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**VIOLATIONS OF THE RIGHTS OF LGBT  
CHILDREN AND YOUTH IN CHILE**

**IN RESPONSE TO  
THE COMBINED FOURTH AND FIFTH PERIODIC REPORTS OF  
CHILE TO THE UN COMMITTEE ON THE RIGHTS OF THE CHILD**

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## **List of Acronyms**

**ADL** - Anti-discrimination Law

**IACtHR** - Inter-American Court of Human Rights

**LGBT** - Lesbian, gay, bisexual and transgender

**MINSAL** - Chilean Ministry of Health

**SENAME** – National Service for Minors

**UNESCO** - United Nations Educational, Scientific and Cultural Organization

**UNICEF** – United Nations Children’s Fund

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## INTRODUCTION

The present report intends to provide supplementary information to the Committee on the Rights of the Child (the Committee) for its consideration of the fourth and fifth periodic reports submitted by the Chilean State. The report focuses on the situation of LGBT children and adolescents in relation to the Convention on the Rights of the Child, ratified by Chile in 1990.

Part I of the report covers the state of the implementation of the decision that the Inter-American Court of Human Rights (IACtHR) issued on February, 24<sup>th</sup> of 2012 in the case of *Atala Riffo and Daughters v. Chile*. The ruling condemned the State of Chile for the Supreme Court's 2003 decision, which stripped judge Karen Atala from the care and custody of her three daughters on the basis of her sexual orientation. In its final judgment, the Inter-American Court of Human Rights affirmed that sexual orientation and gender identity are protected categories under article 1.1 of the American Convention and constitute a violation of international law, setting a groundbreaking precedent for LGBT rights.<sup>1</sup>

To date, the Chilean State has complied with the following reparation measures that were ordered by the Court: the provision of medical and psychological or psychiatric care to Ms. Atala and her eldest daughter M; a public acknowledgment of its international responsibility and a public apology to the victims, and; the provision of compensatory damages to Ms. Atala and her eldest daughter M. It must pay her daughter R when she turns 18 years old.<sup>2</sup> The implementation of permanent education programs and training courses directed at public officials at the regional and national levels, and particularly judicial officials, as yet has not been fully complied with by the Chilean State.<sup>3</sup>

Since its last periodic review by the Committee in 2007, the Chilean State has made significant progress towards guaranteeing that LGBT children and adolescents can fully enjoy the rights enshrined by the Convention without discrimination. In 2012 Chile passed legislation for the protection against discrimination of any kind. The Anti-discrimination Law (ADL) –popularly known as Zamudio Law, after Daniel Zamudio, a young gay man who was brutally murdered by a neo-nazi group—has amplified the urgency of protecting LGBT people from discrimination. Currently, civil society organizations have been pushing for the passage of Bill No. 10.035-17 that seeks to reform the ADL. Despite various legislative and administrative efforts, however, there is still a lack of protection for LGBT children in Chile. They are exposed to discriminative actions both in the private and public spheres.

In Part II, the report discusses the multiple barriers faced by transgender children and adolescents in terms of their citizenship rights. Part III of the report highlights the importance of creating conditions in which children are educated in accordance with the principle of non-discrimination towards LGBT children in the educational system. Lastly, part IV addresses the issue of adoption in relation to Act No. 20830 of 2015, which legalized civil unions. It calls attention to the urgent need of guaranteeing children their right to grow up in a healthy family environment.

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<sup>1</sup> IACtHR, *Atala Riffo and Daughters v. Chile*, Merits, Reparations, and Costs, Judgment . No. 239 ¶ 90- 91.

<sup>2</sup> Skype interview with Karen Atala, judge and director at Fundación Iguales, Santiago, Chile (July, 11, 2005)

<sup>3</sup> *Id*

Recognizing that children require special protection, this document is submitted in the hope that it will contribute to the Committee's review of Chile and to the full restoration of LGBT children's and adolescent's rights and dignity.

## **I. General Principles (Articles 2, 3, 6 and 12)**

### **1. Non- discrimination (Article 2): The Anti-Discrimination Law does not effectively apply the principle of non-discrimination for LGBT children and adolescents.**

Under the Chilean Constitution, article 19, paragraph 2, recognizes that every person and/or group is equal under the law. Similarly, as noted by the State in its report, the Anti-Discrimination Law (Act No. 20609) of 2012 “introduces measures against discrimination by establishing a legal mechanism to effectively restore the rule of law whenever an act of arbitrary discrimination is committed.”<sup>4</sup> While the passage of Act No. 20609 (2012) recognizes the urgent need to address the prevalence of discrimination, representing a significant advance for LGBT adolescents and children in Chile, the law substantially prevents the practical enjoyment of their right to equality.

