



Queer Refugee Hearings Program Country of Origin Information Report

Chile
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The Queer Refugee Hearings Program (QRHP) is a hearing preparation program for individuals in Ottawa claiming refugee protection based on sexual orientation, gender identity and expression (SOGIE). This report serves to provide counsel, claimants, and adjudicators with detailed and nuanced information on the treatment of SOGIE-diverse individuals in Chile in accordance with the Immigration and Refugee Board's *Chairperson's Guideline 9: Proceedings Involving Sexual Orientation, Gender Identity, and Expression*. QRHP cannot guarantee the veracity of the cited information or a positive outcome in any SOGIE-diverse refugee claims.

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I. General Information

Population

Chile is the 65th most populous country in the world with a population of 18,186,770 (July 2020 estimate).¹ 90% of the population is located in the middle third of the country around the capital of Santiago. The far north and south are relatively underpopulated.² The most populous cities include Santiago (6.767 million), Valparaiso (984,000) and Concepcion (881,000). 87.7% of the population lives in urban areas.³

Government and Legal System

Chile is a presidential republic⁴ and divided into 16 numbered regions. Each region is headed by an intendant (intendente) appointed by the President of Chile and a directly elected regional board. The regions are further divided into provinces (56 in total), each of which are headed by a governor appointed by the President.⁵

The President of Chile is both the head of the government and the chief of state. The current President, Sebastian Pinera Echenique (Pinera), took office on 11 March 2018.⁶ Presidents are elected by absolute majority popular vote in two rounds if needed for a single four-year term.⁷ President Pinera is the head of the National Renovation Party, which represents the conservative *Vamos Chile* (Let's Go Chile) coalition. In 2017, he defeated centre-left candidate Alejandro Guillier of the ruling New Majority coalition. This is Pinera's second term in office having served as President from 2009-2014.⁸

Servicio Electoral de Chile currently lists 25 active political parties in Chile. Support for specific political parties in Chile is weak where between 1990 and 2015 the proportion of the electorate that identifies with any political party dropped from 80% to 20%.⁹ This is framed by a growing

¹ Tab 1.3 - Central Intelligence Agency, "Chile," (9 November 2020), online: *The World Factbook* <<https://www.cia.gov/library/publications/resources/the-world-factbook/geos/ci.html> > [CIA Chile].

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵ Marcello Carmagnani, "Chile," (17 November 2020), online: *Britannica* <<https://www.britannica.com/place/Chile/Trade-and-finance#ref24696>>.

⁶ Tab 1.3 - Central Intelligence Agency, "Chile," (9 November 2020), online: *The World Factbook* <<https://www.cia.gov/library/publications/resources/the-world-factbook/geos/ci.html> > [CIA Chile].

⁷ *Ibid.*

⁸ Jennifer Pribble and Juan Pablo Luna, "Chile just elected a billionaire president. These are the 4 things you need to know" (18 December 2017), online: *The Washington Post* <<https://www.washingtonpost.com/news/monkey-cage/wp/2017/12/18/chile-just-elected-a-billionaire-president-these-are-the-4-things-you-need-to-know/>>.

⁹ Tab 1.5 - Bertelsmann Stiftung, "Chile Country Report 2020," (Accessed 18 November 2020) online: *BTI Transformation Index* <<https://www.bti-project.org/en/reports/country-report-CHL.html#pos6>>.

indifference among the population toward politics and a distrust in institutions such as parliament, political parties and the judiciary.¹⁰

The Legislative branch of the government, *Congreso Nacional*, consists of the Senate and the Chamber of Deputies. Senate member (43 seats following the 2017 election, to increase to 50 in 2021) are elected by proportional representation to serve eight-year terms, with one half of the membership renewed every four years. The Chamber of Deputies (155 seats) are elected by proportional representation to serve four-year terms.¹¹

The judiciary of Chile is a civil law system.¹² The Civil Code initially came into force on January 1, 1857. The highest courts in Chile are the Supreme Court (20 members), the Constitutional Court (10 members), and the Elections Qualifying Court (5 members).¹³ Subordinate courts include Courts of Appeal, oral criminal tribunals, military tribunals, local police courts, and specialized tribunals and courts in matters such as family, labor, customs, taxes, and electoral affairs.¹⁴

Triggered by protests over inequalities in the health, education, and housing sectors, on 25 October 2020, Chile held a National referendum where they voted to rewrite the country's constitution. On 11 April 2021, 155 people will be elected to make up the convention, which will draw up the new constitution. The new constitution will then be put to the Chilean people in another referendum in 2022.¹⁵

Religion

Christianity is the largest religion in Chile with 60% of the population identifying as Roman Catholic, 18% of the population identifying as evangelical or protestant. An estimated 4% of the population identifies as atheist or agnostic, while 17% identifies as non-religious. Other religions account for approximately 5% of the population.¹⁶

The constitution provides for freedom of conscience and worship and the law prohibits religious discrimination. Though religion and the state are officially separate, the National Office of

¹⁰ *Ibid.*

¹¹ Tab 1.3 - Central Intelligence Agency, "Chile," (9 November 2020), online: *The World Factbook* <<https://www.cia.gov/library/publications/resources/the-world-factbook/geos/ci.html>> [CIA Chile].

