



GLOBAL INITIATIVES
FOR HUMAN RIGHTS
A **HEARTLAND ALLIANCE** PROGRAM



Grupo por los derechos de las lesbianas

Con la colaboración de



**Discrimination based on sexual orientation and gender identity in
PARAGUAY**

Suggested issues to be submitted to the Working Group on Paraguay

Human Rights Committee

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Civil society organizations *Aireana, grupo por los derechos de las lesbianas* (Lesbian Rights' Group); *Panambí, asociación de travestis, transexuales y transgéneros del Paraguay* (Travestis, Transsexuals and Transgender Association of Paraguay); *Red contra toda forma de discriminación* (Network against all forms of discrimination); *Akahatá - Equipo de Trabajo en Sexualidades y Géneros* (Sexualities and Gender Team) and Heartland Alliance for Human Needs and Human Rights submit these proposed issues to be considered by the Working Group on Paraguay by the United Nations Human Rights Committee in drafting the List of Issues Prior to Reporting by Paraguay on its implementation of the International Covenant on Civil and Political Rights (ICCPR).

As a reference, we quote at the beginning of our report relevant sections from the previous review of Paraguay by the Committee ([2012/2013](#))¹

2012 List of Issues by the Human Rights Committee to the Paraguayan State

3. Please report on the status of the anti-discrimination bill and the measures planned to ensure its implementation and dissemination.

7. Please indicate what legislative reforms or specific measures have been undertaken to combat discrimination against lesbian, gay, bisexual and transgender (LGBT) persons.

2013 Concluding Observations by the Human Rights Committee to the Paraguayan State

9. The Committee regrets that the State party has not yet adopted the bill submitted to the Senate in May 2007 to outlaw all forms of discrimination, since stereotyping, discrimination and marginalization are still prevalent and are especially detrimental to women, persons with disabilities, indigenous people, people of African descent, and lesbians, gays, bisexuals and transsexuals (arts. 2, 26 and 27).

The State party should adopt comprehensive legislation to combat discrimination, including provisions that provide protection against discrimination on grounds of sexual orientation and gender identity, and should prioritize the implementation of programmes to eliminate stereotyping and discrimination and guarantee tolerance and respect for diversity. The State party should also adopt measures to promote equal opportunities and equal, unrestricted and non-discriminatory access to all services by women, persons with disabilities, indigenous people, people of African descent, and lesbians, gays, bisexuals and transsexuals.

1. Rights of those deprived of their freedom. Right to live free from torture, cruel, inhuman and degrading treatment and punishment (Articles 7 and 10 of the International Covenant on Civil and Political Rights - ICCPR)

1.1. The Minister of Justice drafted a Care Protocol for Trans Persons Deprived of Their Freedom.

¹ Human Rights Committee, CCPR/C/PRY/CO/3 - April 29, 2013

1.2. The National Mechanism for the Prevention of Torture recommended to the Ministry of Justice the implementation of the rules issued in 2012 on intimate visits for persons deprived of their freedom without any discrimination based on sexual orientation. Law 5162/2014, Penal Procedural Code, affirms in its Article 31 that "inmates that are not granted transitory outings to maintain and enhance their family ties will be able to receive intimate visits from their spouses or de-facto partners in the way outlined by the rules".

Suggested questions

- Please provide information on the content of the Care Protocol for Trans Persons deprived of Their Freedom and on the measures taken for its effective implementation
- What actions will the Justice Minister take to ensure that lesbians and gays deprived of their freedom have access to their right to intimate visits as prescribed by existing regulations?

2. Legal guarantees (Article 14 of the ICCPR)

2.1. The section on Rights and Guarantees, Chapter V of the Internal Regulations of the Public Defense Minister, Article 87 includes 'equality' among those principles and guarantees and it adds that "those individuals to be disciplined will be treated without discrimination whatsoever on the basis of gender, political preferences, religion, race, social status, sexual orientation or on any other grounds that violate the constitutional principle of equality before the law".

Likewise, the prohibition to discriminate on those same grounds when serving the public is included among public servants' obligations.

Suggested questions:

- How does Paraguay implement the Brasilia Rules in cases of discrimination based on sexual orientation or gender identity?
- What measures does Paraguay take so public servants will not discriminate on the basis of sexual orientation and gender expression?

3. Non-discrimination. Right to equality before the law (Articles 2 and 26 of the ICCPR)

3.1 The draft bill against all forms of discrimination submitted in 2007 was rejected in November 2014. It was brought back for consideration on November 2015².

It is worth mentioning that also in November 2015³ several senators that had opposed the bill on the grounds that, among other things, it would mean to "grant privileges to LGBTI persons"⁴, submitted their own bill that according to them was aimed at combatting discrimination. However, its contents do not define discrimination in a manner that is consistent with the definitions of international instruments ratified by Paraguay. It also replaces the definition of discrimination with one of 'equality' that will make the law impossible to operationalize and renders its contents meaningless.

This bill also creates a reporting mechanism with a very brief period after which complaints expire. In practice, this will mean "punishing" a victim of discrimination when the implementing body delays the procedures.

In short, we consider that this new bill's main function is to actually block the passing of the Draft Bill against All Forms of Discrimination.

Suggested question:

- Please provide information on the status of the draft bill against all forms of discrimination submitted on November 2015 and mentioned under Recommendation No. 9 of the Human Rights Committee during the previous review of Paraguay in 2012/2013.

