



## **Human Rights Situation of LGBTI Persons in Paraguay**

### **Report submitted to the Human Rights Committee**

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***Report presented by:***

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Aireana – Grupo por los derechos de las lesbianas; Akahatá – Equipo de trabajo en sexualidades y géneros; Synergia – Initiatives for Human Rights, and the SRI – Sexual Rights Initiative; are honored to present the following list of issues to the Human Rights Committee with the aim of assisting the Committee in reviewing the implementation of the International Covenant on Civil and Political Rights by the State of Paraguay.

### **List of suggested issues**

**Right to equality before the law and to equal protection of the law without any discrimination. Right to life, right to be free from torture.**

**Article 2 – Right to nondiscrimination**

**Article 3 – Right to equality**

**Article 6 – Right to life**

**Article 7 – Right to be free from torture**

**Article 26 – Right to equality before the law and to equal protection of the law without any discrimination**

1. The Constitution of Paraguay guarantees equality for all persons and prohibits discrimination (art. 46). However, the law does not define discrimination nor provides any legal mechanism or public policies to eradicate it. In 2014, the Senate held a debate over a bill against all forms of discrimination, but it was rejected by 21 votes against it versus 17 in favor of it –none of them from the ruling party. The State has offered no explanations nor alternatives after the rejection of the bill. When asked about it, the State refers to the current National Plan on Sexual and Reproductive Health, from the Ministry of Health, without any mention to concrete measures to prevent discrimination against LGTBI persons.
2. The lack of a law against all forms of discrimination creates a vacuum, because there is no concrete mechanism to effectively protect LGTBI persons or any person who faces discrimination on other grounds so they can file a demand; to denaturalize discrimination; to foster reflections within institutions and business companies; to raise awareness about, educate in and prevent the violence produced by discrimination; to penalize those who exert it; and to establish effective mechanisms for the reparation of the affected persons.
3. The lack of a mechanism to report discrimination leaves the resolution of the cases to the good will of civil servants in the institutions. There is a need for a comprehensive law against all forms of discrimination, including all the areas of the lives of people: it must include the areas of health, education, work, politics, family, the social and recreational spaces, among others.
4. When it comes to legislation, in addition to the lack of the aforementioned law against all forms of discrimination, LGTBI persons are affected in their right to equality due to the lack of protective laws regarding the following issues: a) Lesbian or gay couples do not have any of their rights protected, because there is no legal recognition of their unions; b) Families formed by lesbian mothers or gay fathers are legally unprotected. There is no legal explicit guarantee for lesbian mothers and gay fathers that they are not to be deprived of their right to cohabit with their children on the grounds of their sexual orientation. Nor there is any legislation recognizing the affective relationship between

lesbian or gay couples and their children, which would allow for the survivor partner to assume the guardianship of their children in case the biological parent dies.

5. In Paraguay, there is no possibility for trans persons (*travestis*, transgender, transsexual) to change their legal names. In 2017, members of the organization Panambi<sup>1</sup>, together with the Instituto de Estudios Comparados en Ciencias Penales y Sociales (INECIP), filed two lawsuits before the Civil and Commercial Court of Asunción requesting the changing of their names, on the basis of articles 25 and 42 of the National Constitution; article 45 of the Civil Code and articles 117 and 119 of the law of the Civil Registry<sup>2</sup>. No change in the sex designation was asked for, only the name. In one of those cases, the judge decided to admit the name change. However, the Office of the Public Prosecutor appealed the sentence and the case was turned to the Civil Courts of Appeals. The judges to decide for or against the petition were designated in 2018, but there have been no results until now.
6. Crimes against LGTBI persons are made invisible and covered with impunity, because hate crimes are not a criminal offense in the Penal Code. Discrimination on the grounds of sexual orientation and gender identity or expression is not categorized as an aggravating circumstance.
7. The State does not offer security for LGTBI persons who report physical violence and hate crimes. This fact fosters impunity, because no crime is investigated, prosecuted and – eventually– punished. The few cases for which a prosecution has been opened, have not been resolved. Since 1999 until now, the organizations of trans persons have registered 60 murders of trans persons that have not been investigated and most of them have been archived soon after the murders were perpetrated, with no significant efforts put in the investigation, showing a lack of will on the part of the State.
8. One of those cases of murders against trans persons is that of Ada Mía Naomi Gómez, from Paraguari<sup>3</sup>, who was killed on August 27, 2018. She first received four slashes with a machete in her head. Then, the assailant carried her to a deserted place, took her into a wooded area and burned her up. The body was found in the Naranjo company, in Piribebuy, in an advanced state of decomposition. The head and the limbs were completely burnt. Over the body of the victim, her motorbike was also burned up. The man suspected of the hate crime was apprehended in Naranjo. He was then moved to the Ñuati police station and some evidences of the crime collected at the crime scene were sent to the Office of the Public Prosecutor of Caacupé. LGBTI organizations are waiting for the preliminary hearing, when it will be decided if an oral trial of the case is carried out.

