

**HEARTLAND
ALLIANCE**

GLOBAL INITIATIVE FOR
SEXUALITY AND HUMAN RIGHTS



Grupo por los derechos de las lesbianas

**Campana por una Convención Interamericana
de los Derechos Sexuales y los Derechos Reproductivos**



**Human Rights Violations of Lesbian, Gay, Bisexual,
Transgender and Intersex (LGBTI) People in
Paraguay:
A Shadow Report**

**Submitted for consideration at the 107^h Session of the Human Rights
Committee**

March 2013, Geneva

INTRODUCTION

1. The report is jointly presented by Paraguayan civil society organization, *Aireana, Grupo por los derechos de las lesbianas*, the Paraguayan representatives of the Campaign for an Inter-American Convention on Sexual and Reproductive Rights, and Heartland Alliance for Human Needs & Human Rights.
2. The report has been written in consideration of the “List of issues to be taken up in connection with the consideration of the third periodic report of Paraguay” (CCPR/C/PRY/Q/3). In particular, the report considers issue 3 regarding the status of the anti-discrimination bill and issue 7 regarding the rights of lesbian, gay, bisexual and transgender (LGBT) persons.
3. The information presented is based on reports received and actions taken by the following organizations: *Panambi, Asociación de Travestis, Transexuales y Trangénero de Paraguay; Paragay, Grupo de Acción Gay Lésbico; Ñepyrú de la Ciudad de Coronel Oviedo*; and *Aireana, Grupo por los derechos de las lesbianas*.

GENERAL CONCERNS

4. The organizations responsible for the Alternative Human Rights Report are remiss to see that the Government of Paraguay does not make reference to the following issues in its report (CCPR/C/PRY/3):
 - a. Information on cases of human trafficking of lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals.
 - b. The inclusion of LGBTI individuals in the Paraguayan Government’s management policies regarding gender mainstreaming initiatives within prisons.
 - c. The use of and compliance with the “Guidelines for inclusive and non-discriminatory practices within the civil service” issued by the Civil Service Secretariat and the “Plan for equality and non-discriminatory within the civil service,” which make explicit reference to the prohibition of discrimination on the basis of sexual orientation or gender identity.
 - d. Concrete efforts on the part of the State of Paraguay toward the approval and implementation of the anti-discrimination bill.

For these reasons, we respectfully request that the Human Rights Committee request information from the Government of Paraguay regarding:

- a. Human trafficking of LGBTI individuals.**
- b. Steps taken to include LGBTI individuals in gender mainstreaming policies within prisons.**
- c. The use of and compliance with “Guidelines for inclusive and non-discriminatory practices within the civil service” issued by the Civil Service Secretariat and the “Plan for equality and non-discriminatory within the civil service,” which make explicit reference to the prohibition of discrimination on the basis of sexual orientation or gender identity.**
- d. Concrete efforts on the part of the Paraguayan government toward the approval and implementation of the anti-discrimination bill.**

INFORMATION RELATIVE TO ISSUES 3 AND 7 (CCPR/C/PRY/Q/3)

ISSUE 3 - ARTICLES 3 AND 26 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

Issue 3. raised by the Human Rights Committee: “Please report on the status of the anti-discrimination bill and the measures planned to ensure its implementation and dissemination.” (CCPR/C/PRY/Q/3)

5. The Constitution of Paraguay guarantees equality of all individuals and prohibits discrimination (art. 46). Nevertheless, the term discrimination is not legally defined nor are there any legal or public policy mechanisms in place which are designed to eliminate discrimination.

6. The anti-discrimination bill was presented before the Senate in May 2007. The bill, a product of a four year consultation process within civil society, was passed through four commissions of the Senate. The bill received only one individual opinion statement from Mirtha Vergara de Franco during the previous governmental period from 2003 to 2008, and no other steps within the Senate have been taken to consider the bill.

7. There have only been two small initiatives on the part of the Executive Branch regarding the consideration of the anti-discrimination bill. On two occasions, a letter was sent to the president of the Senate from the head of the Ministry of Women in 2012 and from the Human Rights body of the Executive branch in 2010.

8. During the process of lobbying and advocating for the passage of the anti-discrimination bill, several representatives expressed their opposition to the inclusion of sexual orientation and gender identity as protected categories against discrimination. Some representatives even maintained that they would support the bill if the references to sexual orientation and gender identity were removed.