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ BBC News, "Jubilation as Chile votes to rewrite constitution," (26 October 2020), online: *BBC* <<https://www.bbc.com/news/world-latin-america-54687090>>.

¹⁶ Tab 12.1 - US Department of State, "2018 Report on International Religious Freedom: Chile," (Accessed 18 November 2020), online: *US Department of State*: <<https://www.state.gov/reports/2018-report-on-international-religious-freedom/chile/>>.

Religious Affairs (ONAR), an executive government agency, facilitates communication between faith communities and the government to ensure the protection of the rights of religious minorities.¹⁷

Language

Spanish is Chile's official language which is spoken by 99.5% of the population. 10.2% of the population speaks English, while 1% speak indigenous languages (including Mapudungun, Aymara, Quechua, Rapa Nui). (2012 estimate).¹⁸

Culture

Traditional gender roles have continually shaped Chilean culture, upholding patriarchal structures. Male and female gender norms are pervasive in both private and public spheres where, "a heterosexist dichotomy is an institutionalized norm that is deeply entrenched in Chilean society."¹⁹ The concepts of *machismo* and *marianismo* reflect these gender norms. *Machismo* is, "the expression of a masculine identity that frames men as providers, independent, strong, willing to face danger, dominant, heterosexual, virile, knowledgeable, aggressive, and in control of women."²⁰ Conversely, *marianismo* is the expression of a feminine identity denoting the submission of women to men and characterizing women as, "pure, dependent, vulnerable, abstinent until marriage, innocent, silent, and self-sacrificing."²¹

Chilean society also tends to be stratified according to distinct socioeconomic groups where one's socioeconomic status is considered to be a major determinant of one's identity.²² This is reflected in the use of various Chilean words to describe someone who is upper class (i.e. 'cuico,' 'pituco,' and 'esnob') or someone those who are lower class (i.e. 'roto,' 'ordinario' and 'flaite').²³ Interaction between social classes is usually fleeting and family pressures often prevent one from socialising or marrying those from a different social class. Socioeconomic divides are observed in education (public versus private schooling) as well as between

¹⁷ *Ibid.*

¹⁸ Tab 1.3 - Central Intelligence Agency, "Chile," (9 November 2020), online: *The World Factbook* <<https://www.cia.gov/library/publications/resources/the-world-factbook/geos/ci.html> > [CIA Chile].

¹⁹ Shyam Anand Singh, "Overcoming Heteronormative Hegemony: Queer Resistance to Neoliberalism in Chile," (2015) at 87, online: Thesis submitted for the *National University of Singapore* <<https://core.ac.uk/download/pdf/48812255.pdf>>.

²⁰ Ferrer et al, "Exploring the Masculine Identity in the Context of HIV Prevention in Chile," 48:2 (March 2016) at 129, *Journal of Nursing Scholarship*.

²¹ *Ibid.*

²² Cultural Atlas, "Chilean Culture," (Accessed 18 November 2020) online: *Cultural Atlas* <<https://culturalatlas.sbs.com.au/chilean-culture/chilean-culture-core-concepts>>.

²³ *Ibid.*

ethnicities, where typically those with darker skin (from Indigenous and Spanish heritages) are associated with being lower class.²⁴

Ethnicities

White/ Non-Indigenous persons make up 88.9% of the population, 9.1% identify as Mapuche, 0.7% as Aymara, and 1% as other indigenous groups (including Rapa Nui, Likan Antai, Quechua, Colla, Diaguita, Kawesqar, Yagan or Yamana).²⁵

In Chile, nine indigenous groups are recognized by the Indigenous Act No 19,253, comprised of 1,585,680 persons.²⁶ The 1980 Constitution does not, however recognize indigenous peoples or their rights. As of 2017, indigenous peoples in Chile had the highest rates of poverty, under-development and illiteracy.²⁷