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<sup>1</sup> [www.panambi.org.py](http://www.panambi.org.py)

<sup>2</sup> National Constitution, Article 25 – ABOUT THE EXPRESSION OF PERSONALITY: Every person has the right to the free expression of his/her personality, to creativity and to form his/her own identity and image; Article 42: Every person has the right to a name and a surname, which ought to be recorded in the Civil Status Registry. Only a judge may give permission, with a fair cause, to make changes or additions to the name and surname; Civil Code, Article 45: The change or addition to the name does not affect the status nor the civil condition of he who gets it, nor does it constitute a proof for parentage; Law of the Civil Registry, Article 117: Once a birth certificate is issued and signed, it shall not be subjected to any change nor addition, unless a judicial order indicates so, or when some omission or material mistake is noted and can be mended while the appearers and the witnesses are still present. In this case, corrections or additions may be made immediately after the signature and the act must be signed by all those taking part in the inscription; Article 119: Interested persons or their heirs may ask for the correction of a birth certificate before the Civil First Stance Judge of the place where the birth certificate was issued or before the judge corresponding to his address. The procedure shall be expeditious, with the intervention of the Office of the Public Prosecutor.

<sup>3</sup> Posa Guinea et al (2018) “Más sometido que soberano: el estado paraguayo se cierra a los derechos de las personas LGTBI”. In *Yvy póra Derécho Paraguáipe - Derechos Humanos en Paraguay 2018* (pp 93-106) Asunción. Codehupy

9. Another paradigmatic case was that of the murder of Nicol Ferreira, from the city of Obligado (Itapúa), who on September 28, 2018, was found dead at her home from eight stab-wounds. Her neighbors reported she was a “very respectful and sociable” girl. They also said they saw two men leaving her house in a motorbike in the night of that same date. The hypothesis of robbery was discarded, because the belongings of the victim were found at the place<sup>4</sup>. Until now, there has been no progress in this case.
10. Educational institutions expel lesbian, bisexual and trans women when they publicly express their identity, alleging offenses to morals and good manners and invoking religious principles. In addition to that, more and more commercial establishments expel LGTBI couples at the least public demonstration of affection. The more frequent pretext is the presence of children in the place. Reports of this kind of incidents have raised after the new government took office, which from the beginning declared itself “pro-life and family” from a conservative and heteronormative perspective, ignoring family diversity within the Paraguayan society and the richness that diversity brings to society.

## **Recommendations**

We ask the State of Paraguay:

11. To carry out concrete actions for the passing and implementation of the bill against all forms of discrimination.
12. To pass the bill against all forms of discrimination, meeting the several recommendations made by the mechanisms that monitor human rights instruments, specifically including sexual orientation and gender identity among the prohibited grounds for discrimination in the law, in keeping with international standards.
13. To adopt measures to prevent and penalize violence and discrimination against the LGTBI population, both in the public and private fields, and to inform about the measures taken to clear up cases of violence against LGTBI persons in order to eradicate impunity.
14. To establish and to implement measures of nondiscrimination on the grounds of sexual orientation or gender identity in the new National Plan on Sexual and Reproductive Health 2019-2023.
15. To include in the laws the legal protection and recognition of same-sex unions; protection and recognition of lesbian and gay families; and the recognition of identity for trans persons, as well as the protection of the rights of intersex persons.
16. To command the Ministry of Education and Science to produce and implement a protocol to address cases of discrimination based on sexual orientation, gender identity and expression in the educational institutions under its authority, with the aim of preventing dropping out of school by persons who are entitled by the Constitution to access to mandatory and free education up to ninth grade.
17. To command the Ministry of Industry and Commerce and the Ministry of the Treasury to establish a mandatory nondiscrimination protocol including nondiscrimination on the

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<sup>4</sup>Ibid, Posa Guinea et al (2018)

grounds of sexual orientation, gender identity and expression and making that protocol a requisite to grant operation licenses to industrial and commercial establishments across the country.