Article 2 of the Anti-Discrimination Law asserts that “distinctions”, “exclusions” or “restrictions” based on certain criteria including “gender identity” and “sexual orientation” are allowed as long as they “are justified by the legitimate exercise of other fundamental rights.”<sup>5</sup> These fundamental rights refer to those protected by Article 19 of the Constitution, which includes freedom of conscience and religion, and freedom of teaching and “good morals”, among others. This means that the constitutional guarantees under Article 19 are prioritized over the right to be free from discrimination, establishing a hierarchy that ultimately legitimizes *de facto* discrimination against LGBT adolescents and children. In this sense, the Anti-discrimination Law, as it is, not only fails to protect against discrimination, but may also be invoked to reinforce discrimination against children and adolescents.

In June of the present year, the Senate's Human Rights Commission started discussions about Bill No. 10.035-17, which intends to reform the Anti-Discrimination Law (ADL). The bill incorporates important amendments that would constitute significant steps towards the State party's compliance with anti-discrimination legislation as recognized by international standards. According to the Senate's Human Rights Commission, Bill No. 10.035-17 modifies the ADL's objective by highlighting that its main intention will be to prevent and eliminate—more than merely sanction—discrimination. The Senate's Commission intends to rewrite paragraph 3 of Article 2, which that contains the exception that puts arbitrary discrimination under the fundamental rights outlined in the Constitution.<sup>6</sup>

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<sup>4</sup> CRC, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention. Fourth and fifth periodic reports of State parties due in 2012: Chile*. U.N. Doc. CRC/C/CHL/4-5

<sup>5</sup> Available at: [http://www.mineduc.cl/usuarios/convivencia\\_escolar/doc/201311281730000.LEY-20609\\_no\\_discriminacion.pdf](http://www.mineduc.cl/usuarios/convivencia_escolar/doc/201311281730000.LEY-20609_no_discriminacion.pdf)

<sup>6</sup> Presentation/ Bill that modifies the definition and the procedure by which the law establishes measures against discrimination. Available at:

[http://www.senado.cl/appsenado/index.php?mo=comisiones&ac=sesiones\\_celebradas&idcomision=199&tipo=3&ano=2015&comi\\_nombre=de%2520Derechos%2520Humanos%2C%2520Nacionalidad%2520y%2520Ciudadan%25](http://www.senado.cl/appsenado/index.php?mo=comisiones&ac=sesiones_celebradas&idcomision=199&tipo=3&ano=2015&comi_nombre=de%2520Derechos%2520Humanos%2C%2520Nacionalidad%2520y%2520Ciudadan%25)

However, certain reforms outlined in Bill No. 10.035-17 could have the adverse effect of weakening the ADL and protections from discrimination for LGBT children and adolescents. For example, paragraph 9 of the Bill's preamble<sup>7</sup> seeks to eliminate "exclusions" and "restrictions" from among the categories that constitute discrimination. The paragraph asserts that these categories actually complicate and limit the interpretation of arbitrary discrimination, rather than expand it. The paragraph states that the definition of arbitrary discrimination should be simplified to avoid "...creating various categories that can be a source of problems of legal qualification for both the parties and the judge."<sup>8</sup> While defining and incorporating indirect arbitrary discrimination is a positive aspect of Bill No. 10.035-17, Chilean LGBT rights organizations are concerned that omitting "exclusions" and "restrictions" from the definition of arbitrary discrimination will limit the scope of the ADL and its applicability to individuals who experience discrimination on the basis of their sexual orientation and gender identity.<sup>9</sup>

Furthermore, in its 2007 Concluding Observations, the Committee recommended to the State party to "increase its efforts to review, monitor and ensure implementation of legislation guaranteeing the principle of nondiscrimination and full compliance with article 2 of the Convention, and adopt a proactive and comprehensive strategy to eliminate discrimination on gender, ethnic, religious or any other grounds and against all vulnerable groups throughout the country."<sup>10</sup> However, Act No. 20609 does not provide a comprehensive definition of the governmental body that will be in charge of designing, implementing and evaluating that the principle of non-discrimination is effectively applied and ensured. While Bill No. 10.035-17 acknowledges the importance of including the definition of the duties that must be followed by specific governmental bodies in order to draft policies that constitute effective protections from discrimination, it does not provide such definitions.

