



Human Rights Situation of Lesbian, Bisexual and/or Trans Women in Uruguay

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List of suggested issues presented to the Working Group on Uruguay's Report

Committee on the Elimination of Discrimination against Women

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Colectivo Ovejas Negras; Akahatá – Equipo de trabajo en sexualidades y géneros; Synergia - Initiatives for Human Rights; and the SRI – Sexual Rights Initiative are honored to submit the following list of issues to the Committee on the Elimination of Discrimination against Women with the aim of assisting the Committee in the formulation of the List of Issues to follow up the implementation of the Convention on the Elimination of All Forms of Discrimination against Women by the State of Uruguay.

Introduction

1. During the past years, significant advances had been achieved by Uruguay regarding laws, public policies and institutional policies¹, aiming to guarantee human rights for LBT² persons, in accordance with its Constitution, which enshrines equality for all people³. However, difficulties affecting women, and particularly LBT women, are still present in Uruguay. Several civil society organizations will submit reports on the situation of women, so we would like to contribute a focus on the following issues which affect especially LBT women:
 - a. Discrimination regarding legal recognition of the children of lesbian and/or bisexual mothers
 - b. Violence and killings of trans women due to their identity, sexual orientation and/or gender expression.

Discrimination regarding legal recognition of the children of lesbian and/or bisexual mothers

Article 2 (a), (b), (c) and (d) – Policy Measures

Article 3 – Guarantee of human rights and fundamental freedoms

Article 5 – Prejudices and stereotypes

Article 15 (1) and (2) – Equality before the law

Article 16 (1) – Marriage and family

2. During the last years, the law has expanded the legal recognition of rights for LBT women in Uruguay. Law N° 18.246 of Cohabiting Unions (2007) acknowledges, among others, the union between lesbian and/or bisexual women and for trans women, their heterosexual unions⁴; Law N° 19.075 of Egalitarian Marriage (2013) includes the natural recognition of couples formed by women when children are born within marriage and Law N° 19.167 of Human Assisted Reproduction (2013) allows women (both those who are into civil unions and those who are alone) to access low-complexity fertility treatments through their health

¹ To mention the more important ones: Law N° 17.817 (2004) Struggle against racism, xenophobia and discrimination; Law N° 18.246 (2008) of Cohabiting Unions, which legalizes same sex couples; Law N° 18.590 (2009) Childhood and Adolescence Code, allowing adoption by same sex couples; Law N° 18.620 (2009) Right to Gender Identity and to Change Name and Sex in Identification Cards; Law N° 19.075 (2013) Egalitarian Marriage; Law N° 19.167 (2013) Human Assisted Reproduction Technologies; Decree N° 321/015 (2015) Creation of the National Coordinating Council on Sexual Diversity Public Policies; Supreme Decree N° 189/017 (2017); Law N° 19.684 Comprehensive for Trans Persons (2018), abolishing the former Gender Identity Law.

² Lesbians, bisexuals and trans*. Trans* person encompasses all manifestations of existence such as transsexual, transgender, travesti and other variations which clearly depend on the self'-perception of the person in question.

³ Constitution of the Eastern Republic of Uruguay (1967) art. 7 and art. 8.

⁴ In the normative in force at that time, trans* women were not considered women, and therefore couples formed by a man and a trans* woman were classified as couples formed by men.

care providers with a minimum fee and to access high-complexity fertility treatments through the National Resources Fund⁵.

3. Although, as already mentioned above, the law considers the case of couples formed by two women when it comes to access to reproductive technologies, there are some cases that have not been considered by the law regarding legal recognition of children, since when marriage was not entered into before childbirth, only the birth mother can have her bond with her child legally recognized. This results in a difference when compared to heterosexual relationships regarding children legal recognition and compromises the rights of both the mothers and the children.
4. The genetic relationship of a newborn to a male parent, in case there is one registering the birth, is not called into question when the birth certificate of the newborn is being issued. But when the one willing to recognize a child as own is a woman, a marriage union to the birth mother is put upon her as a requirement.
5. There is no public campaign giving visibility or acknowledging that two women can be mothers of the same person(s). In its Concluding Observations on the eighth and ninth combined periodic reports of Uruguay, this Committee recommended to the State to “adopt a strategy to improve women’s awareness about their rights and the means to claim them”⁶. It should be mentioned that health centers do not have signs nor leaflets providing information on the possibility for couples formed by two women to access human assisted reproduction. During pregnancy checkups and deliverance, visibility and recognition of this situation is also lacking.
6. This situation reached public attention in 2018 when the story of a couple of two women received space in the media because the non-birth mother was not able to legally recognize her newborn daughters⁷.

Questions to the State

7. Which measures are going to be adopted by the State to guarantee couples of women a treatment equal to that received by heterosexual couples when it comes to legal recognition of their children?
8. Does the State of Uruguay plan to perform a needed reformulation of the current parentage normative in a way that includes *de facto* couples formed by women?
9. Which are the public policies and visibility campaigns planned by the State to foster recognition and to eradicate discrimination against co-maternity?

⁵ The National Resources Fund (FNR, for its Spanish acronym) is an institution created by decree Law 14.897 as a non-state public person, providing financial coverage for highly specialized medical procedures and for high cost medicines for the whole population living in the country and registered as users of the National Integrated Health System.

⁶ CEDAW/C/URY/CO/8-9 par. 12b; July25, 2016.

⁷ El País: <https://www.elpais.com.uy/informacion/judiciales/lucharon-madres-reconoce.html> published on 10/03/2018.

Violence and killings against trans* women due to their identity, sexual orientation, and/or gender expression.

