictadura. Su lenguaje siempre fue explícitamente pro-LGBTIQA+, así como un bálsamo para la diversidad sexual y de género en una época profundamente homo/transfóbica en Chile y en buena parte del mundo.

<sup>[18]</sup> http://movilh.cl/archivo/1993-primer-seminario-lgbtiq/

<sup>[19]</sup> http://movilh.cl/archivo/wp-content/uploads/2021/06/Moreira..-10-06-96-Movilh.pdf

<sup>[20]</sup> https://movilh.cl/archivo/category/articulo-365-del-codigo-penal/

<sup>[21]</sup> https://www.movilh.cl/historico-homosexuales-ingresaron-proyecto-de-parejas-al-congreso-chileno/

<sup>[22]</sup> https://www.movilh.cl/ingresan-pacto-de-union-civil-al-congreso-nacional-con-transversal-apoyo-politico-y-social/

<sup>[23]</sup> https://www.movilh.cl/presentan-proyecto-de-ley-para-facilitar-a-las-personas-transexuales-cambio-de-nombre-y-sexo/

<sup>[24]</sup> https://www.movilh.cl/proyecto-de-ley-modifica-articulo-usado-para-discriminar-a-minorias-sexuales-en-el-trabajo/

<sup>[25]</sup> https://www.movilh.cl/entregan-proyecto-de-ley-antidiscriminatorio-a-parlamentarios-chilenos/

<sup>[26]</sup> https://www.movilh.cl/diputados-y-movilh-pidieron-al-tribunal-constitucional-declarar-ilegal-a-10-grupos-neonazis/



# VIII.

# Hitos 2021

XX. Informe Anual de Derechos Humanos de la Diversidad Sexual y de Género en Chile

**HECHOS 2021** 

# **HITOS 2021**

En el transcurso del 2021 se registraron 50 hitos.

A diferencia de años previos, los hitos implican por sí mismos y/o coinciden con un cambio ciclo sociocultural o político en el país, luego de tres décadas de lucha continua por la igualdad para las personas LGBTIQA+.

Del todos los hitos, 43 fueron avance, y 7 corresponden a hechos negativos que pasan a ser parte de la historia de la diversidad sexual y de género en Chile.

- **28 de enero:** El interno Boris Esteban Castillo Arriagada (23) se suicidó el 28 de enero en el Complejo Penitenciario de La Serena, tras recibir constantes abusos en razón de su orientación sexual.
- **22 de enero:** La Feria Chilena del Libro suspende las ventas del clásico "Las mil y una noches" hasta la eliminación de una homofóbica publicidad del texto<sup>1</sup>.
- 1 de marzo, 5 de agosto y 15 de octubre: Los municipios de Concepción, Catemu y Lampa lanzan Oficinas de la Diversidad y la no Discriminación.
- **23 de abril:** Es publicada en el Diario Oficial la Ley 21.331 sobre Salud Mental que prohíbe las "terapias reparativas" de la homo/transexualidad.
- **27 de abril:** El Tribunal Constitucional declara inaplicable la causal de divorcio culposo por homosexualidad.
- **27 de abril:** Fueron lanzados los resultados del primer estudio estatal que ha indagado exclusivamente sobre la realidad LGBTIQA+ en Chile.
- 29 de abril: El asesinato del niño Emilio Jara es usado por sectores homo/transfóbicos para emprender una de las campañas de odio de mayor violencia conocidas en el país.
- **7 de mayo:** Las iglesias de Chile se unen por primera vez y para impedir que la

Corte Interamericana de DDHH falle a favor de la docente Sandra Pavez, discriminada por su orientación sexual.

