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Chile

Country Report for use in refugee claims based on persecution relating to sexual orientation and gender identity

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I. Introduction

Relative to neighbouring South American countries, Chile has been historically slow to adopt legislation that protects the rights of the LGBT community. Until 1999, Chile’s penal code had criminally prohibited same-sex sexual activities. Traces of oppressive sodomy laws still remain today: the legal age of consent for same-sex sexual activity is eighteen years old, while it is only fourteen for opposite-sex sexual activity. Similarly, while there is currently a movement to allow same-sex civil partnerships, the civil code itself still expressly prohibits same-sex marriage. Chile’s constitution does not explicitly protect against discrimination based on sexual orientation.

However, recent legislative changes suggest that the Chilean government is responding to the growing pressure and an increasingly strengthened LGBT community in Santiago, its capital city. In 2012, a series of antidiscrimination laws were passed. These laws explicitly prohibit discrimination on the basis of sex, sexual orientation, and gender identity for the purposes of employment and public office. Further, they define hate-motivation as an aggravating factor for crimes, permit civil lawsuits on the basis of arbitrary discrimination, and require the state to develop public policies to prevent discrimination. The effectiveness and enforceability of these laws in practice remains to be seen.

Studies suggest growing social acceptance of homosexuality in Chile. Support for marriage equality for same sex couples is now around 50%. However, there is less support for allowing same-sex couples to adopt. In 2005 the Supreme Court of Chile stripped Karen Atala of custody of her children, solely on the basis of her sexual orientation. This decision was recently denounced by the Inter-American Court of Human Rights.

In spite of recent legislative reform and a growing social acceptance of homosexuality, discrimination is still prevalent in religious or conservative circles and the military. The national police are identified as one of the most discriminatory organizations in the country. LGBT organizations claim that “public decency” laws are disproportionately applied to LGBT individuals and there have been reports of mistreatment of LGBT populations in some prisons.

Recently serious incidents of violence against LGBT persons have occurred. In March 2012 Daniel Zumudio was beaten and tortured by alleged neo-Nazis. He later died as a result of his injuries. In July 2012 Valeska Salazar was assaulted by family members of her ex-girlfriend who stated they attacked Salazar for turning their relative into a lesbian. Violence and police brutality against transsexual women continues to be a serious problem.

II. Legislation

To access the full text of Chilean legislation (in Spanish), see: <http://www.leychile.cl/Consulta>

1. *The Penal Code*, online: Ley Chile (in Spanish)
<http://www.leychile.cl/Navegar?idNorma=1984>

- **Title 1: Offences and the Circumstances of Liability, Attenuation, or Aggravation:**
 - **Section 4, Article 12 (21) increases sentence severity of crimes motivated by victim's sexual orientation or gender identity**
- **Title 7: Offenses and Crimes Against the Family, Public Morality, and Sexual Integrity**
 - **Section 5, Article 362 defines the age of consent for opposite-sex sexual activity as 14 years old**
 - **Section 6, Article 365 defines the age of consent for same-sex sexual activity as 18 years old**
 - **Section 6, Article 365 formerly prohibits same-sex sexual activity; repealed in 1999 by Law 19617, legalizing same-sex sexual activity**

Title 1, Section 4, Article 12. Aggravating circumstances

(21) Committing or participating in a crime motivated by ideology, political opinion, religion, or belief about the victim's nationality, race, ethnicity or social group, gender, sexual orientation, gender identity, age, affiliation, personal appearance, illness, or disability.

Title 7, Section 5, Rape

Article 362. Those who engage carnally, via vaginal, anal, or oral means, a person under the age of fourteen years, shall be punished by a term of imprisonment in any degree...

Title 7, Section 6

Article 365. Those who engage carnally someone under the age of eighteen years, of the same sex, without the applicability of the offences of rape or statutory rape, shall be punished by imprisonment in its moderate degree.

(Translated from Spanish)

2. *The Constitution*, online: Ley Chile (in Spanish)
<http://www.leychile.cl/Navegar?idNorma=242302>

- **No statutory mention of sexual orientation or gender identity**

3. *Civil Code*, online: Ley Chile (in Spanish)
<http://www.leychile.cl/Navegar?idNorma=172986>

- **Title 4, Article 102 bans same-sex marriage**

Title 4, Marriage

Article 102. Marriage is a solemn contract of unity between a man and a woman, indissolubly and for life, in order to live together, procreate, and aid one another.