General Human Rights Record

Chile closed 2019 with the worst human rights crisis since General Augusto Pinochet's regime (1973-1990).²⁸ This was largely due to severe levels of repression by state forces in the wake of protests against high levels of inequality in the country. According to Amnesty International, the state, "attempted to justify their use of violence against protesters by claiming that these measures were necessary to protect infrastructure and private property from being damaged or vandalized."²⁹

The Attorney General's Office registered more than 2,500 complaints of human rights violations during the 2019 protests, mainly against the state police (Carabineros). Complaints included allegations of inappropriate use of lethal weapons, torture and other cruel, inhuman or degrading treatment, as well as crimes of sexual nature.³⁰

The United States Department of State notes that in 2019, "Significant human rights issues include reports of arbitrary or unlawful killings; torture by law enforcement officers, violence

²⁴ *Ibid.*

²⁵ Tab 1.3 - Central Intelligence Agency, "Chile," (9 November 2020), online: *The World Factbook* <<https://www.cia.gov/library/publications/resources/the-world-factbook/geos/ci.html> > [CIA Chile].

²⁶ Tab 13.1 - David Nathaniel Berger, "The Indigenous World: Chile," (2019) at p 144, online (pdf): *International Work Group for Indigenous Affairs* <https://www.iwgia.org/images/documents/indigenous-world/IndigenousWorld2019_UK.pdf>.

²⁷ *Ibid.*

²⁸ Tab 2.2 - Amnesty International, "Annual Report 2019: Chile" (February 2019) at p 31, online (pdf) *Amnesty International* <<https://www.amnesty.org/download/Documents/AMR0113532020ENGLISH.PDF>>.

²⁹ *Ibid.*

³⁰ *Ibid.*

against lesbian, gay, bisexual, transgender, and intersex persons; and violence against indigenous persons.”³¹

State repression has historically targeted the Mapuche population. Notable deaths of Mapuche persons by the Carabineros include that of Alex Lemun in 2002 and Camilo Catrillanca in 2018.³² Authorities have also controversially used an anti-terrorism law against the Mapuche people.³³

II. Legal Environment for SOGIE-Diverse Individuals

A. Legal framework

Laws Granting and Denying Rights to Sexual Minorities

In 1999, Chile decriminalized homosexuality. Up until then, article 365 of the penal code criminalized same-sex sexual activity. The penal code, implemented in 1874, had mandated a penalty between 541 days and three years for those found guilty.³⁴ While homosexuality is now legal, the new form of Article 365 establishes a different age of consent (18 years of age) compared to heterosexual sexual activity (14 years of age).³⁵ Notably, however, in a 2011 Constitutional Court decision upholding the constitutional validity of Article 365, the court specified that this law only applies to sexual relations between two men and not to lesbians.³⁶

The Chilean constitution does not contain any language explicitly prohibiting same-sex couples from marriage. However, Chile’s Constitutional Court ruled in 2011 that there is no constitutional right to marriage for same-sex couples.³⁷

The Chilean Civil Code, which came into effect in 1857, is used as the regulatory law on marriage.³⁸ Accordingly, Article 102 states, “Marriage is a solemn contract by which a man and

³¹ Tab 2.1 - US Department of State, “2019 Report on Human Rights Practices: Chile,” (Accessed 18 November 2020), online: *US Department of State*: < <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/chile/>>.

³² Tab 2.2 - Amnesty International, “Annual Report 2019: Chile” (February 2019) at p 31, online (pdf) *Amnesty International* <<https://www.amnesty.org/download/Documents/AMR0113532020ENGLISH.PDF>>.

³³ *Ibid* at 32.

³⁴ Shawn Schulenberg, “LGBT rights in Chile: On the verge of a gay-rights revolution?” 2:2 (November 2019) at 101, *Sexuality, gender & policy*.

³⁵ *Ibid*.

³⁶ Pride Legal, “Chile LGBT Laws,” (Accessed 18 November 2020) online: *Pride Legal* <<https://pridelegal.com/chile-lgbt-laws/>>.

³⁷ Shawn Schulenberg, “LGBT rights in Chile: On the verge of a gay-rights revolution?” 2:2 (November 2019) at 107, *Sexuality, gender & policy*.