- 12 y 13 de mayo: La Corte Interamericana de DDHH desarrolla uma audiencia de juicio contra Chile por discriminar la docente Sandra Pavez en razón de su orientación sexual.
- 16 de mayo: 8 candidatos/as abiertamente LGBTIQA+ son electos/ as convencionales constituyentes.
- 16 de mayo: Lorena Olavarría Baeza y Johnny Piraino Meneses se convierten en la primera mujer y hombre LGBTIQA+ en asumir como alcaldes/as de Melipilla y La Calera, en forma respectiva.
- **17 de mayo:** La CIDH, algunos Comité de la ONU y el Consejo de Europa llamaron a no usar las religiones para discriminar a las personas LGBTIQA+.
- **17 de junio:** Lanzamiento del "Primer Concurso para Promover los Derechos Humanos de los/as Migrantes LGBTIQA+ en Chile".
- 25 de junio: Creación del Grupo de Estados Amigos del Mandato del Experto Independiente sobre Orientación Sexual e Identidad de Género (OSIG).
- 28 de junio: El Movimiento de la Diversidad Sexual y de Género lanza una archivo histórico sobre la realidad LGBTIQA+ en Chile que abarca desde 1875 hasta el 2011.
- **4 de julio:** Dos convencionales LGBTIQA+, Pedro Muñoz Leiva y Rodrigo Rojas Vade, asumen las presidencias adjuntas de la Convención Constitucional.
- **28 de julio:** La Cámara de Diputadas y Diputados aprueba en primer trámite la derogación del artículo 365 del Código Penal.

<sup>[1]</sup> Todos los antecedentes de este caso se encuentran en el XIX Informe Anual de los Derechos Humanos de la Diversidad sexual y de Género, publicado en Movilh.cl

- **26 de julio:** El Sename publica su primera "Política para el abordaje de la diversidad sexual y de género en niñas, niños y adolescentes (NNA).
- 5 de agosto y 20 de septiembre: El Juzgado de Familia de Valparaíso y la Cuarta Sala de la Corte de Apelaciones de Valparaíso se niegan a reconocer los derechos de filiación de dos hijos de una pareja lésbica.
- 16 de agosto: La derogación del divorcio culposo por homosexualidad se transforma en ley y es publicada en el Diario Oficial.
- **17 de agosto:** Bomberos son capacitados en temáticas LGBTIQA+.
- 2 de septiembre: La Armada recomienda a los estudiantes de la Academia de Guerra Naval leer textos que tratan a las personas LGBTIQA+ como una "tiranía", una "inmoralidad" y una "actitud sexual depravada" que "desmantela las normas sexuales".
- **4 de septiembre:** El municipio de Valparaíso, encabezado por el alcalde Jorge Sharp, se cuadró con la versión de los responsables del incendio de la discoteca Divine señalando que el siniestro se originó por un atentado homofóbico que nunca ocurrió.
- 15 de septiembre: Es publicada la Ley 21.369 que regula el acoso sexual, la violencia y la discriminación de género en el ámbito de la educación superior, incluyendo a personas LGBTIQA+ como un sector protegido.
- **22 de septiembre:** Cristóbal Paz, se convierte en el primer niñe no binarie en dar públicamente su testimonio, tras transformarse en activista de la diversidad sexual y de género.
- **24 de septiembre:** El Banco Mundial lanza su primer estudio sobre los derechos humanos de las personas LGBTIQA+.
- **5 de noviembre:** La presidenta de la Convención Constitucional,

Elisa Loncón, se reúne con el Movimiento LGBTIQA+.