(Translated from Spanish)

4. *Antidiscrimination Act, 2012*, online: Ley Chile (in Spanish)
<http://www.leychile.cl/Navegar?idNorma=1042092>

- **Title 1, Article 1 requires the state to develop public policies to end discrimination**
- **Title 1, Article 2 prohibits discrimination on the basis of sex, sexual orientation, and gender identity**
- **Title 2, Article 3 permits filing of anti-discrimination lawsuits**
- **Title 3, Articles 15 and 16 prohibits discrimination for the purposes of the Labour Code, including public office**
- **Title 3, Article 17 defines motivation based upon sexual orientation or gender identity as an aggravating factor for the purposes of the *Criminal Code***

Title 1, General Provisions

Article 1. This law essentially aims to establish a judicial mechanism that effectively restores the rule of law over committed acts of arbitrary discrimination. It requires that each organ of state administration, within the scope of their competence, develop and implement policies to ensure that all persons, without arbitrary discrimination, may enjoy and exercise the rights and freedoms recognized by the Constitution of the Republic, statutes, and international treaties ratified by Chile that are in force.

Article 2. For the purposes of this law, ‘arbitrary discrimination’ means any distinction, exclusion, or restriction that lacks reasonable justification, made by State agents or individuals, and that causes deprivation or disturbance, or threat to the legitimate exercise of fundamental rights as established in the Constitution of the Republic or in international human rights treaties ratified by Chile that are in force, particularly when performed upon grounds such as race, ethnicity, nationality, socioeconomic status, language, ideology or political opinion, religion or belief, syndication or participation in trade associations (or lack thereof), sex, sexual orientation, gender identity, marital status, age, affiliation, personal appearance, and disease or disability. The categories referred to in the above

paragraph may not be invoked in any case in order to justify, validate, or exculpate conditions or practices contrary to law or public order.

Title 2, Civil Action for Arbitrary Discrimination

Article 3. Those directly affected by an act or omission amounting to arbitrary discrimination may bring a civil action of arbitrary discrimination, as one chooses, before a judge within the jurisdiction of one's home, or the home of the person responsible for the act or omission.

Title 3, Amendments to Other Legislation

Article 15. The following amendments to the *Decree with Force of Law No. 29, 2005, the Ministry of Finance*, which are established, consolidated, coordinated, and systemized in the text of Law No. 18.834, *Administrative Status*: 1) In Article 84, replace subsection (1), provided by Law No. 20.005, with the following: "To perform any such act prejudicial to the dignity of other officers shall be considered to give rise to an action of sexual harassment, defined under the terms of Article 2, paragraph 2, of the Labour Code, and arbitrary discrimination, according to the definition in Article 2 of the Antidiscrimination Act."

Article 16. Replace subsection (1) of Article 82 of Law No. 18.883, *Administrative Regulations for Municipal Officials*, with the following: "To perform any such act prejudicial to the dignity of other officers shall be considered to give rise to an action of sexual harassment, defined under the terms of Article 2, paragraph 2, of the Labour Code, and arbitrary discrimination, according to the definition in Article 2 of the Antidiscrimination Act."

Article 17. Amendment to the *Criminal Code*, hereby added in Article 12 (Aggravating Factors), is the following paragraph: "(21)(a) Committing or participating in a crime motivated by ideology, political opinion, religion, or belief of the victim, or the nation, race, ethnicity or social group to which the victim belongs, or the victim's sex, sexual orientation, gender identity, age, affiliation, personal appearance, or disease or disability."

(Translated from Spanish)

5. *Law 17344: Authorization to Change Full Name to the Indicated Extent*, online: Ley Chile (in Spanish)
<http://www.leychile.cl/Navegar?idNorma=28940>

- **Article 1(a) and (b) allows legal change of names if it would incite discrimination, or if, for "plausible reasons," the alternative name has been used by the person for at least 5 years**
- **This is subject to judicial discretion and is not a right**
- **The provision does not mention changing legal sex**

Article 1.

Every person has the right to use the names that have been individualized upon their registration of birth.

...any person may request once to be allowed to change their given names or surname, or both together, in the following cases:

- (a) When one name or the other are ridiculous, laughable, or morally or materially impair the person;
- (b) Where the applicant has been known for over five years, for plausible reasons, by given names or surname, or both, other than their own

...