³⁸ *Ibid* at 104.

a woman come together presently and inextricably for all of life, with purpose to live together, to procreate, and to mutually care for each other.”³⁹

On April 13, 2015, then President Michelle Bachelet signed the Civil Union Accord into law (Law No 20.830) which allowed persons of the same sex to enter into civil unions with one another.⁴⁰ This law grants same-sex couples the right to inherit one another’s property, join a partner’s health plan and receive pension benefits. This right, however, did not grant same-sex couples equal rights in respect to children.⁴¹

In 2017, the Bachelet administration sent a bill to Congress to recognize same-sex marriage⁴² which gained little traction. In June 2020, Chile’s Constitutional Court denied a lesbian couple, who were married in Spain, their right to have a child and to have their marriage recognized in the country.⁴³ On October, 21 2020, however, the Chilean Senate’s Constitution Commission approved marriage equality, an important step in moving the bill forward.⁴⁴

Laws Protecting SOGIE-Diverse Individuals

In 2012, Daniel Zamudio, a 24 year-old gay man was walking home at night when he was brutally attacked and tortured for several hours by four individuals because of his sexual orientation.⁴⁵ This prompted the Chilean government, with significant pressure from the public and the Office of the United Nations High Commissioner for Human Rights, to pass Law No. 20.609 prohibiting discrimination on the basis of sexual orientation and gender identity.⁴⁶ This law encompasses discrimination in the areas of housing, employment and access to government

³⁹ *Ibid* at 105.

⁴⁰ Tab 2.5 - Human Rights Council, “National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21- Chile” (7 November 2018) at p 14, online (pdf) *United Nations* <<http://undocs.org/en/A/HRC/WG.6/32/CHL/1>>.

⁴¹ Tab 2.7 - Human Rights Council, “Summary of Stakeholders’ submissions on Chile,” (6 November 2018) at p 6, online (pdf): *United Nations* <<http://undocs.org/en/A/HRC/WG.6/32/CHL/3>>.

⁴² Human Rights Watch, “Chile: Events of 2019,” (January 2020) online: *Human Rights Watch* <<https://www.hrw.org/world-report/2020/country-chapters/chile>>.

⁴³ Jose Miguel Vivanco, “A step Backward for Same-Sex Couples in Chile,” (24 September 2020) online: *Human Rights Watch* <<https://www.hrw.org/news/2020/09/24/step-backward-same-sex-couples-chile>>.

⁴⁴ Gay Star News, “Chile’s Senate approves crucial articles for same-sex marriage law,” (21 October 2020) online: *Gay Star News* <<https://www.gaystarnews.com/article/chiles-senate-approves-crucial-articles-for-same-sex-marriage-law/>>.

⁴⁵ Shawn Schulenberg, “LGBT rights in Chile: On the verge of a gay-rights revolution?” 2:2 (November 2019) at 102, *Sexuality, gender & policy*.

⁴⁶ Tab 6.1 - ILGA, “LGBTI persons in Chile deprived of liberty, with restrictions on their liberty, and other human rights situations related to torture, inhuman and degrading treatment or punishment,” (16 March 2017) at p 1-2, online (pdf): *ILGA* <https://ilga.org/wp-content/uploads/2016/02/SPT-Country-Visit-Chile-LGBT_EN.pdf>.

services.⁴⁷ Employment discrimination on the grounds of sexual orientation and gender identity are prohibited under Article No. 2 of the Labour Code.⁴⁸

Hate crimes based on sexual orientation and gender identity are also considered an aggravating circumstance in sentencing under Article No 12.21 of the Criminal Code.

Other Laws Disproportionately Impacting SOGIE-Diverse Individuals.

The Organization of Transsexuals for the Dignity of Diversity (OTD), a Chilean organization that aims to raise awareness in the community about transgender individuals, notes that Article 373 of the Chilean Penal Code has been used to justify the detention of LGBT individuals and “to criminalize and harass [their] lawful behaviour.”⁴⁹ Article 373 of the Chilean Penal Code punishes behaviour that offends “morality” and “decency” [or “good customs”]⁵⁰ and states:

[t]hose that in any form offend the modesty or good customs with acts of grave scandal or of significance, not expressly covered in other articles of this Code, will suffer the penalty of imprisonment to the minimum or medium degree (Chile 1874, Art. 373) (translation).

Legal Provisions Concerning Transgender and Intersex Persons

The Gender Identity Law came into effect in December 2019, granting transgender citizens, starting at age 14, the ability to change gender markers on government-issued identity documents, including national identity cards and university diplomas, to reflect their gender identity.⁵¹ Those aged 18 and over can change their registered names and gender through

⁴⁷ Tab 2.1 - US Department of State, “2019 Report on Human Rights Practices: Chile,” (Accessed 18 November 2020), online: *US Department of State*: < <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/chile/>>.

⁴⁸ Stonewall, “Stonewall Global Workplace Briefings 2019: Chile,” (2019) online (pdf): *Stonewall* <https://www.stonewall.org.uk/system/files/global_workplace_briefing_chile_final.pdf>.