18. To implement, through the Offices of the Governors and the municipalities across the country, awareness and education campaigns against all forms of discrimination, including discrimination based on sexual orientation, gender identity and expression.

## **Arbitrary detentions of lesbians and trans**

### **Article 9 – Liberty and security of person – Prohibition of arbitrary arrest or detention.**

19. Arbitrary detentions of lesbians and trans persons are still pervasive across the country and remain in complete impunity. Sometimes, victims go to lesbian and trans organizations to document detentions and to seek for some kind of protection. In the cases documented by the organizations until now, victims fail to file a report with official entities due to fear not only of impunity but also of backlash.

20. Among the cases of arbitrary detentions of lesbians and trans persons during 2018, we can note the following: “Sofía<sup>5</sup> is from the department of Misiones, she is 21 years old, she used to live with her grandfather, a sister and a brother until May of this year. She suffered violence and harassment from them since the moment she told them she is a lesbian. She has a 2 years old son. An aunt of her took the boy to live with her, alleging Sofia would not be capable of supporting him nor of caring for him. By the end of April, 2018, her grandfather tried to choke her and beat her so badly he dislocated one of her shoulders. She stayed some days in Asunción, waiting for things to calm down and giving time for her mother to arrive at Misiones. On May 15, Sofia’s stepfather and brother beat her again, breaking a chair on her head. Her mother tried to defend her, but was also beaten. The police intervened and took Sofia to the hospital and the stepfather and brother to the police station of Santa María Misiones. Once out of the hospital, Sofia went to the police station to report the case, but the police arrested her and set the stepfather free. Her family accused Sofia of intra-familial violence and she was kept in jail overnight, prevented from changing her bloodstained clothes and enduring cold. Sofia’s lover called to “Rohendu”<sup>6</sup> to ask for help. This service got in touch with the direction of Human Rights of the Office of the Public Prosecutor and the National Mechanism for Torture Prevention but did not get any effective answer. Eventually, Sofia was released and decided to move to other city, to safeguard her integrity and her life. The report from the family has been made void”<sup>7</sup>.

21. Contrary to what is established through Res. N° 1344/15<sup>8</sup> of the National Police, backed by the Ministry of Home Affairs, LGTBI persons keep being arbitrary arrested, without complying with due process, because this detentions are carried out within a frame of

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<sup>5</sup> Sofia is a fantasy name, used to protect the identity of the person.

<sup>6</sup> A helpline for LGTBI persons hold by the organization AIREANA.

<sup>7</sup> Posa Guinea et al (2018) “Más sometido que soberano: el estado paraguayo se cierra a los derechos de las personas LGTBI”. In *Yvypóra Derecho Paraguáipe - Derechos Humanos en Paraguay 2018* (pp 93-106) Asunción. Codehupy

<sup>8</sup> Resolution N° 1344/15 establishing the minimum conditions for the deprivation of liberty in police stations and the institutional communications mechanism to ease the right to legal representation and the meeting of due procedural dates. Available in <http://www.policianacional.gov.py/wp-content/uploads/2018/03/RESOLUCION-1344-CONDICIONES-MINIMAS-DE-PRIVACION-LIBERTAD-EN-DEPENDENCIAS-POLICIALES.pdf>

power abuse on the part of the police. The vulnerability in which LGBTI persons are kept is the key allowing these ongoing abuses.