- **11 de noviembre:** La OEA aprueba la resolución sobre "Promoción y protección de los Derechos Humanos" incluyendo un título sobre personas LGBTIQA+.
- 13 de noviembre: La XXI Marcha del Orgullo, y la primera tras la pandemia, se convierte en la más masiva desarrollada en Chile al conglomerar a más de 150 mil personas. Además, por primera vez el desfile incluyó una columna de migrantes LGBTIQA+.
- **21 de noviembre:** Marcela Riquelme Aliaga, Camila Musante Muller y Francisca Bello se convirtieron en las primeras mujeres abiertamente lesbo/bisexuales en ser electas diputadas, mientras que Emilia Schneider Videla en la primera persona trans en correr igual suerte.
- 29 de noviembre: Son lanzados los resultados del primer estudio que midió y conoció las opiniones y percepciones de las parejas del mismo sexo y de las familias homoparentales frente al matrimonio igualitario en Chile.
- 1 de diciembre: Camila Quiroz
   Viveros asume como presidenta de la directiva transitoria de Comunes, la primer mujer de la diversidad en ocupar un cargo de ese tipo.
- **10 de diciembre:** La ley de matrimonio igualitario es publicada en el Diario Oficial<sup>2</sup>.
- 14 de diciembre: El Tribunal de Justicia de la Unión Europea (TJUE) reconoció los derechos de los/as hijos/ as de pareja del mismo sexo en todo el bloque, incluso en aquellos países donde no hay matrimonio igualitario.
- **21 de diciembre:** La Superintendencia de Educación garantiza la autonomía de estudiantes trans a partir de los 14 años.

<sup>[2]</sup> https://www.movilh.cl/wp-content/uploads/2021/12/ Ley-21.400-matrimonio-igualitario.pdf

La discriminación que afecta a lesbianas, gays, bisexuales, trans, intersexuales, queers, asexuales y otros (LGBTIQA+) fue hasta el 2001 una realidad conocida, pero que carecía de datos estadísticos y análisis concretos destinados a medir y evaluar su evolución en el tiempo.

En el 2002, con el surgimiento del Primer Informe Anual de los Derechos Humanos de la Diversidad Sexual y de Género, esa situación cambió radicalmente, pues en forma inédita en su historia la población LGBTIQA+ de Chile comenzó a catastrar y analizar, con el máximo rigor, todos los casos de discriminación ocurridos en el transcurso de un año, así como a sistematizar cada avance, estancamiento o retroceso sobre episodios y procesos vinculados a su propia realidad.

**Los Informes Anuales de DDHH** son los principales documentos para conocer la situación de las personas LGBTIQA+ en Chile y sus contenidos han sido más que descriptivos y analíticos, en tanto son una de las herramientas más utilizadas por el Movimiento para avanzar hacia la igualdad de derechos.

Este estudio posibilita demandar y proponer; con fundamentada razón; leyes, políticas públicas y cambios sociales destinados a erradicar la discriminación.

También a propósito de estos informes la ONU, la OEA y la CIDH, entre otras instancias, han llamado la atención a Chile sobre la homofobia y la transfobia, mientras que autoridades de diversos poderes del Estado se han pronunciado públicamente y en más de una oportunidad sobre sus contenidos, debiendo fijar postura en torno a las vulnerabilidades que se denuncian.

Los Informes se basan en variadas investigaciones sobre los casos de discriminación, en los discursos y actividades de todas las organizaciones LGBTIQA+ del país y en antecedentes públicos o privados proporcionados por centros académicos, consultoras, organismos judiciales, legislativos, gubernamentales, medios de comunicación y grupos de derechos humanos, tanto nacionales como internacionales.

Cada informe se ha perfilado así como la historia anual de las personas LGBTIQA+ en Chile.



# News > Chile Chile: Aggressions on LGTBI People Climb To Record Numbers



An activist mobilizes against the "Freedom Bus" chartered by far-right Catholic organizations, the sign reads, "No more hate", Chile. | Photo: EFE

Published 18 March 2021

#### Last year, discrimination against this social group increased by 14.7 percent.

Chile's Homosexual Integration and Liberation Movement (MOVILH) on Wednesday warned of the increase in homophobia and transphobia levels as 1,266 abuse cases against the LGBTI community were reported in 2020.

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women and 59 men).

MOVILH informed six murders of LGTBI community members, 148 physical or verbal aggressions perpetrated by civilians or police officers, 143 cases of labor discrimination, and 379 institutional marginalization episodes.