(Translated from Spanish)

III. Case Law

Federal Court of Canada Decisions

1. *Burgos-Rojas v. Canada (Minister of Citizenship & Immigration)*, [1999] F.C.J. No. 88

Holding: Application for judicial review of Immigration and Refugee Board (IRB) decision denying refugee status granted.

- **The IRB erred in only considering the credibility of the applicant’s evidence**
- **The court held that even if the IRB did not find the applicant’s accounts credible, they were supposed to consider if he had a reasonable and well-founded fear of persecution, given the IRB’s awareness of the treatment of gay people in Chile**

The Applicant claims he identified as a homosexual man at 17, while living in Chile. It was accepted by the courts through documentary evidence that Chile is a homophobic country, with gay people often being harassed and beaten, even by police enforcement officials. He claims as a result of his sexual orientation he was subjected to persecution including threats, insults and beatings on a near-daily basis. He alleges the police had detained and beaten him and his lover, though no charges against the Applicant were laid. These incidents caused him to fear for his safety, such that he only left his home for work. The Applicant met a Canadian woman in January 1996, and they were married in March 1996. He did not disclose his sexual orientation to her. The couple moved to Canada in April 1996, where one week later the applicant told his wife he was gay. He moved out one and half months later.

The IRB found that his evidence was not credible and “fraught with internal inconsistencies and implausibilities.” They doubted his credibility when he confused facts regarding two major beatings he experienced, as well as the likelihood he would inform the military of his sexual orientation knowing how gay people in the country were treated.

Upon review, the Federal Court ruled that the IRB only considered the credibility of the applicant’s evidence. They did not consider if a gay man had a reasonable fear of

persecution in Chile. The IRB was aware of the treatment of gay people in the country, and even if they did not find his accounts credible, they needed to consider whether he had a reasonable fear of return.

2. *Espejo-Guiñez v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 211

Holding: Application for judicial review of Refugee Protection Division (RPD) decision granted. The matter is to be referred back to a newly constituted panel for reconsideration.

- **The court held that fear of persecution is not restricted to persecution by the Appellant's army colleagues, but extended to the larger community and police force**
- **The RPD assumed that the police and state could offer protection for the applicant, whereas the Federal Court found the police to be a potential agent of persecution.**
- **The RPD erred in failing to consider whether the police can protect the Applicant from persecution by the police themselves**

The Applicant is a gay man from Chile who was caught in a sexual act with another man while serving in the army. The two men were detained and beaten, and the Applicant was forced to resign from the Army. After his resignation, the Applicant received threatening phone calls and was badly beaten twice more by those same men who had assaulted him in the army. He left for Canada several months later.

The RPD found that while his claims about past persecution were credible, there was no evidence he would be subject to future persecution from those individuals. They found that the Applicant could turn to the police for help in the future. However, they did find in their analysis that the police in Chile abuse their authority and have a homophobic attitude.

On appeal, for the Federal Court agreed with the Applicant that the fear of persecution is not restricted to those individuals but includes the larger community and police force. Evidence from the Refugee Protection Division indicated that his fear of police involvement was justified from past incidents, and that the police are a potential agent of persecution.

Immigration and Refugee Board of Canada Decisions

1. *B.S.J. (Re)*, [1998] C.R.D.D. No. 32

Holding: Claimant not granted Convention Refugee status because his testimony regarding his sexual orientation is neither credible nor trustworthy.

- **The claimant needs to be able to prove they are a member of the social group being persecuted against, which in this case are LGBT people**
- **If the court cannot be convinced that the claimant is gay, his or her application for Convention refugee status will be rejected on those grounds**

The Applicant is a man who claims to have suffered harassment and discrimination in Chile because he is gay. He described incidents involving the police who beat him and made comments about his sexual orientation. He testified that in addition to police harassment, the real problem was with the Chilean society in general, as he was constantly looked down upon.

The IRB found that there were many inconsistencies in his testimony, including lying about his marital status on his passport and claiming he was unemployed when he was actually taking jobs unofficially for cash. He also mentioned several other incidents of discrimination, but did not include them in his claim. The IRB concluded that those events did not occur. The IRB found that the claimant was not a gay man, and as such did not have a well-founded fear of persecution in Chile for being gay.

2. *J.M.E. (Re), [1998] C.R.D.D. No. 19*

Holding: Claimant not granted Convention refugee status because his testimony regarding his sexual orientation is neither credible nor trustworthy.