⁴⁹ Immigration and Refugee Board of Canada, “Chile: Situation of sexual minorities, including legislation; treatment by society and authorities; state protection and services available (2010- July 2014)” (23 July 2014) online: *Refworld*: < <https://www.refworld.org/docid/5534b2cd4.html>>; Organizando Trans Diversidades, “Violations of the Human Rights of Trans Persons in Chile,” (July 2019) at p 6, online (pdf): *Organizando Trans Diversidades* <https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/CHL/INT_CCPR_ICS_CHL_34621_E.pdf>.

⁵⁰ Immigration and Refugee Board of Canada, “Chile: Situation of sexual minorities, including legislation; treatment by society and authorities; state protection and services available (2010- July 2014)” (23 July 2014) online: *Refworld*: < <https://www.refworld.org/docid/5534b2cd4.html>>.

⁵¹ Tab 2.1 - US Department of State, “2019 Report on Human Rights Practices: Chile,” (Accessed 18 November 2020), online: *US Department of State*: < <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/chile/>>.

administrative processes, while those aged 14-17 can do so through the courts.⁵² There is no requirement for surgery or change in physical appearance before changes can be made.⁵³

The Gender Identity Law and anti-discrimination law (Law No. 20.609 above) represent positive steps for trans persons in Chile. The country, however, lacks any legislation or public policies that put in place mechanisms for the protection of trans children and adolescents from the violence and discrimination they face within their families.⁵⁴

Concerning intersex persons, in December 2-15 the Ministry of Health issued a circular (Circular No. 18) in which it instructed that all normalising treatments of intersex children, including irreversible genital surgeries, cease until these children were old enough to make decisions about their own bodies.⁵⁵ On August 23, 2016, however, the Ministry of Health issued Circular No. 7 which referred to circumstances where it is possible to operate before this age. Such circulars are general in nature and, while calling for a formalized protocol, do not establish deadlines for when this will be created.⁵⁶

B. Application of the law

Application and Accessibility of the Laws Protecting SOGIE-Diverse Individuals

In 2017, the Office of the Undersecretary for Human Rights went into operation (Act No 20.885). The Office's responsibilities include drafting a four-year national human rights plan, designing policies to ensure the observance, promotion and protection of human rights and coordinating the implementation, monitoring and evaluation of such policies.⁵⁷

⁵² Tab 2.2 - Amnesty International, "Annual Report 2019: Chile" (February 2019) at p 33, online (pdf) Amnesty International <<https://www.amnesty.org/download/Documents/AMR0113532020ENGLISH.PDF>>; Shawn Schulenberg, "LGBT rights in Chile: On the verge of a gay-rights revolution?" 2:2 (November 2019) *Sexuality, gender & policy*, p 102.

⁵³ Human Rights Watch, "Chile: Events of 2019," (January 2020) online: *Human Rights Watch* <<https://www.hrw.org/world-report/2020/country-chapters/chile>>.

⁵⁴ Organizando Trans Diversidades, "Violations of the Human Rights of Trans Persons in Chile," (July 2019) at p 3, online (pdf): *Organizando Trans Diversidades* <https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/CHL/INT_CCPR_ICS_CHL_34621_E.pdf>.

⁵⁵ Tab 6.1 - ILGA, "LGBTI persons in Chile deprived of liberty, with restrictions on their liberty, and other human rights situations related to torture, inhuman and degrading treatment or punishment," (16 March 2017) at p 3, online (pdf): *ILGA* <https://ilga.org/wp-content/uploads/2016/02/SPT-Country-Visit-Chile-LGBT_EN.pdf>.

⁵⁶ Josefina Lira and Sofia Neumann, "Servicios de Salud operan a niños con ambigüedad sexual sin contar con un protocolo," (22 April 2019) online: *KM Cero* <<https://kilometrocerocero.cl/servicios-de-salud-operan-a-ninos-con-ambigüedad-sexual-sin-contrar-con-un-protocolo-50bf83f50772>>.

⁵⁷ Tab 2.5 - Human Rights Council, "National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21- Chile" (7 November 2018) at p 3, online (pdf) *United Nations* <<http://undocs.org/en/A/HRC/WG.6/32/CHL/1>>.