## **2. Public Officials at the regional and national level must receive adequate training (Articles 2, 3, 6 and 12)**

In the case of *Atala Riffo and Daughters v. Chile*'s the Inter-American Court of Human rights (IACtHR)<sup>11</sup> decision contemplated the importance of providing permanent training and education to public officials in order to address discrimination in public institutions against LGBT persons including children and youth. As guarantees of non-repetition, the IACtHR ordered measures directed to train public officials in relation to: "i) human rights, sexual

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[C3%25ADa&idseesion=9570&idpunto=%25%25SESIONES\\_Celebradas.IDPUNTO%25%25&fecha=03%2F06%2F2015&inicio=12%3A00&termino=13%3A30&lugar=Sala%25207%2C%2520Senado%2C%2520Valpara%25C3%25ADso&listado=2](http://www.senado.cl/appsenado/index.php?mo=sesionessala&ac=getCuenta&iddocto=55951) . Accessed: 20 Junio 2015.

<sup>7</sup> Bill No. 10.035-17. Available at:

<http://www.senado.cl/appsenado/index.php?mo=sesionessala&ac=getCuenta&iddocto=55951>

<sup>8</sup> *Id.*

<sup>9</sup> Skype Conversation with Karen Atala, Director at *Fundación Iguales*, Chile (June 29, 2015).

<sup>10</sup> Committee on the Rights of the Child, *Concluding Observations: Chile*, U.N. Doc. CRC/C/CHL/CO/3 ¶ 30

<sup>11</sup> Case of *Atala-Riffo and Daughters v. Chile*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct.H.R. (ser. C) No. 239 (24 February 2012) ¶ 267–272

orientation, and non-discrimination; ii) the protection of the rights of the LGBT community; and iii) discrimination, overcoming gender stereotypes against the LGBT population.”<sup>12</sup>

In Chile’s compliance report provided to the IACtHR, the government asserted that the Ministry of Justice introduced a bill, which sought to create a Human Rights Subsecretariat that would be in charge of developing “human rights plans and programs designed specifically for certain public service areas which will include the judiciary and especially focus on the full implementation of the non-discrimination based on sexual orientation law.”<sup>13</sup> While the bill was approved last year, the Human Rights Subsecretariat has still not been created.<sup>14</sup>

### **3. The Penal Code criminalizes sexual relations between homosexual males under 18 years old (Articles 2, 3, 6 and 12),**

In the 2007 Concluding Observations for Chile, the Committee expressed concern about the ongoing criminalization of homosexual relations of persons under 18 years old<sup>15</sup>, specifically upheld by Article 365 of the Chilean Penal Code. Under the Code, while the age of consensual sexual relations for heterosexuals is set at 14 years old, for homosexuals it is set at 18 years old. This article therefore establishes a distinction in the ages of consent for sexual relations, which is based on the explicit discrimination on the basis of sexual orientation and gender identity. It further states that sexual relations between homosexuals can be punished with imprisonment when there are youth under 18 years old involved. On January 4<sup>th</sup> of 2011, the Constitutional Court clarified that sanctions in this case are only applicable to homosexual males.<sup>16</sup>

Despite civil society organizations consistent advocacy around the urgency for the need to reform the Penal Code, the article has not been modified.

### **4. Lack of protection for LGBT children (Articles 2, 3, 6 and 12)**

In its General Comment No. 13, the Committee underscores that all violence against children can be prevented and is never justifiable.<sup>17</sup> In relation to article 6, General Comment No. 13 elaborates that protection from all forms of violence encompasses not only a child’s right to life and survival, but further their right to development. Development is interpreted by the Committee as a holistic concept, which covers “a child’s physical, mental, spiritual, moral, psychological and social development.”<sup>18</sup> Implementation of Article 6 thus calls for measures that realize optimum development of children.<sup>19</sup>

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<sup>12</sup> Case of *Atala-Riffo and Daughters v. Chile*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct.H.R. (ser. C) No. 239 (24 February 2012) ¶ 271

<sup>13</sup> MADRE/IWHR CUNY. Memorandum via email. Follow up on Chile’s compliance with Court ordered reparations to Karen Atala and her three daughters (June 3, 2013).