- **The CRDD did not believe the claimant to be gay**
- **Witness testimony and a lack of knowledge of the gay community in Toronto were contributing factors to the rejection of his claim**

The Applicant is an 18-year-old man from Chile, who claimed that he would be subject to detention, arrest and physical violence based on his sexual orientation if he were returned to his native Chile. The persecution he claims to have suffered in Chile included being beaten and detained by police on account of his sexual orientation, expelled from school for kissing another male, and being raped by a police officer on three occasions while living with a minor.

The Convention Refugee Determination Division (CRDD) did not find him to be a credible or trustworthy witness regarding his homosexuality. They found many inconsistencies among his oral testimony, Personal Information Form, his interview at immigration and the testimony of the witness, his alleged lover. The Applicant could not explain the inconsistencies, so the CRDD found him not credible. The CRDD in particular found inconsistencies between the testimonies of the Applicant and the witness, and were suspicious of the lack of knowledge the Applicant had of the gay community in Toronto.

IV. Government Reports

Canada

1. Immigration and Refugee Board of Canada, Responses to Information Requests, "CHL103221.FE" (7 August 2009)
Online: <http://www.irb-cisr.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=452504&pls=1>

- **Despite social changes and legislative reform, homophobia is still very present in Chile**
- **Between 2006 and 2009, reports of discrimination based on sexual orientation increased**
- **In 2007 there were four homicides motivated by the victims' sexual orientation**

This report stresses the presence of homophobia in Chile and outlines the discrimination and violence faced by homosexuals in Chile. Discrimination is particularly prevalent in religious or conservative circles and in the military, with the national police identified as one of the most discriminatory organizations in the country. MOVILH reported an increase in the number of reports of discrimination between 2006 and 2009. MOVILH's data also indicates that there were four homicides motivated by the victims' sexual orientation and identity in 2007.

United States of America

1. U.S. Department of State, Bureau of Democracy, Human Rights and Labor, "Country Reports on Human Rights Practices for 2012: Chile" (2012)
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204435>

- **A worsening of violence against LGBT individuals between 2011 and 2012 has been reported**
- **LGBT individuals are mistreated in some prisons**
- **On March 4, 2012, Daniel Zamudio was attacked and tortured by alleged neo-Nazis and later died as a result of his injuries**
- **On July 20, 2012 Valeska Salazar Gajardo was attacked by friends and relatives of her former girlfriend who claimed that they attacked Salazar for "turning" their relative into a lesbian**

This report is a comprehensive summary of human rights practices in Chile. It acknowledges discrimination against lesbian, gay, bisexual and transgendered persons as one of Chile's principal human rights problems.

The U.S. Department of State recounts reports from MOVILH, a national organization advocating for LGBT rights, which state that acts of violence against LGBT individuals worsened between 2011 and 2012 (see Section V). The attacks on Daniel Zamudio and Valeska Salazar Gajardo are recent instances of serious violence against homosexuals.

This report emphasizes the mistreatment of LGBT individuals in some prisons as a serious human rights problem. Prisoners with HIV/AIDS reportedly fail to receive adequate medical attention in some prisons. According to MOVILH and various media outlets an official commission reported that gay prisoners were denied hygienic services and forced to defecate in sacks.

V. Reports from International Agencies and Non-Governmental Organizations

Movimiento de Integración y Liberación Homosexual (MOVILH)

(The Movement for Homosexual Integration and Liberation is an organization advocating for LGBT rights. Founded in 1991, the organization's interventions are national in scope and encompass social, cultural political, economic, legal and legislative aspects of LGBT rights.)

1. "XI. Informe Anual de Derechos Humanos de la Diversidad Sexual en Chile", February 2013
Online:
http://www.movilh.cl/documentacion/XI_Informe_de_DHH_Movilh_Hechos_2012.pdf

- **Studies suggest that support for equal marriage rights has risen to around 50%.**
- **Homophobic attitudes still persist in the military**
- **There has been some violent backlash against anti-discrimination legislation and changing social attitudes towards homosexuality**
- **There is police abuse of LGBT individuals**
- **Brutal prison conditions for the LGBT population have been reported**

This is the latest in a series of annual reports on human rights and sexual diversity in Chile. Reports going back to 2002 are available at <http://www.movilh.cl/biblioteca/estudios/>.