9. The lack of a law against all forms of discrimination causes a lack of any concrete and effective protection mechanism which would allow LGBTI individuals, or any other person who suffers discrimination, to receive some type of legal reparation in the case of discrimination.

10. The need for a law against all forms of discrimination was exemplified by the case of B.U., a young lesbian who was verbally mistreated while seeking treatment in 2010 at the Neuropsychiatric Hospital (part of the Ministry of Public Health and Social Wellness, MSPBS). B.U. was discriminated against on the basis of her sexual orientation by two doctors. One of them, upon “discovering” her sexual orientation on her patient file, reportedly said to her “*Ah, lesbiana, yo no trato a gente como vos*” [“Ah, lesbian, I don’t treat people like you”].

11. After this incident, B.U. requested support from a lesbian civil society organization. The organization sent a letter to the Minister of Health, requesting that administrative proceedings be initiated regarding the two doctors. The MSPBS responded to the letter by inviting B.U. and the lesbian organization to a meeting to analyze the case. Despite this first institutional response, the

MSPBS indicated that they could not open administrative proceedings due to the fact that the two doctors did not acknowledge that any mistreatment occurred. After multiple meetings between the organization and the MSPBS over the course of the year, upon the request of the civil society organization, the director of the Neuropsychiatric Hospital sent a letter to B.U. as a form of moral compensation.

12. The lack of any formal mechanism to denounce discrimination results in cases where the resolution of any case depends on the good intentions of individuals within the institutions involved. The case which has been described illustrates the need for a law against all forms of discrimination which covers the areas of health, education, labor, politics, family, society and recreation, among others.

For these reasons, we respectfully request that the Human Rights Committee recommend that the Government of Paraguay:

- i. Approve the anti-discrimination bill with the explicit inclusion of sexual orientation and gender identity within the list of protected categories against discrimination. Approval of the bill would fulfill several recommendations of monitoring mechanisms of human rights instruments (Committee on the Rights of the Child, 2010¹; Committee on the Elimination of Racial Discrimination, CERD, 2011²; Committee on the Elimination of Discrimination Against Women, CEDAW, 2011³; Human Rights Council, 2011⁴).**

ISSUE 7 - ARTICLES 6, 7, 9 AND 10 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

Issue 7. raised by the Human Rights Committee: “Please indicate what legislative reforms or specific measures have been undertaken to combat discrimination against lesbian, gay, bisexual and transgender (LGBT) persons.”

Legislative Reforms

13. In legislative terms, in addition to the lack of the aforementioned law against all forms of discrimination, LGBTI individuals face impairments to their right to equality due to the inexistence of protective legislation relative to the following issues:

- a. Lesbian and gay couples do not have any guaranteed rights due to the fact that there is no legal recognition of their unions.

¹ CRC/C/PRY/CO/3, par. 24-25

² CERD/C/PRY/CO/1-3, par. 9

³ CEDAW/C/PRY/CO/6, November 8, 2011, par. 12-13

⁴ A/HRC/17/18, par. 84.2, 84.24, 85.26, 85.18

- b. Same-sex parents are legally unprotected: there are no legal protections which explicitly prohibit lesbian mothers or gay fathers from being deprived custody of their children on the basis of their sexual orientation.
- c. Trans individuals are not able to change their legal name.
- d. The legal code does not include the concept of a hate crime. It also does not include mention of discrimination on the basis of sexual orientation and gender identity or expression.
- e. No legislation exists to protect the rights of intersex persons.

For these reasons, we respectfully request that the Human Rights Committee recommend that the Government of Paraguay:

- ii. **Include the following in Paraguayan legislation: legal protection and recognition of unions between persons of the same sex; recognition and protection of same-sex parents; recognition of the identity of trans persons; and protection for the rights of intersex persons.**

Public Policies

14. The public policy measures adopted by the Executive Branch between August 2008 and June 2012 represented only first steps. Nevertheless, these measures have not become policies with any prospect of long-term implementation as many have been halted following the parliamentary coup d'état on June 22, 2012.⁵