Article 2 (d) and (e) – Policy Measures

Article 3 – Guarantee of human rights and fundamental freedoms

Article 5 (a) – Prejudices and stereotypes

Article 15 (1) and (4) – Equality before the law

General Recommendation 19 and 35.

10. Uruguay has passed laws recognizing gender identity of trans women (Law N° 19.684 Comprehensive for Trans Persons – 2018⁸) and it has other laws that include report mechanisms of discrimination cases, such as Law N° 17.817 (2004) to Fight Racism, Xenophobia and Discrimination. Besides, Law N° 19.580 of Violence against Women based on Gender (2018) includes trans women.
11. This current legislation about discrimination and rights recognition notwithstanding, trans women keep being subjected to discrimination by different parts of the Uruguayan society due to their gender identity, sexual orientation, gender expression and/or any other public manifestation which departs from heteronormative standards.
12. Civil society organizations have been vocal in marking that these situations are distinguished by their high content of violence and cruelty, a fact supported by the ongoing reports of bigoted attacks received both by civil society organizations and by the National Institution of Human Rights and the Ombudsperson⁹. The situation, which can be described as systematic violence, has been of concern also for several institutions and bodies of the international system¹⁰.
13. Law N° 17.817 establishes the struggle against all forms of discrimination as a national priority, but it does not criminalize any form of discriminatory acts, neither in general nor in specific terms and no other law does. In cases of violence against LBT women based on their gender expression or identity or sexual orientation, the only available resource is to consider them as the crime of committing or incitement to commit acts of hate, despise or violence which are statutory offences in the Penal Code¹¹. However, courts rarely apply these norms, partially due to the severity of the sentences associated to these crimes and therefore the most frequent result is impunity.

⁸ It abolishes the former Law N° 18.620 of Gender Identity (2009)

⁹ VI Informe Anual (2017, VI Annual Report) of the Institución Nacional de Derechos Humanos y Defensoría de Pueblo (National Institution for Human Rights and Ombudsperson). See: <http://inddhh.gub.uy/wp-content/contenido/2018/06/Informe-Anual-2017-INDDHH.pdf>

¹⁰ See: UN Human Rights Committee. Concluding observations on the fifth periodic report of Uruguay (2013). CCPR/C/URY/CO/5. December 2, 2013, par. 12.

UN High Commissioner for Human Rights, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, A/HRC/19/41, November 17, 2011, par. 22; UN High Commissioner for Human Rights, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23, May 4, 2015, par. 23.; Inter-American Commission of Human Rights. *Violence against LGBTI persons*. OAS/Ser.L/V/II.rev.1. Doc 36, November 12, 2015.

The UN Special Rapporteur on Violence against Women has noted that homicides based on gender attributable to sexual orientation and gender identity are characterized by a serious degree of physical violence, which in some cases is higher than that found in other hate crimes. Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, A/HRC/20/16, May 23, 2012, par. 71.

¹¹ Penal Code N° 9.155 art. 149 bis and ter.

14. As it is stated in the Concluding Observations made by this Committee on the combined eighth and ninth periodic reviews of Uruguay¹², it is remarkable “the lack of a specific mechanism to report cases related to all forms of discrimination based on gender”, as well as “the limited access of women to legal representation and to information on the mechanisms available to them within the justice system”.
15. Taking into account that the mechanisms to report discrimination are in themselves intricate, especially regarding dissemination and knowledge about their procedures, LBT women face obstacles impairing their access to them. This has serious consequences, especially for trans women regarding their access to justice, a fact worsened by the situation of extreme social and economic vulnerability in which the majority of that population lives¹³.
16. Often, the lives and physical integrity of trans women are put at risk by the violence and discrimination they experience. Due to the lack of effective public prevention policies and of a comprehensive approach of access to justice, the State does not provide trans women enough guarantees to revert the situation of serious vulnerability they experience. As already expressed by the Committee¹⁴, it is of extreme concern that attacks, extreme violence and even femicides perpetrated against trans women remain unsolved and without investigation, leading to total impunity for perpetrators.
17. One particular case deserves special mention – a few days after the Comprehensive Law for Trans Persons was passed, a trans woman was brutally attacked on the solely grounds of her identity, sexual orientation and/or gender expression, and was forced to leave the place to save her life.

Questions to the State

18. Which measures are going to be adopted by the State to guarantee trans women their due access to justice in cases of discrimination based on identity, sexual orientation, and/or gender expression?
19. Which specific measures in the field of legislation and public policies are going to be adopted by the State to prevent violence and killings against trans women across the country?
20. Which measures are going to be adopted by the State to guarantee the full investigation of those killings of trans people that are still unpunished and the application of the due sentences to the perpetrators of transphobic hate crimes, in addition to the proper reparation for the victims?
21. Which measures are going to be adopted by the State to guarantee that the cases of violence and discrimination based on sexual orientation and gender identity will be investigated according to due process to guarantee the perpetrators will be taken to trial

¹² CEDAW/C/URY/CO/8-9 par. 13 c and d; July 25, 2016.

¹³ MIDES (2017) Sistematización del proceso del Censo de Personas Trans en Uruguay (Systematization of the process of Trans Persons Census in Uruguay). See: <http://www.mides.gub.uy/innovaportal/file/90072/1/fasciculo-1-censo-trans-web.pdf>

¹⁴ CEDAW/C/URY/CO/8-9 par. 19 c; July 25, 2016.

and –if found guilty– punished with sentences appropriate to motivations based specifically on discrimination, as well as providing the victims with suitable reparations?

22. Which measures are going to be adopted by the State to update its legal instruments and specifically criminalize discrimination, in accordance to the dispositions of Law N° 17.817, which establishes the struggle against all forms of discrimination as a national priority?