This report includes a survey of recent studies on societal attitudes towards homosexuality in Chile. Most of these studies report that support for equal marriage rights for homosexuals has risen to around 50%. Results vary from study to study on the acceptance of homosexual individuals being allowed to adopt. 96.6% of the military is opposed to homosexuals enlisting with 52.1% saying they were "repelled" by "homosexuality/lesbianism", 20.9% saying it was a "neutral issue" and 24% saying it was "a personal choice that should be respected".

This report includes data on violence against LGBT individuals in Chile. Since 2002, there have been 20 murders of LGBT individuals, with 3 in 2012, 86 physical or verbal assaults, with 20 in 2012 and 34 cases of police abuse or arbitrary detention with 2012 as one of the worst years with 6 cases. A study by UNAIDS found that 75% of homosexual men surveyed had experienced "taunts", 55% had experienced "insults" and 15% had experienced "physical violence". The same study found that 90% of transgendered women had experienced "taunts" and "insults" and about 65% had experienced "physical aggression".

This report emphasizes abuse of LGBT individuals by the police and brutal prison conditions for LGBT populations in some prisons. Abuse by the police often occurs in the context of an attempt to report a crime by the victim. A commission of judges reported brutal prison conditions for the LGBT population.

International Gay and Lesbian Human Rights Commission

2. “Human Rights Violations of Adolescents in Chile”, October 2007
Online: http://www.iglhrc.org/sites/default/files/IGLHRC%20Chile%20Shadow%20Report%202007_CRC.pdf

- **Chile's *Criminal Code* criminalizes same-sex sexual activity involving a minor under 18, while the age of consent for heterosexual sex is 14**
- **In a recent report to the United Nations Committee on the Rights of a Child, Chile equated “sodomy” with rape, incest, statutory rape, sexual abuse, child pornography, and prostitution of boys and girls**

This report argues that Chile's laws relating to the age of consent to sexual activity criminalize homosexual sexual activity and infringe on the human rights of adolescents. The age of consent for heterosexual sex in Chile is 14 but the Criminal Code criminalizes same-sex sexual activity involving a minor under 18. As a result, homosexual sex between adolescents as well as between an adult and an adolescent can be punished. In 2007, a man was sentenced to 41 days in prison for having sex with a minor who was 12 days from the age of majority, although the minor testified that he had sex without being pressured and on his own initiative. The prosecutor had requested a 541-day prison sentence, claiming this was justified because the older man had “corrupted the sexual moral of the minor”.

3. “Violaciones de derechos humanos de las personas lesbianas, bisexuales y transexuales (LBT): Un informe sombra”, September 2012
Online: <http://www.iglhrc.org/sites/default/files/583-1.pdf>

- **Violence at the hands of families, strangers and the police is a persistent problem for LBT women in Chile**
- **Chile's “public decency” law, Article 373 of the Criminal Code, has been disproportionately applied to LGBT persons**
- **Violence and police brutality against transsexual women are serious problems**

This report argues that violence against LBT women in Chile is a persistent problem that the state has failed to properly address. The attack on Valeska Salazar is an example of this violence.

Violence against transsexual women and police brutality are particularly serious problems. On June 28, 2012 Maria Ignacia, a transsexual woman, was arbitrarily arrested, illegally detained, verbally abused and forced to perform oral sex by police officers. Police officers minimized the assault of a transsexual sex worker by a client and left the victim bleeding for 30 minutes before investigating her injuries. Transgendered women are incarcerated along with male prisoners and many suffer violence at the hands of fellow inmates.

4. “Chilean Paradoxes: LGBT rights in Latin America”, August 2012
Online: <http://iglhrc.wordpress.com/2012/08/13/chilean-paradoxes-lgbt-rights-in-latin-america/>

- **While Chile is making progress in the recognition of LGBT rights, many problems remain.**
- **In 2005, the Chilean Supreme Court denied Karan Atala custody of her children on the basis of her sexual orientation**
- **Activists claim that recent developments in legislation will fail to effectively promote LGBT rights**

This report argues that although Chile has been making progress in recognition and protection of LGBT rights, the situation for LGBT people in Chile remains problematic. The 2005 decision of the Chilean Supreme Court to strip Karan Atala of custody of her children on the basis of her sexual orientation is an example of serious discrimination against LGBT people in Chile. The fact that this decision was recently denounced by the Inter-American Court of Human Rights suggests that Chile may be lagging behind neighbouring states in protection of LGBT rights.