15. Some initiatives which have been halted after the June 2012 parliamentary coup d'état include the following:

- a. The plan for equality and non-discrimination within the civil service.
- b. The joint campaign of the Women's Secretariat of the Presidency of the Republic (currently the Ministry of Women) with civil society organization *Aireana*, *grupo por los derechos de las lesbianas*⁶ entitled, "*Acá no se discrimina a las lesbianas*" ["Lesbians are not discriminated against here"]. Following the coup d'état, the Ministry of Women removed posters which read, "*acá no se discrimina a las lesbianas*" ["lesbians are not discriminated against here"].
- c. Agreements between non-governmental organizations and the state agencies, the Secretariat of Childhood and Adolescence (SNNA), the Ministry of Education (MEC) and the Ministry of the Interior,⁷ to support policies of equality and non-discrimination for LGBTI individuals.
- d. The implementation of the Health Plan for trans individuals supported by the Ministry of Public Health and Social Wellness and the Spanish Agency for International Development Cooperation (AECID) has been halted. The project of the plan is titled,

⁵ The Paraguayan organizations submitting this report consider the removal of President Fernando Lugo to be the result of an arbitrary summary process, such that it should be considered a "parliamentary coup d'état," lacking any legitimacy.

⁶ http://www.aireana.org.py/aca_no_se_discrimina.html.

⁷ http://www.aireana.org.py/convenio_SNNA_2011.html.

“Mejora de la calidad de atención en salud sexual y reproductiva en la red pública de servicios de salud” [“Improve the quality of sexual and reproductive health services within public health sector”].

We respectfully request that the Human Rights Committee request information from Government of Paraguay regarding:

i. The current state of the aforementioned public policy initiatives.

Crime and violence against trans, lesbian and gay persons (Articles 6 and 7 of the ICCPR)

16. The State does not offer any guarantees for individuals who denounce cases of violence, resulting in a state of impunity. The few cases which have been reported have not been resolved. From 1999 to the present, trans organizations have registered 37 cases of killings of trans individuals which have not been investigated by the authorities. The majority of these cases were closed shortly after the crime occurred without any serious investigative effort. These reports speak to the lack of will on the part of the State to investigate crimes committed against trans persons.

17. The following describes paradigmatic cases of violence perpetrated against LGBTI persons.

- a. On July 1, 2008, 17 year old female trans sex worker named Lupita was killed by a gunshot fired from the inside of the vehicle of a client. Another trans woman, 19 year old Laura, was in the area and approached the scene of the crime to see what had occurred when she was also shot. In Laura’s case the shot was not fatal, and she was transported to the center for Medical Emergencies (Posa Guinea, 2008: 370).
- b. In June 2010, a young gay man was brutally assaulted by several men upon leaving a bar. The men also verbally insulted him. During the attack, the assailants found a cross among the victim’s belongings and threw it in his face, saying, “*Por ésta, te salvás*” [because of this, you’re saved]”. The victim did not wish to report the crime due to the lack of any guarantee that the police or the prosecutor’s office would bring seek justice for his case (Posa Guinea, 2010: 328).
- c. On January 16, 2011, P.G., a trans sex worker, was attacked by a neighbor in Asuncion, Paraguay. According to testimonies, the neighbor saw P.G. standing on the sidewalk, approached her directly, and poured caustic soda on her legs causing second degree burns. As a result, P.G. was rendered unable to work. The case was reported but the perpetrator remains unpunished (Robledo, 2011: 154).
- d. On July 16, 2011, P. C.H. was attacked and burned by her romantic partner. P. C.H. suffered second and third degree burns on 80 percent of her body and was rendered unconscious. She received intensive therapy and over the course of four months, P. C.H. required inpatient treatment at the National Hospital of Itaugua. The crime was reported at the police station and subsequently with the 1st Prosecutor’s Office. The offense is classified as intentional attempted homicide. Nevertheless, the perpetrator of the crime remains free (Robledo, 2011: 154).

- e. On January 21, 2012, M.A., a young lesbian woman was robbed while at a lesbian karaoke locale. Upon realizing that her belongings were stolen, she reported this to the manager of the locale, who in turn asked her to leave. When she left the locale, she was approached by a patrol car of the 1st Police Station and was asked to get in the car. M.A. believed that she would be taken to the station in order to report the robbery. Instead, the police car took a different route and drove to Carlos A. Lopez Park, where M.A. was raped by two male police officers while a female police officer filmed it with M.A.'s cellular phone. As the victim was being raped, the police officers told her that they were going to “enseñar lo que era un hombre” [“teach her what a man is”] (Posa Guinea & Robledo Desh, 2012: 174). The victim later denounced the case at the prosecutor’s office. She suffered telephone threats and harassment on the part of the assumed perpetrators. The press reported on the case but the coverage has not resulted in any resolution.⁸ Corrective rapes of lesbian women occur in all parts of the world and this is a clear example of a case of a corrective rape, abuse of power, and torture perpetrated by the police.

