

Written submission on Chile
Pre-Sessional Working Group 71st session (12 – 16 March 2018)

(2177 words)

ODRI (Office for the Defense of Rights Intersectionality) is an organization that works around the world to promote and intersectional approach to human rights and public policies. Our aim with this report is to provide evidence regarding the discrimination of transgender in Chile due to the current lack of privacy of gender recognition judicial proceedings.

Description of the problem

Every individual that takes legal action to change their gender markers and names is required to present a judicial order as a requirement for the continuation of the proceedings. These judicial orders are published every day 1 and 15 of each month in the online version of the “Diario Oficial de la República de Chile”, the official newspaper of the State of Chile, owned by the Ministry of Interior and Public Security.

Between November 2017 and January 2018, <http://www.diariooficial.interior.gob.cl>, *Diario Oficial de la República de Chile* has registered sensitive data regarding the claimants of civil proceedings of legal recognition, including ID cards, birth certificates and personal addresses. The disclosure on the Internet of these data jeopardizes the privacy of 82 transgender individuals that can be easily identified over the Internet by searching some of these data on web search engines like Google or social media search engines like Facebook or Instagram.

ODRI gathered and synthesized the judicial orders over the last three months after processing the data manually and with the software NVIVO. Table 1 shows that 42 district courts of 15 regions of Chile have revealed on the Internet personal data of 82 transgender individuals. The Region of Santiago presents the highest record of cases and district court where privacy has been exposed (45 cases distributed in 21 district courts). Moreover, the district courts of the regions of Antofagasta and Bío Bío have both registered 7 cases; while the regions of Lagos and Zona Metropolitana de Santiago have recorded each one 4 cases. Additionally, the region of Valparaíso listed 3 cases; whereas the regions of Coquimbo, Maule and Los Ríos had registered by region 2 cases. Finally, the regions of Atacama, O'Higgins, La Araucanía, Magallanes and Tarapacá have recorded for region one case.

Table 1: Distribution of judicial courts involved in the examination made from November 2017 to January 2018

Regions	Judicial districts (number of cases where privacy has been exposed)
I-Tarapacá	3º Juzgado de Letras en lo Civil de Iquique (1 case)
II-Antofagasta	1º Juzgado de Letras Civil de Calama (1 case) 2º Juzgado de Letras Civil de Calama (2 cases) 3º Juzgado de Letras Civil de Calama (2 cases) 3º Juzgado de Letras Antofagasta (1 case) 4º Juzgado de Letras en lo Civil de Antofagasta (1 case)

III-Atacama	1º Juzgado de Letras de Copiapó (1 case)
IV-Coquimbo	3º Juzgado de Letras de Ovalle (1 case) Juzgado de Letras de Illapel (1 case)
V-Valparaíso	4º Juzgado Civil de Valparaíso (2 cases) Juzgado de Letras de Casablanca (1 case)
VI-O'Higgins	Tribunal de Letras de Peralillo (1 case)
VII-Maule	1º Juzgado de Letras de Curicó (1 case) 3º Juzgado de Letras de Talca (1 case)
VIII-Bío Bío	1º Juzgado Civil de Concepción (2 cases) 2º Juzgado Civil de Concepción (2 cases) 3º Juzgado Civil de Concepción (2 cases) 2º Juzgado de Letras en lo Civil de Chillán (1 case)
IX-La Araucanía	2º Juzgado Civil de Temuco (1 case)
X-Los Lagos	1º Juzgado Civil de Puerto Montt (1 case) 2º Juzgado Civil de Puerto Montt (2 cases) Juzgado de Letras de Osorno (2 cases)
XI-Magallanes	Juzgado de Letras y Garantía de Puerto Natales (1 case)
XII-Santiago	1º Juzgado Civil de Santiago (2 cases) 2º Juzgado Civil de Santiago (1 case) 4º Juzgado Civil de Santiago (1 case) 6º Juzgado Civil de Santiago (1 case) 7º Juzgado Civil de Santiago (1 case) 9º Juzgado Civil de Santiago (2 cases) 10º Juzgado Civil de Santiago (5 cases) 11º Juzgado Civil de Santiago (3 cases) 12º Juzgado Civil de Santiago (2 cases) 13º Juzgado Civil de Santiago (1 case) 14º Juzgado Civil de Santiago (1 case) 17º Juzgado Civil de Santiago (1 case) 18º Juzgado Civil de Santiago (1 case) 19º Juzgado Civil de Santiago (4 cases) 20º Juzgado Civil de Santiago (3 cases) 21º Juzgado Civil de Santiago (2 cases) 22º Juzgado Civil de Santiago (1 case) 23º Juzgado Civil de Santiago (5 cases) 24º Juzgado Civil de Santiago (5 cases) 28º Juzgado Civil de Santiago (3 cases) 29º Juzgado Civil de Santiago (1 case)
XIII-Los Ríos	1º Juzgado Civil de Valdivia (1 case) 2º Juzgado Civil de Valdivia (1 case)
XIV-Arica y Parinacota	No judicial order recorded on this period
RM- Zona Metropolitana de Santiago	2º Juzgado de Letras de Buin (2 cases) 2º Juzgado Civil de San Miguel (2 cases)