Activists claim that recent developments in legislation will fail to effectively promote LGBT rights. LGBT organizations have characterized the recent anti-discrimination legislation as weak and ineffective. Some activists argue that opposite sex marriages will still be privileged under a proposed bill allowing same-sex civil unions and recent challenges to the constitutionality of the civil code's definition of marriage as between one man and one woman have been unsuccessful. Although it has been promised that sex reassignment surgery will soon be covered by the national health plan, there is currently no law that would allow legal name and sex reassignment for transgendered people.

Human Rights Watch

5. "World Report 2013: Chile", 2013
Online: <http://www.hrw.org/world-report/2013/country-chapters/chile?page=3>
 - **Chile now has a law prohibiting discrimination on the grounds of sexual orientation and gender identity**
 - **There is still no mechanism for the compensation of victims of discrimination**

This is a comprehensive report on human rights conditions in Chile. The section related to sexual orientation and gender identity focuses on the recent introduction of anti-discrimination legislation. The legislation is aimed at providing rapid redress of discriminatory acts and toughening penalties for discriminatory acts. However, it creates no mechanism for compensating victims of discrimination.

Amnesty International

6. "Human Rights Report 2013: Chile", 2013
Online: <http://www.amnesty.org/en/region/chile/report-2013>
 - **Chile now has an anti-discrimination law**

- **In March 2012, Daniel Zumudio was beaten to death, allegedly for being homosexual**
- **The Inter-American Court of Human Rights recently condemned a Chilean Supreme Court decision that stripped a mother of child custody on the basis of her sexual orientation**

VI. Newspaper and Media Reports

1. “Daniel Zamudio Verdict: 4 Chilean Man Found Guilty In Gay Man's Murder”, Huffington Post, 17 October 2013
Online: http://www.huffingtonpost.com/2013/10/17/daniel-zamudio-murder-verdict-_n_4117517.html
 - **Four Chilean men have been found guilty of first-degree murder for killing a gay man and carving swastikas into his body**
 - **Daniel Zamudio's murder set off a national debate about hate crimes in Chile that led Congress to pass an anti-discrimination law**
2. “Senate Approves Life Partner Agreement” (in Spanish), MOVILH, 16 October 2013
Online (in Spanish): <http://www.movilh.cl/comision-del-senado-aprueba-creacion-de-estado-civil-en-el-acuerdo-de-vida-en-pareja/>
 - **Senate committee voted in favour of the ‘Life Partner Agreement’, which would grant quasi civil union status to same-sex couples, with many of the same rights such as marriage, and would protect child custody regardless of sexual orientation**
 - **Still further governmental hurdles before it becomes law**
3. “Chile to cover sex change operations”, ioL News, 25 May 2012
Online: <http://www.iol.co.za/news/world/chile-to-cover-sex-change-operations-1.1304964#.UmKomflQE18>
 - **Chile will cover the cost of sex change operations under public health plan**
 - **Will be performed in public hospitals in Santiago, Valparaiso, and Concepcion**
 - **Adjusted according to income bracket**
4. “Atala Riffo and Daughters v. Chile”, IACHR, [2012]
Online: http://corteidh.or.cr/docs/casos/articulos/seriec_239_ing.pdf
 - **Supreme Court of Chile denied a Judge Atala Riffo child custody on basis of sexual orientation; this decision was overturned by the Inter-American Court of Human Rights (IACHR)**
 - **IACHR ruled that sexual orientation is protected under the American Convention, and cannot be a basis for denying custody of children**

- **Chile agreed to comply**
5. “Chile Introduces Constitutional Gay Marriage Ban Amendment”, On Top Magazine, 11 August 2011
Online: <http://www.ontopmag.com/article.aspx?id=9184&MediaType=1&Category=24#>
 - **Movement to constitutionally define marriage as between a man and a woman by Chile’s Independent Democratic Union**
This came 2 days after introduction of Life Partner Agreement Bill, which would grant quasi civil union status to same-sex couples
 6. Peralta Wetzel, César Antonio, et al v. Soto Silva, Joanna, Tribunal Constitucional, [2011]
Online (in Spanish): <http://www.tribunalconstitucional.cl/wp/ver.php?id=2213>
 - **Constitutional Tribunal upheld rejection of 2 couples seeking to register their marriages in Argentina and Canada with the Chilean Civil Registry, ruling that marriage “is reserved for heterosexual couples and not those of the same sex”**
 - **Also rejected Chilean couple applying for marriage license**