Despite the establishment of the Undersecretary and anti-discrimination law (Law 20.609), the United States Department of State notes, “Law enforcement authorities appear reluctant to use the full recourse of the 2012 antidiscrimination law, including charging assailants of LGBTI victims with a hate crime, which would elevate criminal penalties as permitted under the law.”⁵⁸

The Organization of Transsexuals for the Dignity of Diversity (or OTD, its acronym in Spanish) further notes that while the anti-discrimination law incorporates into the Chilean Criminal Code aggravated circumstances for crimes motivated by sexual orientation and gender identity (Article No 12.21 of the Criminal Code), it is difficult to demonstrate accused individuals’ motivations, rendering the law ineffective. This is especially true as the court requires videos or other records of the moment when the crime was being committed to demonstrate homophobic or transphobic motivation.⁵⁹

Discriminatory Application of General laws

As stated above, Article 373 of the Chilean Penal Code punishes behaviour that offends “morality” and “decency” [or “good customs”].⁶⁰ In 2019, the OTD highlighted that police forces still use this article to justify arbitrary detentions. The most affected are trans women doing sex work, where the police use the article to arrest them while trying to force them to leave the neighbourhoods where they work.⁶¹

On January 22, 2019, during the Universal Periodic Review by the United Nations Human Rights Council, Chile accepted the recommendation to reviews its Penal Code, namely article 373 and other laws in order to prevent discrimination against LGBTI persons.⁶²

Conditions in Detention for SOGIE-Diverse Individuals

In 2014, the Instituto Nacional de Derechos Humanos released a report stating that LGBTQ+ persons in prison in Chile are discriminated against, beaten and even excluded from workshops

⁵⁸ Tab 2.1 - US Department of State, “2019 Report on Human Rights Practices: Chile,” (Accessed 18 November 2020), online: *US Department of State*: <<https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/chile/>>.

⁵⁹ Organizando Trans Diversidades, “Violations of the Human Rights of Trans Persons in Chile,” (July 2019) at p 4, online (pdf): *Organizando Trans Diversidades* <https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/CHL/INT_CCPR_ICH_CHL_34621_E.pdf>.

⁶⁰ Immigration and Refugee Board of Canada, “Chile: Situation of sexual minorities, including legislation; treatment by society and authorities; state protection and services available (2010- July 2014)” (23 July 2014) online: *Refworld*: <<https://www.refworld.org/docid/5534b2cd4.html>>.

⁶¹ Organizando Trans Diversidades, “Violations of the Human Rights of Trans Persons in Chile,” (July 2019) at p 6, online (pdf): *Organizando Trans Diversidades* <https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/CHL/INT_CCPR_ICH_CHL_34621_E.pdf>.

⁶² ILGA, “UPR Chile,” (28 January 2014) online: *ILGA* <<https://ilga.org/upr-chile>>.

given to the wider prison population.⁶³ LGBTQ+ persons are also subjected to sexual violence, including forced nudity.⁶⁴

Transgender women and LGBTQ+ individuals living with HIV face specific challenges in Chilean prisons. Transgender women are subject to strip searches by male prison staff members and are denied the possibility of wearing clothing in line with their gender identity.⁶⁵ While those living with HIV are given adequate medical attention, the detention conditions in regards to dampness, food, and a lack of access to hygienic bathrooms constitute difficulties for their health and well-being.⁶⁶

Reasons for Unreported Further Human Rights Violations

Violence and hate crimes based on sexual orientation are often underreported in Chile, in part because LGBT people are often victims of abuse by police officers themselves (See ‘Treatment by State Officials’ below).⁶⁷ During the protests and civil unrest in 2019 alone, a group of trans and lesbian organizations published a report detailing their knowledge of 14 unreported cases against LGBTQ+ people, where victims have opted not to file official complaints for fear that they will experience backlash from state authorities.⁶⁸

III. Treatment by State Actors

Political Climate Toward SOGIE-Diverse Individuals

In Chile, the Catholic Church has a very historical role in influencing public policy. During the Pinochet regime in the 1970s and 1980s, the Church played a central role in opposing the atrocities committed by the state, garnering a strong reputation for looking out for the well-being of the average citizen. As such, their moral authority has influenced Chilean politics, making it

⁶³ Tab 6.1 - ILGA, “LGBTI persons in Chile deprived of liberty, with restrictions on their liberty, and other human rights situations related to torture, inhuman and degrading treatment or punishment,” (16 March 2017) at p 5, online (pdf): *ILGA* <https://ilga.org/wp-content/uploads/2016/02/SPT-Country-Visit-Chile-LGBT_EN.pdf>.

⁶⁴ Tab 2.10 - United Nations Human Rights Office of the High Commissioner, “Report of the Mission to Chile 30: October-22 November 2019,” (13 December 2019) at p 30, online (pdf): *United Nations Human Rights Office of the High Commissioner* <https://www.ohchr.org/Documents/Countries/CL/Report_Chile_2019_EN.pdf>.

⁶⁵ Tab 6.1 - ILGA, “LGBTI persons in Chile deprived of liberty, with restrictions on their liberty, and other human rights situations related to torture, inhuman and degrading treatment or punishment,” (16 March 2017) at p 5, online (pdf): *ILGA* <https://ilga.org/wp-content/uploads/2016/02/SPT-Country-Visit-Chile-LGBT_EN.pdf>.