## **Recommendations**

We ask the State of Paraguay:

22. To take urgent and concrete measures to eradicate arbitrary detentions based on sexual orientation, gender identity or expression.
23. To implement effective mechanisms to help LGBTI persons to get access to justice, allowing the victims to report arbitrary detentions in a safe manner, among other crimes perpetrated against them.
24. To carry out, through the Ministry of Home Affairs a campaign to disseminate Resolution N° 1344/15<sup>9</sup>, which establishes the minimum conditions that have to be met for deprivations of liberty within police stations and the institutional communications mechanism to secure the right to defense and the observance of the due procedural dates, addressing both the National Police and society at large.
25. To take any necessary measures to effectively comply, through the Ministry of Justice, with Resolution 72/12 from the Direction of Correctional Facilities and Penal Execution, which establishes the regulations for private visits in correctional facilities across the country, disseminating it in all correctional facilities across the country and fixing penalties for those jails which directors do not abide by this rule.

## **Liberty and security of person and human treatment of persons deprived of liberty Denegation of private visits to lesbians deprived of their liberty**

### **Article 2 – Right to nondiscrimination**

### **Article 10 – Right to decent conditions of detention**

### **Article 26 – Right to equality before the law and to equal protection of the law without any discrimination**

26. Up to date, the Paraguayan State has not given lesbians access to private visits that are granted to persons deprived of their liberty, in spite of the regulation in force, which contemplates this through Resolution 72/12 from the Direction of Correctional Facilities and Penal Execution, setting the regulation for private visits in all correctional facilities across the country. In April, 2015, the New Penal Execution Code came into force, removing the restriction of private visits to opposite-sex couples and recognizing the principles of equality and nondiscrimination. Art. 131 of the New Penal Execution Code establishes that private visits should proceed in accordance to that ruled in the regulations<sup>10</sup>.

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<sup>9</sup> <http://www.policianacional.gov.py/wp-content/uploads/2018/03/RESOLUCION-1344-CONDICIONES-MINIMAS-DE-PRIVACION-LIBERTAD-EN-DEPENDENCIAS-POLICIALES.pdf>

<sup>10</sup> Since March, 2012: resolution N° 72/12 from the Direction of Correctional Facilities and Penal Execution of the Ministry of Justice and Labor establishes the new operation forms for the benefit of private visits in women prisons of the Republic, and opens the possibility for same-sex couple to access private visits because it does not specify gender nor sex of the couples and guarantees nondiscrimination.

27. Claiming for their rights, in November, 2015, 10 women deprived of their liberty in the Buen Pastor prison asked the director of the prison to be granted permission to receive private visits from their female partners. In December, 2015, the prison's director rejected the petition based in a 1970 law of penal execution, already repealed by the National Constitution. Between January and September, 2016, many lobby actions were carried out and meetings with the prison authorities were asked for, with no concrete results.
28. Taking all these facts into account, in October, 2016, one of the inmates of Buen Pastor prison, represented by lawyers from Aireana, filed a petition with the Execution Court of Fernando de la Mora, asking for access to private visits with her partner, also an inmate in that prison. The petition was rejected in December, 2016, because the judge argued that the requirement for a "visit" was not met since both women in the couple were inmates. Once the rejection was issued, it was appealed, but the petition was rejected again in May, 2017, arguing that for the visit to be granted the persons have to be "spouses" as they are defined in the Civil Code and therefore that benefit could not be granted to same-sex couples. This decision exhausted the national judicial resources, and therefore in December, 2017, petition P-2350-17 was filed with the IACHR and it is still being processed.
29. When asking for their right to private visits –based in Resolution N° 72/12<sup>11</sup> from the Direction of Correctional Facilities and Penal Execution of the Ministry of Justice and Labor– many lesbians deprived of their liberty received a negative response because prison directors are afraid of the reaction that this may provoke in the religious institutions, particularly the reaction of the Catholic Church. This reveals the great power the government gives to religious institutions, disregarding that the National Constitution of Paraguay establishes that the country is a secular state, and thus denying and violating fundamental rights of its citizens.

## **Recommendations**

We ask the State of Paraguay:

30. To apply the 2012 regulation (Resolution 72/12 from the Direction of Correctional Facilities and Penal Execution, establishing the regulation for private visits in all correctional facilities across the country) for private visits for lesbians deprived of their liberty, aiming at guaranteeing access to this right without any discrimination, because the regulation does not specify sex nor gender of the visiting person.

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<sup>11</sup> - Resolution N° 72/12, establishing new operation forms for the benefit of private visits in women prisons in the republic.