The 82 civil lawsuits regarding legal recognition compiled by ODRI are divided in 41 cases submitted by transgender women and other 41 cases submitted by transgender men. In five

of the cases belonging to transgender men, the claimants have been identified as underage, and for that reason, they have been legally represented by their parents and guardians. In 78 cases, the petitioners demanded the modification of both the name and the gender marker, in 3 cases the change of the assigned name, whereas only in one case the petitioner requested only the modification of just the gender marker.

The wording of the judicial orders diverges from each judicial court, which means that judicial orders differ on the personal information divulged. In all 82 cases the assigned names have been recorded, while in 79 cases is revealed the gender marker. The system reveals the demanded names in 80 cases. In some cases, very sensitive data has been consigned in the judicial orders (34 identified numbers - *Rol Único Nacional*- and 6 personal addresses of petitioners). Table 2 summarizes all these findings.

Table 2: Characteristics of the proceedings of legal recognition where privacy has been compromised by the judiciary of Chile

Specific gender identities of the claimants	Number of proceedings conducted by each claimant or by representatives	Legal petitions	Data revealed in the judicial orders	Date of publication in el Diario Oficial
- 41 transgender men	- 77 adults	- 3 changes of name	- Assigned names at birth in 82 cases	November 2, 2017
- 41 transgender women	- 5 children (transgender boys) represented by their parents	- 1 change of gender marker	- Requested names in 80 cases	November 15, 2017
		- 78 gender marker and name	- Birth registration details in 24 cases	December 1, 2017
			- ID Numbers (<i>Rol Único Nacional</i>) in 34 cases	December 15, 2017
			- Personal addresses of 6 petitioners	January 2, 2018
				January 15, 2018

Legal analysis of the recorded data

Considering this evidence, the retention of data by *Diario Oficial* constitute an interference to the right to privacy on judicial proceedings, that are not in conformity with the treaty-based obligations enshrined in article 17 of the International Covenant on Civil and Political Rights and the article 11 of the American Convention on Human Rights. The publicity of all the data does not serve a legitimate purpose, because these proceedings are exercises of personal freedom and do not obstruct the rights of third parties. Therefore, the publicity of civil

proceedings divulges certain aspects of private life (the decision to undergo to gender legal recognition) and compromises the dissemination of personal information to the public that can be accessed by third parties and public authority. *Diario Oficial*, the State-owned newspaper, should only register personal information that is relevant, reasonable and necessary as required by the law for a legitimate purpose, criteria that is not fulfilled in the present case.

Furthermore, the Inter-American Court of Human Rights recognizes in its Advisory Opinion 24 “*Gender identity, and equality and non-discrimination with regard to same-sex couples*” the privacy of proceedings and identified risks for the exposure of sensitive data on paragraph 135¹. Furthermore, the Committee on the Elimination of Discrimination against Women, on the General Recommendation No. 33 on women’s access to justice, has underlined the importance of privacy for women on paragraph 18 (f):

“When necessary to protect women’s privacy, safety and other human rights, ensure that, in a manner consistent with due process and fair proceedings, legal proceedings can be held privately in whole or in part or that testimony can be given remotely or using communications equipment, such that only the parties concerned are able to gain access to their content. The use of pseudonyms or other measures to protect the identities of such women during all stages of the judicial process should be permitted. (...)”²