We respectfully request that the Human Rights Committee request information from Government of Paraguay regarding:

- i. **The steps taken to resolve cases of violence against LGBTI persons.**

Likewise, we respectfully request the Human Rights Committee to recommend that the Government of Paraguay:

- i. **Take steps to eliminate the impunity of crimes and violence against LGBTI.**

Arbitrary detentions of lesbian and trans individuals (Article 9 of the ICCPR)

18. Arbitrary detentions of lesbian and trans individuals continue to occur with impunity. The victims often turn to lesbian and trans organizations, but in the cases these organizations have documented, the victims have not reported the arbitrary detentions out of fear of facing impunity and further repercussions.

19. The following are paradigmatic cases of arbitrary detentions of lesbian and trans individuals:
 - a. In 2008, two lesbians were detained for several hours by the police and taken to a police station “*para que eligieran un hombre*” [“so that they could choose a man”]. The police officers said to them, “*habiendo tantos cómo van a estar entre ustedes*” [“with so many of them (men to chose from), how could you be with each other”].⁹

⁸“*Un policía violaba mientras el otro filmaba*”. *Diario ABC Color*, April 10, 2012, available online: <http://www.abc.com.py/nacionales/un-policia-violaba-mientras-otro-filmaba-segun-denuncia-388455.html>; “*Jueza sobresee a dos agentes en caso de supuesta violación*” *Diario Última Hora*, September 18, 2012, available online: <http://www.ultimahora.com/notas/561629-Jueza-sobresee-a-dos-agentes-en-caso-de-supuesta-violacion>

⁹ Testimony of the victim, collected October 2008.

- Finally, the women were released without further incident (Posa Guinea & Robledo Desh, 2012: 372).
- b. In June 2009, in Ciudad del Este, two transgender indigenous persons were detained by the police and taken to a police station where they were hit on the palms of their hands with a policeman's baton (Posa Guinea, 2009:294).
 - c. In July 2010, M.A. and B.T., two trans sex workers were present at the scene when a murder occurred at the 20 kilometer mark of Route 1 of the city of Capiata, located in the Central state. When they were called to testify as witnesses, they were detained by the police from Station Number 32 despite the fact that a man had already confessed to the crime (Posa Guinea, 2010:329).

For these reasons, we respectfully request that the Human Rights Committee recommends that the Government of Paraguay:

- i. Take appropriate measures to eliminate arbitrary detentions due to sexual orientation and/or gender identity**
- ii. Implement effective mechanisms for victims to safely denounce arbitrary detentions.**

The denial of conjugal visits to incarcerated lesbians (Article 10 of the ICCPR)

20. In June of 2011, V.O. attempted to access her right to a conjugal visit, permitted to incarcerated individuals. She sent a letter to the director of the prison, who denied her this right.

21. Paraguay's penitentiary law dates back to 1970, and is outdated with regard to the National Constitution which guarantees equality.

22. V.O. turned to a civil society organization which assisted her in submitting a claim before the Department of Public Administration. The Department of Public Administration sent a communication to the prison, reiterating that discrimination is prohibited and requesting information about the proceedings of the case. The prison did not reply to the Department of Public Administration, and V.O. continues to be denied conjugal visits.

23. The denial of access to conjugal visits to same-sex couples constitutes a break with the principle of equality, is contrary to the respect owed to individuals who are incarcerated, and is an arbitrary interference on the part of the State of Paraguay in the private lives of these individuals.

For these reasons, we respectfully request that the Human Rights Committee recommends that the Government of Paraguay:

- iii. Take appropriate measures to guarantee the access to conjugal visits to same-sex couples, removing any real or legal obstacles.**

Recommendations made to the Human Rights Committee:

1. We respectfully request that the Human Rights Committee request information from Government of Paraguay regarding:

- 1.1. Human trafficking of LGBTI individuals.
- 1.2. Steps taken to include LGBTI individuals in gender mainstreaming policies within prisons.
- 1.3. The use of and compliance with “Guidelines for inclusive and non-discriminatory practices within the civil service” issued by the Civil Service Secretariat and the “Plan for equality and non-discriminatory within the civil service,” which make explicit reference to the prohibition of discrimination on the basis of sexual orientation or gender identity.
- 1.4. Concrete efforts on the part of the Paraguayan government toward the approval and implementation of the anti-discrimination bill.
- 1.5. The current state of public policy initiatives initiated in August 2008 which were interrupted as of June 21, 2012.
- 1.6. The steps taken to resolve cases of violence against LGBTI persons.