3.2 The Government Secretary issued Resolution SFP 0665/2015 by which it approved a tool to measure the degree of implementation of the Equality and Non-Discrimination Plan for the Paraguayan State Machinery.

Suggested question:

- Please provide information on the outcomes of measuring the degree of implementation of the Equality and Non-Discrimination Plan for the Paraguayan State Machinery.

²Identification number S-157013. Available (in Spanish)

at: <http://sil2py.senado.gov.py/formulario/FichaTecnicaExpediente.pmf?q=FichaTecnicaExpediente%2F106146>

³This bill is called "To establish mechanisms to guarantee equality in rights for all in the Republic" submitted by Senators Abdo, Petta, Wiens, Amarilla y Castiglioni. It is available

at: <http://sil2py.senado.gov.py/formulario/FichaTecnicaExpediente.pmf?q=FichaTecnicaExpediente%2F106088>

⁴Please see: <http://www.ultimahora.com/senado-manda-al-archivo-proyecto-ley-contra-la-discriminacion-n847415.html>; <http://www.hoy.com.py/nacionales/con-biblias-en-mano-senadores-rechazan-polemico-proyecto-contra-discriminac>

4. Right to life (Article 6 of the ICCPR)

4.1. Since 1989 there have been 55 murders of trans persons in Paraguay⁵. None of them have been solved.

Suggested question:

- Please provide information on the measures to stop impunity, protect the right to life of trans persons in Paraguay, advance investigations on these murders, adequately punish those responsible and provide effective compensation to the victims' families and communities.

5. Right to personal liberty and security. Right to freedom of movement (Articles 9 and 12 of the ICCPR)

In 2014, 2015 and before civil society organizations reported arbitrary arrests of same-sex couples in Asunción and Luque. For instance,

On October 10, two young gay men were playing cards in a park in Luque when the police arbitrarily arrested them for "having sex in public". Apparently, an unidentified neighbour had reported them. They were kept at the police station for three hours and finally released when a volunteer lawyer from Rohendu [Rohendu is a hotline provided by Aireana to hear complaints about discrimination based on sexual orientation] arrived at the police station to inquire about the case and realized that no formal complaint against the couple existed. The police told the lawyer and the couple that it was all a mistake and that they were free to go.⁶

In 2015⁷, Y. F. a 25-year-old trans person living in Ciudad del Este reported to have been discriminated against because of her gender identity while visiting a friend at the Ciudad del Este prison. When she submitted her ID at the entrance, the prison officer said she was not to be allowed in with "that feminine appearance" and ordered her to leave. Rohendu supported her to submit a formal complaint to the Prosecutor's Office in her city.

Suggested questions:

- How does the State guarantee the right to freedom of movement without any discrimination based on gender identity or expression in public spaces and also when accessing State facilities (prisons, hospitals, etc.)?
- What measures does the Interior Ministry implement to stop arbitrary arrests of LGTBI persons?

⁵<http://www.panambi.org.py/publicaciones/16>

⁶ Posa Guinea (2014) "**Acá no hay homofobia, el año de la negación**". Situación de los derechos de Lesbianas, Gays, Bisexuales, Personas Trans e Intersexuales LGTBI (2014) en Yvypóra derécho Paraguáipe – Derechos Humanos en Paraguay 2014. Asunción, Codehupy, p 144

⁷ Posa Guinea (2015) **Continúan los crímenes de odio mientras el Estado ojapo kangyvai⁷ nuestros derechos**. Situación de los derechos de Lesbianas, Gays, Bisexuales, Personas Trans e Intersexuales LGTBI (2015) en Yvypóra derécho Paraguáipe – Derechos Humanos en Paraguay 2015. Asunción, Codehupy, pp 95-108

6. Rights of boys, girls and adolescents (Article 24 of the ICCPR)

In 2015, the principal of a primary school called the mother of one of her students, who was a partner in a lesbian couple, and told her that her 5-year-old daughter should keep silent about the fact that she had two mothers or else be removed from the school to avoid becoming a bad example for others. One civil society organization submitted a complaint of discrimination against the girl and then the Legal Advice Department at the Ministry of Education and Culture issued a memorandum to the school quoting national dispositions and regulations⁸ that guarantees children to access and stay at schools on the basis of principles like non-discrimination and the best interests of the child.

Suggested question:

- What measures will the State take to make these regulations on non-discriminations better known and to eradicate discrimination against LGBTI girls, boys and adolescents as well as against the children of LGBTI persons?

⁸ National Constitution. Article 46: "All inhabitants of the Republic are equal in dignity and rights. No discrimination is allowed. The State will remove obstacles and stop those factors that sustain or enable them. Protections established on unfair inequalities will not be considered discriminatory but rather measures toward equality".

Article 73: "Every person has the right to comprehensive and ongoing education, that as a system and a process is conducted in the context of her/his community's culture. Its aims are the full development of the human personality and the promotion of freedom and peace, social justice, solidarity, cooperation and integration among peoples, respect for human rights and democratic principles, affirming the commitment to the Motherland, cultural identity and intellectual, moral and civic education, as well as the elimination of educational contents of discriminatory nature.

Article 74: The right to learn and to equal opportunities in accessing the benefits of a humanist culture, of science and technology, are to be guaranteed with no discrimination whatsoever.

Law 1264/98- Comprehensive Education Law. Article 10: Education will basically be guided by the following principles: a) affirming a person's cultural identity, b) respect for all cultures; c) equal conditions to access and stay in educational facilities ... e) effective equality between the sexes and rejecting all kinds of discrimination...