VII. Scholarship

1. Encarnación, O.G. “Latin America’s gay rights revolution”. *J of Democracy*, 2011
 - **There has been strong impetus since mid-2000s for LGBT rights among Latin American countries**
 - **A likely cause for this is spillover from the mature LGBT rights movement in the United States and Western Europe; the author considers same-sex unions to be ‘transnational exports**
 - **Still, successes are likely best attributed to political victories by activist groups that took advantage of a left-wing regional shift in Latin America, positive constitutional examples set by developed countries, and the rise of international human rights discourse**
 - **Despite political victories, social transformation has not occurred; public opinion continues to remain strongly opposed to the manifestation of LGBT rights**
 - **Activists in Latin America have been more successful advocating from a human rights perspective rather than through the justice system, suggesting that Latin American countries are responsive to international human rights pressures**

While this article treats Latin America as a regional entity, with Argentina as its flagship case, it is useful for placing Chile in the broader context of sociopolitical development in the region. It argues that Latin America develops according to mutual regional pressures, which is notable for LGBT developments in Chile, given the decision of the Inter-American Court of Human Rights that Judge

Karen Atala had been wrongly deprived custody of her children on the basis of her sexual orientation. As forefront Latin countries like Argentina paved the way with human rights policy and law, others in the region, including Chile, are likely to follow.

2. Gonzalez, K. "Civil marriage and gay union law in the Americas", *Law and Business Review of the Americas*, 2010

- **The study describes rights extended to same-sex couples in Uruguay, Brazil, Argentina, Mexico, Colombia, Venezuela, Cuba, and Chile, finding that Chile is the most hostile toward the idea of same-sex civil union**
- **Authors predict that same-sex couple rights will not be granted for at least another decade, given the Supreme Court's clear stance against allowing same-sex couples equal family law rights**
- **Still, public opinion is shifting toward acceptance of same-sex union**
- **Status of same-sex union in the Americas is driven mostly by political factors, and not by the Catholic Church; there is no strong correlation between strength of the Church and same-sex protection in any given country**

This article situates the laws and attitudes of each North and South American country against the others. Chile is argued to be the most conservative and hostile nation in South America toward the notion of same-sex civil union or marriage, citing evidence of its slow actions to repeal sodomy laws, the strict anti-marriage assertions of the Supreme Court in recent cases, and historical reluctance of the public to support equal rights at the polls.

The authors refute the argument that attitudes toward same-sex couples are driven by the Catholic Church's notoriously anti-union stance, instead pointing to the constitutional structure and principles that give the Supreme Court broad flexibility when applying family law, as well as the highly conservative political parties and public opinion.

3. Barrientos, J., Silva, J., Catalan, S., Gómez, F., & Longueira, J. "Discrimination and victimization: Parade for Lesbian, Gay, Bisexual, and Transgender (LGBT) Pride, in Chile." *J of Homosexuality*, 2010

Chile has shown slower advances toward acceptance of LGBT persons than other Latin American countries

- **Cultural homophobia is deeply rooted in laws, institutions, and attitudes**
- **'Sodomitic relationships' only struck from the penal code in 1997**
- **To determine their experiences with discrimination and victimization, administered questionnaires were given to LGBT individuals. 85% of respondents had experienced some form of discrimination; 30% experienced it at school, in their homes or communities, and religious organizations**

The survey administered in this study reached across those identifying as gay, lesbian, transgender, transsexual, bisexual, and many original self-determined denominations. They were also asked about their place of residence, religion, education, occupation, and income.

Importantly, they were asked to rate their experience with discrimination and victimization in different areas of their lives. Results indicated moderate levels (around 30%) of discrimination at school, from their family and community, and from their religious organization. Most had abandoned their Catholic religious roots, pursued postsecondary education, and lived in a metropolitan environment (Santiago), but had medium-low income.

Nearly all participants reported some experience with discrimination and victimization. Those who were subject to more aggressive experiences perceived that discrimination was a more significant issue than those subject to less aggressive experiences. A trend of public discrimination and victimization by strangers was established, which supports the notion of widespread cultural homophobia. The authors suggest that ‘normativization’ has occurred, such that LGBT individuals have come to accept that they will be subject to discrimination. Finally, the severity and perception of discrimination and victimization appears to be related to appearance; hence, transgender and transsexual individuals are more likely to experience physical violence.