Last year, 26 percent of the aggressions affected gay people, 15 percent impacted lesbians, and 11 percent transgender people (76

"President Sebastian Piñera's administration was weak in terms of public condemnation of human rights violations against LGBTI people and refused to implement targeted policies amid the COVID-19 pandemic," MOVILH stressed.

"The government was indifferent to homophobic abuses inside the Navy and made a permanent lobby at Congress to boycott legal equality", the Activists added.

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Chileans gathered in Santiago to protest against the violations of human rights by the state of Chile, carrying signs of eyes whose pupils reflected images of state torture. protests.media/chileans-prote #RenunciaPiñera #libertadalospresospoliticosdelarevuelta		
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Valparaiso was the region with the highest number of aggressions with 38,4 percent of the cases, followed by the Metropolitan area and Biobio.

Despite the enactment of the 2019 Gender Identity Law, activists condemn that the Parliament delays discussions on home parental adoption and equal marriage laws.

They also urged for modifications of the 2012 Zamudio Law, an anti-discrimination norm named after a young homosexual who was murdered by a neo-Nazi group.

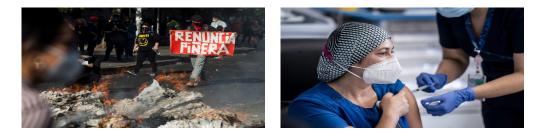
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# **Trans in Chile**



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#### Michel Riquelme (he, they/them)

#### Executive Coordinator of OTD "Organizing Trans Diversity" Association Chile

My activism began in 2005 in LGBTI + groups of Santiago, as one of the founders of the first transmasculine support group of in Chile. I have participated in the organization of feminist meetings at national and regional (Latin America) level. In 2015, we created the first magazine in the country that focused on topics relating to the transgender community. Currently, I am the Executive Coordinator of OTD.

#### What is the situation facing trans people in your country

Transphobia still exists institutionally within the government, as there are no departments dedicated to working on resourcing and planning around the issues that affect the trans community. The Ministry of Women and Gender Equality, which is supposed to consider the situation of trans women, haven't even created a plan or intervention for them. The trans community lacks visibility, even within organizations working on sexual diversity, and there is a lack of transparency regarding the hiring of transgenc people, so access to work is still very difficult. There are transphobic politicians who attack trans people, whenever they can, especially from right-wing parties, but also from the center or the left, the lati excusing themselves by saying that "these issues divide the left".

Discrimination and violence happens intentionally or by omission, as there are no public policies or laws protecting trans people. The policies that do exist are binary, do not take into account the diversity of trans identities, and refer only to men and women. Even in spaces that consider themselves to be transfriendly, non-binary trans people are still invisible and their specific needs are ignored with regards to actions or policies within those organizations/institutions. Violence is usually directed towards those with diverse gender expressions. If transphobic people realize that a person is trans due to their gender expression, they can be targeted and attacked, in public spaces or behind closed doors from their own family. The most subtle transphobia comes from families, who say that "being trans is just a phase, that it will pass", or trying to make the person change, especially transgender children. Being a transgender child is one of the most vulnerable positions to be in , because you depend on your parents and their approval, without which you are powerless.

In general, in any public institution there are reports of discrimination on the basis of gender. There are practically no public institutions that have gender neutral bathrooms, and within public institutions individuals are always referred to as him or her, with no thoughts of referring to people in a gender neutral way to avoid this type of discrimination. Accessing work is complex, as discrimination still exists towards diverse gender expression, and if you haven't changed your gender on your identity card, you will face discrimination within the education system, although there are schools that are trans friendly. There is a lot of discrimination and bullying and very few attempts from educational professionals to intervene. With regards to sex work, aggression and violence towards trans sex workers on the street are reported, but there is no institutional support for sex workers who are attacked, nor is there support for those who would like to stop doing sex work.