2. We respectfully request that the Human Rights Committee recommends that the Government of Paraguay:

- 2.1. Approve the anti-discrimination bill with the explicit inclusion of sexual orientation and gender identity within the list of protected categories against discrimination. Approval of the bill would fulfill several recommendations of monitoring mechanisms of human rights instruments (Committee on the Rights of the Child, 2010¹⁰; Committee on the Elimination of Racial Discrimination, CERD, 2011¹¹; Committee on the Elimination of Discrimination Against Women, CEDAW, 2011¹²; Human Rights Council, 2011¹³).
- 2.2. Include the following in Paraguayan legislation: legal protection and recognition of unions between persons of the same sex; recognition and protection of same-sex parents; recognition of the identity of trans persons; and protection for the rights of intersex persons.
- 2.3. Take steps to eliminate the impunity of crimes and violence against LGBTI.
- 2.4. Take appropriate measures to eliminate arbitrary detentions due to sexual orientation and/or gender identity.
- 2.5. Implement effective mechanisms for victims to safely denounce arbitrary detentions.
- 2.6. Take appropriate measures to guarantee the access to conjugal visits to same-sex couples, removing any real or legal obstacles.

¹⁰ CRC/C/PRY/CO/3, par. 24-25

¹¹ CERD/C/PRY/CO/1-3, par. 9

¹² CEDAW/C/PRY/CO/6, November 8, 2011, par. 12-13

¹³ A/HRC/17/18, par. 84.2, 84.24, 85.26, 85.18

References

Moragas, Mirta; Fessler, Sandra; Romero María Inés (2012) “*Sin esperanzas bajo un gobierno de facto. Derechos sexuales*” in: CODEHUPY (2012) *Yvypóra Derécho Paraguáipe – Derechos Humanos en Paraguay 2012*. Asuncion: Codehupy, pp. 433-439.

Posa Guinea, Rosa M. & Aireana, grupo por los derechos de las lesbianas; “*A paso de tortuga y con obstáculos. Situación de derechos humanos de lesbianas, gays, bisexuales, personas trans e intersex*” in: CODEHUPY (2010) *Yvypóra Derécho Paraguáipe – Derechos Humanos en Paraguay 2010*. Asuncion: Codehupy, p. 328

Posa Guinea, Rosa María & Robledo Desh, Carolina (2012) “*Orgullo y resistencia. Situación de los derechos humanos de lesbianas, gays, bisexuales, personas trans- travestis, transgéneros y transexuales- e intersex (LGTBI)*” in: CODEHUPY (2012) *Yvypóra Derécho Paraguáipe – Derechos Humanos en Paraguay 2012*. Asuncion: Codehupy, p. 170.

Posa Guinea, Rosa & Aireana, grupo por los derechos de las lesbianas; (2009) “*Por algo se empieza. Situación de los derechos de lesbianas, gays, rangénero e intersex*” in: CODEHUPY (2009) *Yvypóra Derécho Paraguáipe – Derechos Humanos en Paraguay 2009*. Asuncion: Codehupy, p. 294.

Posa, Rosa; Aireana, grupo por los derechos de las lesbianas & Grupo de Acción Gay Lésbico (2008) “*Ahora nuestros derechos. Derecho a la no discriminación de lesbianas, gays y transgéneros*” in: CODEHUPY (2008) *Derechos Humanos en Paraguay 2008*. Asuncion: Codehupy, p. 370.

Robledo, Carolina & Aireana, grupo por los derechos de las lesbianas (2011) “*Somos más de 108. Situación de los DDHH de Lesbianas, Gays, Bisexuales, Transgéneros e Intersex (LGTBI)*” in: CODEHUPY (2011) *Yvypóra Derécho Paraguáipe – Derechos Humanos en Paraguay 2012*. Asuncion: Codehupy, p. 154.