<sup>14</sup> Skype Conversation with Karen Atala, Director at *Fundación Iguales*, Chile (June 29, 2015).

<sup>15</sup> Committee on the Rights of the Child, *Concluding Observations: Chile*, U.N. Doc. CRC/C/CHL/CO/3 ¶ 29 (2007)

<sup>16</sup> Decision by the Constitutional Court on January 4, 2011, Case #1683-2010

<sup>17</sup> CRC, *General Comment No. 13 (2011). The right of the child to freedom from all forms of violence*, U.N. Doc. CRC/C/GC/13, ¶ 3 (a)

<sup>18</sup> *Id.*, ¶ 62

<sup>19</sup> *Id.*, ¶ 62

In 2012, a report produced by the UN Educational, Scientific and Cultural Organization (UNESCO) qualified Chile as the Latin American country that presents the highest rate of bullying against LGBT students, citing that 68% of LGBT students in Chile have reported being victims of aggressions based on their sexual orientation or gender identity.<sup>20</sup> Furthermore, a 2013 report on the health of transgender individuals in Chile found that 50% of the transgender population has attempted to commit suicide and 87.5% has suffered from depression.<sup>21</sup> In a 2013 report, the Chilean Ministry of Health (Minsal) acknowledged that LGBT children are more prone to present ideas or to plan attempts of suicide. It also clarifies that social “acceptance” and support are protective factors.<sup>22</sup> Since 2007, LGBT people have gained visibility in Chile. However, this has also spurred radical opponents of LGBT rights and even exacerbated aggressions based on harmful stereotypes. Despite this reality, there are no government-initiated programs in Chile that specifically address the pervasive discrimination against LGBT children.

The necessity to protect LGBT children against discrimination has also been raised as a major concern by the Committee on previous occasions.<sup>23</sup> In the case of Chile, the Committee requested that: “specific information be included in the next periodic report on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party, to provide special protection to vulnerable groups.”<sup>24</sup> Because of the pervasive discrimination against children, programs designed to address discrimination on the basis of sexual orientation and gender identity are urgently needed. However, the State does not refer to this issue in its State Report.

In order to comply with the Convention, the State must fulfill its obligations to protect and restore the dignity and safety of LGBT children and adolescents. For this purpose, the Committee is explicit in highlighting that: “The concept of dignity requires that every child is recognized, respected and protected as a rights holder and as a unique and valuable human being with an individual personality, distinct needs, interests and privacy.”<sup>25</sup>

## Recommendations:

- Accelerate the passage of the reforms to the ADL and ensure that these effectively comply with international standards in terms of preventing, protecting and eliminating discrimination without exceptions.

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<sup>20</sup> UNESCO *Good Policy and Practice in HIV and Health Education. Booklet 8: Education Sector, Responses to Homophobic Bullying*, p.20 (2013) Available at: <http://unesdoc.unesco.org/images/0022/002229/222918S.pdf>

<sup>21</sup> Bockting, Walter and Joanne Keatley (2013) *Towards Trans People’s Health. Elements for the integral attention to trans people and their communities in Latin America and the Caribbean*. p. 51 Available at: <http://176.32.230.27/worldsexology.org/wp-content/uploads/2013/08/por-la-salud-de-las-personas-trans.pdf>

<sup>22</sup> Ministry of Health. National Program for Adolescent and Youth’s Integral Health. *Current Situation of adolescent’s suicides, with a gender perspective*. P.5 (December, 2013). Available at: <http://web.minsal.cl/sites/default/files/files/SituacionActualdelSuicidioAdolescente.pdf>

<sup>23</sup> See, for example: CRC, *Concluding Observations: UK*, ¶ 24 and 25 (b) UN Doc. CRC/C/GBR/CO/4 (20 October 2008) ; CRC, *Concluding Observations: Australia*, ¶ 30(f) UN Doc. CRC/C/AUS/CO/4 (28 August 2012).