4. Friedman, E.J. “Gender, sexuality, and the Latin American left: testing the transformation”. *Third World Quarterly*, 2009

Left-wing political developments are occurring in Brazil, Chile, Venezuela, and Bolivia that affect women and LGBT individuals

- **While women and feminist movements in South America grew in strength and visibility from the 1970s onward, policy changes remained largely underpinned by conservative family values and beliefs**
- **Feminists and left-wing politicians have been at odds with each other in South America, often seeking different policy outcomes. Politicians promoted economic liberalism while maintaining patriarchal institutions, while feminists supported social liberalism more strongly**
- **The development and success of feminism in South America may be able to predict gender and sexual orientation developments**
- **Current laws regarding LGBT persons reflect the trajectory of women’s rights; there is parliamentary support for equal rights, but it is slow and reluctant executive action**

This article addresses, and attempts to predict, the likely course that gender and sexual rights will take in Chile based upon the pattern followed by feminist movements. As feminist groups overcame tensions with political parties and began to gain national eminence, legislative action began to unfold. However, the movement continues to be faced with a struggle between the feminists themselves and the patriarchal left-wing political groups that feminists associate with, as these groups often pursue different agendas and are forced to compromise on policy issues.

The same pattern is emerging for sexual orientation rights. Activists and allies are beginning to attain national visibility and political support, but any developments are always on the legislature’s terms, and this often reflects deeply rooted traditional beliefs about the family. LGBT groups are met with continued political and community opposition, and have not yet

achieved the momentum required to overcome the implicitly heteronormative legislature and executive.

5. Herrera, F. "Tradition and transgression: Lesbian motherhood in Chile". *J of NSRC*, 2009

Lesbian women in Chile are refused access to adoption and artificial insemination procedures, and so are forced to find alternative methods

- **They consistently fear loss of custody if their sexual orientation is discovered**
- **Most women interviewed felt they had to conceal sexual identity from families, ex-husbands, workmates, and/or children**
- **Women in same-sex relationships believe that the likelihood of discrimination that their children will face is a risk that prohibits parenthood**
- **Lesbian women perceive that the community is unable to reconcile their transgressive sexual identity with traditional attitudes toward femininity and the nuclear family**
- **Fear of losing custody is a strong motivating factor for concealing identity**

This in-depth interview-based ethnographic study details the experiences of several lesbian women who have chosen to become mothers in Santiago. It finds that there are tremendous obstacles to motherhood, both externally imposed and internally driven. Externally, access to medical procedures is denied, and the likely stigma that children would face prohibits many partners from pursuing motherhood, or forces them to keep their identities concealed. Further, those who bring children from opposite-sex relationships fear loss of custody. Internally, the non-biological mother often finds it difficult to come to terms with the definition of family as a biological unit that is prevalent in Chilean culture. Partners also often grapple with their cultural beliefs that children require 'father-figures' and male role-models, while still wanting to exclude biological fathers in order to protect the fragile nature of their motherhood. Additionally, mothers are unable to rely on extended family for support, unlike opposite-sex couples, because of the rejection of their sexual identity.

6. Nierman, A.J., Thompson, S.C., Bryan, A., & Mahaffey, A.L. "Gender role beliefs and attitudes toward lesbians and gay men in Chile and the U.S". *Sex Roles*, 2007

- **Chile is a highly patriarchal country that has a strongly established culture of male dominance and masculinity; the U.S. is less patriarchal**
- **Sexist, traditional, conservative attitudes expected to predict attitudes toward same-sex activity**
- **Chilean and American university students were surveyed to determine their level of prejudice toward same-sex activity**
- **A second study sought to determine whether gender role beliefs in each country can account for the levels of prejudice**
- **Overall, the studies found that men's attitudes are more negative than women's, and Chilean attitudes more negative than American; these effects were completely mediated by gender role beliefs**

This article presents compelling evidence that the barriers faced by LGBT individuals are deeply rooted in the broader culture, rather than being purely politico-legal. The study found that, overall, men had more negative opinions of same-sex activity than women, and that Chileans were more negative than Americans. In the second study, Chileans were found to hold much more traditional beliefs about gender roles than Americans. The differences in these beliefs completely moderated opinions of lesbians; after controlling for gender role beliefs, Chileans viewed lesbians no more negatively than Americans. However, they still held more negative beliefs about gay men. The authors argue that while gender role beliefs are a very strong indicator of attitudes toward same-sex activity within a given culture, there are other cultural factors that exacerbate negative attitudes toward gay men, such as a heightened pressure for men to prove their *machismo* by distancing themselves from effeminate men.