The State of Chile is aware of the risks to the privacy of transgender individuals. The Commission on Human Rights and Indigenous Peoples of the House Chamber of Deputies of

¹ “135. En concordancia con lo anterior, la publicidad no deseada sobre un cambio de identidad de género, consumado o en trámite, puede poner a la persona solicitante en una situación de mayor vulnerabilidad a diversos actos de discriminación en su contra, en su honor o en su reputación y a la postre puede significar un obstáculo mayor para el ejercicio de otros derechos humanos (supra párr. 134). En ese sentido, tanto los procedimientos, como las rectificaciones realizadas a los registros y los documentos de identidad de conformidad con la identidad de género auto-percibida, no deben ser de acceso público, ni tampoco deben figurar en el mismo documento de identidad. Lo anterior resulta consistente con la íntima relación existente entre el derecho a la identidad y el derecho a la vida privada reconocido por el artículo 11.2 de la Convención que protege contra todas las interferencias arbitrarias en la intimidad de la persona, dentro de las cuales se encuentra comprendida su identidad de género. Es así como esta Corte ha sostenido que “el ámbito de la vida privada se caracteriza por quedar exento e inmune a las invasiones o agresiones abusivas o arbitrarias por parte de terceros o de la autoridad pública” y “comprende, entre otras dimensiones, tomar decisiones relacionadas con diversas áreas de la propia vida libremente, tener un espacio de tranquilidad personal, mantener reservados ciertos aspectos de la vida privada y controlar la difusión de información personal hacia el público” . Esto no significa que esa información no pueda ser accesible en caso de que la persona sea requerida por las autoridades competentes de conformidad con lo establecido por el derecho interno de cada Estado.”. I/A Court H.R. Gender identity, and equality and non-discrimination with regard to same-sex couples. State obligations in relation to change of name, gender identity, and rights deriving from a relationship between same-sex couples (interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to Article 1, of the American Convention on Human Rights). Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24.

² United Nations. Committee on the Elimination of Discrimination against Women. General recommendation No. 33 on women’s access to justice, CEDAW/C/GC/33, 3 August 2015, párr. 18(f).

Chile recently suggested safeguards to privacy in the amendments to article 11 of the Gender Identity Bill³.

The Commission on Human Rights and Indigenous Peoples of the House Chamber of Deputies of Chile has suggested to treat data of transgender individuals as a sensitive data, so it is excluded from publication at *Diario Oficial de Chile*. However, the amendments are, up until this moment, far from being approved, because they need to be revised by the House Chamber of Deputies, the Human Rights Commission of the Senate, the Senate of Chile, and the Mixed Commission. Furthermore, the proposed bill has specific rules for children and for married transgender, where publicity of proceedings is an implicit requirement. It must also be noted that the proposed bill does not offer remedies to the 82 individuals identified by ODRI, and other similar situations such as pending proceedings of gender legal recognition.

Conclusions and recommendations

Considering this evidence, the retention of data by *Diario Oficial* constitute an interference that affects and jeopardizes the right to privacy. To remedy this situation, *we respectfully ask you to recommend Chile to: 1) De-identify the data contained in the 82 identified cases, give remedies to the affected parties, ensure non repetition for similar cases, and ensure training for the judiciary in relation to their human rights obligations regarding the privacy of transgender persons on the Internet considering paragraph 18.f of General recommendation No. 33 on women's access to justice, and the recent jurisprudence of the Inter-American Court of Human Rights that has explicitly expressed in paragraph 135 of the Advisory Opinion No. 24 that these proceedings should not be publicized, and 2) Ensure the enactment of privacy safeguards on the Gender Identity Bill that excludes third party access to sensitive data regarding transgender solicitants, and prevents a person's identity from being connected with information.*

Signed by

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Director

D.A. Mauricio Ocampo
UN Advocacy Official

³ Report of the Commission of Human Rights and Indigenous People regarding the proposed bill that “Recognizes and protects the right to gender identity”, January 17 2018. BOLETÍN N° 8924-07(SEN). Available at: www.camara.cl/pdf.aspx?prmID=39000&prmTIPO=INFORMECOMISION .