<sup>24</sup> CRC, *Concluding Observations: Chile*, U.N. Doc. CRC/C/CHL/CO/3 ¶ 31 (2007)

<sup>25</sup> CRC, *General Comment No. 13 (2011). The right of the child to freedom from all forms of violence. Supra note 17* ¶ 3 (c)

- Ensure that the reform to the ADL includes an explicit reference to protected categories such as “gender identity” and “sexual orientation”.
- Amend Article 365 of the Penal Code in order to ensure that the minimum age for consent in sexual relationships does not discriminate against homosexual adolescent males.
- Ensure that trainings on gender identity, sexual orientation and LGBT human rights are provided to public officials, in accordance with the decision of the Inter-American Court in the case of *Atala Riffo and Daughter v. Chile*.
- Comply with the prompt creation of the Human Rights Subsecretariat that is in charge of coordinating public policies, especially directed to LGBT children and youth.
- Ensure that advocates for LGBT children and youth directly participate in the process of drafting, designing and monitoring public policy, that their voices are given due weight and that they are being respected and conceived as right holders.

## II. Civil Rights and freedoms (Articles 8 and 13-17)

### 1. The right to preserve gender identity for Youth

Under article 8, the Convention guarantees that every child has the right to preserve his or her identity. The Committee recognizes diversity among children and specifies that the definition of identity must contemplate “sex”, “sexual orientation” and “personality”, among others.<sup>26</sup> On similar grounds, the European Court asserted that States had no “margin of appreciation” to decide whether or not it should “enable individuals to live in dignity and worth in accordance with the sexual identity chosen by them at great personal cost”<sup>27</sup>, since legal protection against interference with one’s privacy should be given “to the personal sphere of each individual, including the right to establish details of their identity.”<sup>28</sup> On previous occasions, the European Court has further recognized the gravity of the problems faced by transgender people.<sup>29</sup> In regard to this concern, the UN Human Rights Committee called on States to “recognize the right of transgender persons to a change of gender by permitting the issuance of new birth certificates.”<sup>30</sup>

Under the current legislation (Act No. 17.344), persons who wish to change their name or sex in the national identity register must do so by filing a complaint before a civil court. Act No. 17.344 authorizes name changes exclusively when the name given to a person results in mockery or

<sup>26</sup> CRC, *General Comment No. 14* (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1). ¶ 55

<sup>27</sup> *Goodwin v United Kingdom*, App. No. 28957/95 (Eur. Ct. H.R. Grand Chamber, July 11, 2002), ¶ 74, 91

<sup>28</sup> *Id.* ¶ 90. See also: *I v. United Kingdom* App. No. 25680/94 (Eur. Ct. H.R. Grand Chamber, July 11, 2002) ¶ 73.

<sup>29</sup> See: *Rees v United Kingdom*, App. No. 0532/81 (Eur. Ct. H.R. (plenary) October 17 1986); *Cossey v United Kingdom*, App. No. 0532/81 (Eur. Ct. H.R. (plenary) September 27, 1990); *X, Y and Z v United Kingdom*, App. No. 21830/93 (Eur. Ct. H.R. Grand Chamber, April 22 1997); *Sheffield and Horsham v United Kingdom*, App Nos 22985/93, 23390/94 (Eur. Ct. H.R. Grand Chamber July 30, 1998).

<sup>30</sup> Human Rights Committee, *Concluding Observations: Ireland*, UN Doc. CCPR/C/IRL/CO/3 (30 July 2008) ¶ 8

ridicule of that person and threatens his or her moral integrity, or when a person has been known by a different name for more than five consecutive years.<sup>31</sup> The procedure established through this law implies not only tremendous economic costs, but also long periods of waiting time. Similarly, the decision as to whether a person may or may not legally change her or his name and sex depends upon the discretion of a judge.<sup>32</sup> There have been few occasions in which name and sex change in the civil registry have been approved. These approvals have usually been granted after the solicitor has undergone long periods of hormonal treatment, as well as sex reassignment surgeries. However, these procedures require a prior medical diagnostic, are difficult to access because of their high costs, and are not necessarily desired by transgender persons.<sup>33</sup>

There have been several cases in Chile that have raised visibility of the issues of children's gender identity.<sup>34</sup> However, a law that publicly recognizes and legitimates transgender people as full citizens and rights holders, does not exist.

