

QUICK GUIDE TO ADDRESSING SEXUAL RIGHTS ISSUES DURING THE UNIVERSAL PERIODIC REVIEW ON CHILE¹

These Guides include:

- A list of issues mentioned in the National Report, the Compilation of official UN Documents and the Summary of Other Stakeholders Submissions, with references to the particular paragraphs in which they can be found.
- The full text of those paragraphs
- Suggested questions and recommendations.

References in the two working languages of the Council (English and French) have been kept in their original language. For this particular Guide, we have translated some paragraphs that were in Spanish in the Summary.

Issues are highlighted. References in the National Report are *in Italics*.

All sexual rights issues that do not relate specifically to women are referred to in this Guide. Sexual rights' issues referring specifically to women -as well as other women's issues- are referred to in the Guide on Women's Issues

OP-CRC-SC (Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography) ratified.

ISSUE	N Report	Compilation	Summary
Criminalization of same-sex consensual practices		Laws criminalizing same-sex consensual relations repealed (13).	
Gender identity / sexual orientation	Non-discrimination and social integration policies for sexual minorities. Changes in health and education systems. National Plan, aimed to eradicate marginalization. Educational Plan to eliminate discrimination towards students and teachers. (82)	Discrimination based on sexual orientation persists (13).	Need to pass the law prohibiting discrimination against sexual minorities. Concerns about amendments introduced to the draft limiting its effectiveness and extent. Need to specifically include gender identity as protected category (19) Arbitrary detentions, and police abuse based on art. 373 of Penal Code. Social violence esp. by neo-Nazi groups. (24). Need to promote labour policies for trans people, as they have no

¹ These Guides were produced by the Sexual Rights Initiative, a coalition of organizations based in Africa, Asia, Eastern Europe, Latin America and North America whose mandate is to advance women's issues broadly and sexual rights issues in the Human Rights Council. For questions, comments, suggestions please contact Alejandra Sardá-Chandiramani at alejandra@mulabi.org

			choice other than prostitution (40). Need for health policies for trans people including non-compulsory treatments and surgery, with informed consent (45) Legislation does not allow for marriage, joint patrimonial rights and child custody, in conditions of equality for same-sex couples (33).
HIV/AIDS			Inadequate measures to protect detained people living with HIV (25)
Sexual Violence in prisons			Need for measures to eliminate overcrowding and monitor conditions of detention, including sexual violence (17)
Trafficking/sexual exploitation /violence against children		Criminal Code doesn't prohibit all types of trafficking. Need for legislation criminalizing trafficking in children and harmonization with OP-CRC-SC / Palermo Protocol (19).Worst forms of child labour affecting indigenous and street children. Need for effective implementation of National Action Plan to eliminate exploitation. (20)	

Criminalization of same-sex consensual practices

In 2007, the Human Rights (HR) Committee observed with satisfaction that the **laws criminalizing homosexual relations between consenting adults have been repealed** (Para 13, Compilation).

Discrimination based on sexual orientation and gender identity

Since the return to democracy, policies of non-discrimination and social inclusion have been implemented with regard to sexual minorities. Important changes have been made in the areas of education and health, thanks to an open dialogue between the authorities and representatives of gays, lesbians and transsexuals. The Office of the Minister and Secretary-General of Government announced in 2004 the National Plan to Combat Discrimination in Chile, which talks of the need to end marginalization based on sexual orientation or gender identity. The Ministry of Education tackled the issue of discrimination against students and teachers on account of their sexual orientation in 2005 in its Sex and Emotional Education Plan (Para 82, NR)

HR Committee remained concerned about the **discrimination** to which some people are subject because of their sexual orientation, for instance, **before the courts and in access to health care** (Para 13, Compilation).

Corporación Humanas (JS1) expressed their concern for the delay in passing a law that establishes measures against discrimination affecting sexual minorities. JS1 adds that during 2008 the draft proposal was amended in ways that restrict the notion of non-discrimination, explicitly free Churches from their responsibility to implement the law and limits State powers in the protection and guarantees related to the right not to be discriminated against (Para 19, Summary)

JS1 indicated that legal and judicial practice does not favour the free development of the right to form a family for the homosexual population as it does not allow them to marry, legally regulate their joint property and assets or access to custody of their children in conditions of equality. According to JS1, in 2008 the IAHRC declared admissible a complaint submitted by a lesbian mother who is accusing the Supreme Court of discrimination in the exercise of her right to custody of her daughters. (Para 33, Summary)

Sexual Rights Initiative (JS3) indicated that since 2002 arbitrary detentions and police abuse against transsexuals, travestis and transgender people have been reiterated, based and protected by Article 373 of the Penal Code that penalizes those who "in any manner offend modesty or good customs". JS also indicated that, due to their situation of social marginalization, transsexuals are exposed to violence on the part of individuals, including Neo-Nazi groups (Para 24, Summary)

JS3 indicated that transsexual women lack possibilities to enter the labour market and must resort to prostitution for survival, while transsexual men must wear feminine or unisex clothing to be able to work (Para 40, Summary)

HIV/AIDS

JS1 added that policies for prevention and strengthened care of persons deprived of their liberty and HIV positives are clearly insufficient (Para 25, Summary)

Sexual Violence in prisons

(See recommendations)

Trafficking/sexual exploitation/violence against children

The Committee on the Rights of the Child (CRC) noted in 2008 that not all forms and types of trafficking (e.g. trafficking for forced labour and internal trafficking) are prohibited under **article 367 (b) of the Criminal Code**. (Para 19, Compilation)

In 2007, CRC was alarmed about the high number of children exposed to **dangerous and/or degrading work**. The ILO Committee of Experts noted in 2007 that **indigenous children** and **street children** are particularly affected by the **worst forms of child labour**. (Para 20, Compilation).

Suggested recommendations:

- To promulgate legislation to protect the rights of same-sex couples
- To continue and increase efforts to raise awareness in the judiciary about non-discrimination based on sexual orientation, particularly in custody cases, and to respond in a positive and open manner to the current case before the IAHRC.

- To improve policies for HIV prevention and care among those persons deprived of their liberty.

Committee against Torture (CAT)

- To improve conditions in places of deprivation of liberty to meet international standards; take urgent measures to address overcrowding in prisons and other places of detention; and introduce a system for monitoring the conditions of detention, the treatment of inmates and prisoner-on-prisoner and sexual violence in prisons (Para 17, Compilation).

Committee on the Rights of the Child (CRC)

- To adopt the Bill which is before the Senate, aimed at criminalizing trafficking in children in accordance with the Palermo Protocol, and complete the harmonization of national legislation with the OP-CRC-SC (Para 19, Compilation)
- To continue and reinforce efforts to prevent and combat economic exploitation of children through the effective implementation of the National Action Plan (Para 20, Summary)

Sexual Rights Initiative

- That the Senate passes the Anti-Discriminatory Law, including in it "gender identity" as a protected category to ensure protection for transsexual people without any doubt (Para 19, Summary)
- To develop nation-wide health policies to answer the needs and requirements of travesti, transsexual and transgender populations, including assessment, treatment and/or surgeries, always on the basis of free and informed consent and without any mandatory element. (Para 45, Summary)
- To develop nation-wide employment policies for travestis, transsexuals and transgender populations (Para 40, Summary)