#### Is there access to legal gender recognition?

Although the gender identity law was passed, it is nevertheless a very precarious law compared to neighboring countries such as Uruguay or Argentina. The Chilean law will allow the change of name and gender to people over 18 as long as they are not married. This is a violation of the right to raise a family, because if a trans person is married, they will be forced to divorce in order to change their gender marker. Children under 14 will not have access to any legal gender recognition, so it's unknown what's going to happen to them, and non-binary people are left out completely. This law is not yet in force, we expect this to happen in October 2019.

#### What is the situation with access to healthcare?

In Chile, HIV is uncontrolled, and there are no statistics relating to the trans population to see wheth the situation has worsened or improved. We have tried to collect statistics from the government, but they do not have them filtered by identity, it is very difficult to search this data in order to have overview of the HIV situation facing trans people.

With regards to accessing surgeries and hormones, there has been an increase in the number of hospitals that are considering this issue, and there is even one doctor per hospital that works directly to address access to hormone therapy and surgeries. However, these are focused only in the larger cities, and this is not the case in the more distant regions or cities, so many trans people are still excluded from access to transition-related healthcare. This means that, in accessing healthcare, there are still reported situations of discrimination or abuse in situations where there are only cisgender people without training or sensitivity to interact humanely with transgender people.

# What is the biggest threat to the rights and lives of trans people in your country right now, and what is your organization doing to address these problems?

The issue of physical violence is currently a huge threat: in recent months there have been trans people who have been killed. We have no laws other than the new gender identity law addressing this ongoing issue, so there is a continued lack of public policy guaranteeing the rights of trans people. OTD tries to be a well integrated organization in order to be able to address as many issues as possible, but it is very difficult. We always try to have a community base of trans people who are contributing towards the direction of the organization in an attempt to tackle as many issues as possible facing the trans community in Chile. We have focused strongly on: the process of approving the gender identity law; on informing and counseling as many transgender people as possible; on finding and collating statistical information on the trans population that is neglected in research carried out by government institutions; and in educating and training public and private institutions, as we believe that education is fundamental to transforming the culture that we live in.

#### How can trans allies and the international (trans and allied) community help?

I would ask you to always take into consideration the opinion of trans people. In the past, cisgender allies have written public policies for trans people without consulting trans people of all identities. You can not make policies or actions for us, without us. Also, consider the issue of resources, as many of us are not working because there is no money.

I believe that we must increase the visibility of trans people in international decision-making spaces, as well as increasing allocation of resources to policies that address the situation of trans people a highlight violations of the rights of trans people that are still happening today.

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#### Advice on how to survive transphobia?

Community organization is fundamental, although individual activism is important and hopefully more and more people feel the call to be activists. It is also necessary to work with your peers to try to build community in order to strengthen our communities. An individual can make change happen, but if that individual can join forces with their peers to ethically build an organization to increase their impact, it is essential to do so in order to generate safe spaces for other trans people.

I believe there isn't much awareness that transphobia exists, I think that discrimination and violence are often minimized, and attempts are made to force trans people to be more 'normal' in order to be accepted in society, which is very bad. Often we have our own internalized transphobia to contend with, which is also bad. We have to learn how to remove the internalized transphobia that we may have towards our peers that do not conform to an ideal of 'normality' that is imposed on us by cisgender society. We have to work our own transphobia in order to bring down the one on the outside.





Asociación CTD Chile

# The OTD Association is a group made up of transgender people and cisgender allies the operates from the city of Santiago, Chile.

We work with the transgender community out of our headquarters, providing peer counseling services, psychological care and community development workshops. We also provide educational training to a wide range of public and private institutions, educating them about transgender people and our rights and we work with health institutions to improve quality of care for the trans population. We have published studies on the trans population and created campaigns and public activities promoting the rights of trans people. Our legislation unit were at the forefront of the processing and approval of the recent Chilean Gender Identity Law.

Join our mailing list!

**Contact Us** 

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