In May 2013, a Bill for the Recognition of Gender Identity (Bill N° 8.924-07) was introduced to Chile's Congress. The bill was then passed on to the Human Rights Commission of the Senate, where a number of recommendations and articles to strengthen it were approved, including specific protections for transgender children and adolescents, such as the right to gender identity and the adoption of the Yogyakarta Principles' definition of gender identity. The bill has also eliminated the requirements of surgery or psychological/psychiatric certification in order to be able to make a name and sex change. It further eliminated the element of judicial processing, through which a lawyer was needed, and declared that the family courts would be in charge of the procedures of name and sex change.<sup>35</sup>

While these have been important achievements, the bill has still not been enacted into law. Senator Jacqueline Van Rysselbergue -- President of the Senate's Human Rights Commission-- has publicly expressed her opposition to the Gender Identity Law. She has also refused to discuss Bill No. 8.924-07, causing major delays in its passage.<sup>36</sup> As a result of this delay, many transgender children in Chile remain invisible, unable to access and exercise their rights to freedom of expression, privacy and preservation of identity.

## **Recommendations:**

- Pass the Bill for the Recognition of Gender Identity (Bill N° 8.924-07).
- Develop and implement trainings on the Bill for the Recognition of Gender Identity for government officials at all levels to ensure that every child is recognized as a full citizen and rights holder, and entitled to a life of dignity. Such trainings should, among other

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<sup>31</sup> MOVILH, XIII Annual Report on the Human Rights of Sexual Diversity in Chile. 2014 Facts, p. 178 (2015) Available at: <http://www.movilh.cl/documentacion/2014/XIII%20Informe%20de%20DDHH%202014-web.pdf>

<sup>32</sup> *Id.*

<sup>33</sup> MOVILH. Towards a Diverse Chile: Proposals against discrimination, p. 44 (2013) Available at: [http://www.movilh.cl/chilediverso/Por\\_un\\_Chile\\_Diverso-Propuestas\\_contra\\_la\\_discriminacion.pdf](http://www.movilh.cl/chilediverso/Por_un_Chile_Diverso-Propuestas_contra_la_discriminacion.pdf)

<sup>34</sup> See, for example the case of Andy in the next section of this report.

<sup>35</sup> Andrés Rivera. *Chile's Gender Identity Bill: Two years later* (08 May 2015) Available at: <http://iglhr.org/content/chile%E2%80%99s-gender-identity-bill-two-years-later>. Accessed: 24, June, 2015.

<sup>36</sup> *Id.*

things, aim to sensitize judges thereby limiting their discretion when determining whether a person may change their name or sex.

### III. Education (article 28 par 2 and article 29)

#### 1. Transgender children are often deprived of their right to education

Transgender children and youth often face multiple barriers in relation to education. In Chile, 60% of the transgender population has never finished studies that go beyond basic education.<sup>37</sup> Similarly, only in the city of Santiago, 81.2% of the transgender population has not been able to access higher education.<sup>38</sup> Such drastic statistics stem from harmful patterns of discrimination and violence that transgender youth face within schools. Transgender children and adolescents are often exposed to bullying, isolation and marginalization that are grounded in long-standing cultural transphobia. The effects of such discrimination and violence can be prolonged throughout their childhood and adulthood. Consequences are likely to include attempts at suicide.<sup>39</sup>

The following example illustrates this situation:

#### Andy\*

When Andy was born she was assigned a male sex and the name Baltazar in her identity register. When she learned how to talk, she started to use the pronouns “she” and “her” to refer to herself. One day, she asked her mother why God had made her a boy, when she identified as a girl. As she grew up, her parents noticed that she was not comfortable with the gender identity that was imposed upon her; Andy disliked leaving her house and rejected playing games traditionally associated with boys. Her family decided to reach out for help, eventually deciding to support her decision to embody the gender identity that she explicitly identified with. Andy’s parents presented medical certificates soliciting that the Pumahue School in Chicureo let Andy use the uniform and bathroom assigned for girls, as well as call her by her chosen name. However, the school responded that they could not accept Andy within their institution, claiming that they wanted to protect “Baltazar” against arbitrary discrimination from “his” peers.<sup>1</sup> Accordingly, Andy’s parents filed a civil suit against the institution, which is still being processed.

\* Available at: <http://www.13.cl/programas/contacto-t25/capitulos/mi-hija-es-transgenero>

<sup>37</sup> Bockticking, Walter and Joanne Keatley (2013) *Towards Trans People’s Health. Elements for the integral attention to trans people and their communities in Latin America and the Caribbean.* p. 51 Available at: <http://176.32.230.27/worldsexology.org/wp-content/uploads/2013/08/por-la-salud-de-las-personas-trans.pdf>

<sup>38</sup> *Id*

<sup>39</sup> UNICEF. *Eliminating discrimination against children and parents based on sexual orientation and/or gender identity.* Current Issues, No. 9 (November 2014), p 3. Available at: [http://www.unicef.org/esaro/Current\\_Issues\\_Paper-\\_Sexual\\_Identification\\_Gender\\_Identity.pdf](http://www.unicef.org/esaro/Current_Issues_Paper-_Sexual_Identification_Gender_Identity.pdf)

The widespread discrimination and violence that confronts transgender youth in educational environments severely impedes their ability to lead fully developed and dignified lives. Educational institutions should strive to promote respect for the rights of every child, irrespective of their sexual orientation and gender identity, and encourage every child to freely express who they are. By denying access to or not guaranteeing permanence in education for transgender children, Chile is violating articles 28 par. 2 and 29 of the present Convention.

## **Recommendations:**

- Guarantee that all LGBT youth have access to education, without discrimination based on their perceived or real sexual orientation, gender identity, or gender non-conformity.
- Design and implement campaigns to promote the effective application of the principle of non-discrimination within the education system in relation to transgender children and youth, ensuring that they are heard and respected.
- Provide appropriate gender sensitivity training to teachers to reduce discrimination against transgender children and youth in schools.

## **IV. Family environment and alternative care (arts. 5, 18 and 21)**

### **1. Adoption in relation to same-sex civil unions**

In its preamble, the Convention highlights that “the child, for the full harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding”.<sup>40</sup> However, an alarming number of children in Chile have been placed into institutional and foster care, and grow up in environments where they are unable to achieve such development.<sup>41</sup>

On April 13, 2015 Chile approved Act No. 20.830, which allows same-sex couples to form civil unions, and specifies that these partnerships constitute a family. Despite this advance, under Chilean law same-sex couples continue to be prohibited from adopting children--a right only enshrined for those who can get married. In determining adoptions, authorities must account first and foremost for the best interest of the child in question. By prohibiting same-sex couples from adoption, the State of Chile is not only violating the principle of non-discrimination, but further

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<sup>40</sup> Convention on the Rights of the Child. Preamble.

<sup>41</sup> UNICEF, *2014- 2017 Childhood Agenda. Challenges and Proposals*, p. 15 (2013) Available at: [http://www.unicef.cl/web/wp-content/uploads/doc\\_wp/Agenda%202014%202017.pdf](http://www.unicef.cl/web/wp-content/uploads/doc_wp/Agenda%202014%202017.pdf). According to the United Nations Children’s Fund (UNICEF), by the end of 2012, there were 3,445 children and adolescents fostered by families. Among them, 583 were under 3 years old. Additionally, at that time, there were 9,312 children and adolescents in residential care, including 849 who were under 3 years old as well as 950 children and adolescents in the National Service for Minors (SENAME) centers of attention. Among them, 163 were under 3 years old. Between January 2012 and December of 2012, 14,677 children and adolescents were placed in residential care, including 1,575 children under 3 years old, and 3,675 children and adolescents were registered in the SENAME’s centers of attention, including 454 who were under 3 years old. In the same period, 5,121 were placed in foster families, including 1,575 under 3 years of age.

prioritizing traditional family arrangements over a child’s wellbeing, denying the possibility of healthy, family environments, and full harmonious development to countless children in need.<sup>42</sup>

In previous Concluding Observations, the Committee has asserted that: “the human rights of children cannot be realized independently from the human rights of their parents, or in isolation from society at large”<sup>43</sup>. In this regard, couples who have formed civil unions and have proven to be able to satisfy a child’s physical, spiritual, emotional, intellectual and social needs, should be granted the right to care for that child, when this is in accordance with the child’s best interests.

## **Recommendations:**

- Revise legislation on adoption to guarantee persons who are in civil unions the same right to adopt as those persons who are married.

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<sup>42</sup> Skype Interview with Karen Atala, Director at *Fundación Iguales*, Chile (June 29th, 2015)

<sup>43</sup> See for example: Committee on the Rights of the Child, *Concluding Observations: Uzbekistan* U.N. Doc. CRC/C/15/Add.167 ¶ 35, (2001); Committee on the Rights of the Child, *Concluding Observations: Saudi Arabia* U.N. Doc. CRC/C/15/Add.148 ¶ 31 (2001).