⁶⁶ *Ibid* at 4-5.

⁶⁷ Perfecto G et al “Chile’s Breach of its Obligations under the International Covenant on Civil and Political Rights (ICCPR) to Protect the Rights of Sexual Minorities, Including Lesbian, Gay, Bisexual, and Transgender People,” (March 2007) online (pdf): *Indiana University School of Law* <https://mckinneylaw.iu.edu/human-rights/_docs/shadow-reports/un-chile-2007.pdf>.

⁶⁸ Tully Satre and Cristian Valenzuela, “The Crisis in Chile is Extending to a Crackdown on Gays,” (21 November 2019) online: *Advocate* <<https://www.advocate.com/commentary/2019/11/21/crisis-chile-extending-crackdown-gays>>.

harder for social movements on issues such as divorce and same-sex marriage to progress in comparison to other South American countries.⁶⁹

Chilean right-wing parties, composed of conservative politicians, continue to hold a distant if not adversarial standing to LGBT issues.⁷⁰ The executive branch of the Chilean government, however, has been somewhat supportive of LGBTQ+ issues since 2006. Former President Michelle Bachelet announced her support for same-sex unions for all couples regardless of sex, however she failed to introduce any legislation to grant such rights. In 2011, during President Sebastian Pinera's first term of office, these rights were realized as Chile allowed for same-sex civil unions. Pinera, however, was very direct that he opposed same-sex marriage.⁷¹

Treatment by Authorities

Violence against LGBTQ+ persons extends to treatment by Chilean police. In June 2018, on the night of Santiago's Pride Parade, Rolando Jimenez, founder of LGBTI organization MOVILH, was subject to verbal and physical abuse and arbitrary arrest for defending a same-sex couple being subjected to verbal discrimination harassment and physical abuse by Carabineros (the Chilean national police force). MOVILH alleged Jimenez was attacked because he has been a constant critic of alleged homophobic actions by Police Precinct Number one. In August 2018, Carabineros General Director, Mario Rozas apologized for the incident.⁷²

Mistreatment by the police continued in 2019. Stories include:

- Alberto Faundez was arrested on suspicion of theft. Upon discovering that he was gay, police allegedly physically assaulted him in the detention center, forced him to strip naked in front of other prisoners and subjected him to homophobic insults.⁷³
- An unnamed 22-year-old gay man notes how the Carabineros stripped off his clothes, hit him in front of other detainees and forced him to sign documents while refusing to let him read them. The police also prohibited him from alerting his family of his whereabouts.⁷⁴

⁶⁹ Shawn Schulenberg, "LGBT rights in Chile: On the verge of a gay-rights revolution?" 2:2 (November 2019) at 103, *Sexuality, gender & policy*.

⁷⁰ Moreno Lopez and Rodolfo Antonio, "The Paths and Consequences of Obtaining Legislative Allies: The Cases of the LGBT, Environmental and Labour Movements in Chile," (2019) at 30, Dissertation at *University of California, Irvine*.

⁷¹ Shawn Schulenberg, "LGBT rights in Chile: On the verge of a gay-rights revolution?" 2:2 (November 2019) at 103, *Sexuality, gender & policy*.

⁷² Tab 2.1 - US Department of State, "2019 Report on Human Rights Practices: Chile," (Accessed 18 November 2020), online: *US Department of State*: <<https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/chile/>>.

⁷³ *Ibid*.

⁷⁴ Tully Satre and Cristian Valenzuela, "The Crisis in Chile is Extending to a Crackdown on Gays," (21 November 2019) online: *Advocate* <<https://www.advocate.com/commentary/2019/11/21/crisis-chile-extending-crackdown-gays>>.

- In June a gay couple had been physically assaulted by a coworker. Police officers refused to help with one officer stating, “Imagine what disease you’re carrying” upon realizing one of the men was bleeding.⁷⁵
- Josue Maureira, a 23-year-old gay man describes how while being taken to a police station in Santiago he was kicked a beat with batons in the back of the police van, knocking him in and out of states of consciousness. When he arrived at the police station, he continued to be beat and was called a “faggot” because his nails were painted red. At the station one officer said to him, “What happens if I turn the camera off and kill you?... what are you going to do, you fucking faggot?” The officer continued to beat him until he shouted in reply, “Yes, I am a faggot.”⁷⁶

The OHCHR has received additional information related to sexual violence and homophobic insults during arrests:

Mauricio (20 years old), was brought to a police station and when he couldn’t remove his earring due to shaky hands, the police reportedly ripped out the earring and threw him to the floor. He has reportedly then beaten with a baton and insulted with homophobic expressions (“maricón culeao /fucking queer”).⁷⁷

On 30 October in Temuco, Mauricio (29 years old) and other members of a group advocating for sexual diversity, were detained while demonstrating. Police seized Mauricio, threw him to the ground, pushed his face towards the floor and one of the police proceeded to kneel on his head. While this happened, police used homophobic slurs.⁷⁸

The Advocate notes how reports of human rights violations committed by the Chilean police, “shed light on the discriminatory and abusive forms that nonheterosexual individuals experience when detailed by police ... (and) show not only the police force’s brutality but also its well-entrenched homophobia.”⁷⁹ They further note, “[w]hile the Chilean government makes advancements that further protect and extend equal and fair treatment to LGBTQ+ people... the national police do not seem to be on the same page.”⁸⁰

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ Tab 2.10 - United Nations Human Rights Office of the High Commissioner, “Report of the Mission to Chile 30: October-22 November 2019,” (13 December 2019) at p 26, online (pdf): *United Nations Human Rights Office of the High Commissioner* <https://www.ohchr.org/Documents/Countries/CL/Report_Chile_2019_EN.pdf>.

⁷⁸ *Ibid.*

⁷⁹ Tully Satre and Cristian Valenzuela, “The Crisis in Chile is Extending to a Crackdown on Gays,” (21 November 2019) online: *Advocate* <<https://www.advocate.com/commentary/2019/11/21/crisis-chile-extending-crackdown-gays>>.

⁸⁰ *Ibid.*

IV. Treatment by Non-State Actors

Societal Attitudes

Chilean societal attitudes are heavily influenced by the ‘*machista*’ culture, where masculinity is upheld as culturally superior to femininity.⁸¹ As such, men who appropriate effeminate attributes and women displaying masculine behaviour experience discrimination to varying degrees.⁸² Femininity in gay men is perceived as a transgression of gender norms.⁸³ Effeminate men are marginalized while the sexual role of ‘*pasivo*’ (being penetrated) is stigmatized.⁸⁴

Those who identify as part of the LGBTQ+ community in Chile are seen to be acting contrary to the heteronormative expectations in Chilean society. Pablo Astudillo (2016) states, “in Chile, from a conservative viewpoint, homosexuality is particularly presented as a category that is essentially different from heterosexuality, it can be visible and talked about as long as it is made quite clear that homosexual behavior is not what is expected from a subject.”⁸⁵

In contrast to the “*machista*” culture, the Mapuche people, in southern Chile, have fewer rigid views of gender. Their religious authorities, Machi, are said to determine their gender by their spirituality, not by the sex assigned to them at birth. This fluidity of gender is what provides them the ability to interact with the spiritual realm.⁸⁶

Religious Attitudes Towards SOGIE-Diverse Identities

One of the most common arguments for the slow pace of LGBTQ+ rights in Chile is its conservative social culture.⁸⁷ Opposition to the LGBTQ+ movement in Chile has mostly been headed by the Catholic Church who, “has had a very long, historical role in influencing public policy... (and) still occupies even today a very privileged position in Chilean politics on

⁸¹ Shyam Anand Singh, “Overcoming Heteronormative Hegemony: Queer Resistance to Neoliberalism in Chile,” (2015) at 87, online: Thesis submitted for the *National University of Singapore* <<https://core.ac.uk/download/pdf/48812255.pdf>>.

⁸² *Ibid.*

⁸³ Victor Gigueoa and Fiona Tasker “‘I Always have the Idea of Sin in my mind...’ Family of Origin, Religion, and Chilean Young Gay Men.” (2014) at 274, 10:3 *Journal of GLBT Family Studies*.

⁸⁴ Shyam Anand Singh, “Overcoming Heteronormative Hegemony: Queer Resistance to Neoliberalism in Chile,” (2015) at 120, online: Thesis submitted for the *National University of Singapore* <<https://core.ac.uk/download/pdf/48812255.pdf>>.

⁸⁵ Pablo Lizama and Jaime Barrientos Delgado, “The Sexual Diversity Pastoral Care Group and the Catholic Schools in Chile: An Attempt to Confront Heteronormativity in School Spaces,” in *Queer Social Movements and Outreach Work in Schools: A Global Perspective*, (2020) at 98, *Springer Nature Switzerland*.

⁸⁶ Natural History Museum: Los Angeles Count, “Beyond Gender: Indigenous Perspectives, Mapuche,” (Accessed 18 Nov 2020) online: Natural History Museum <<https://nhm.org/stories/beyond-gender-indigenous-perspectives-mapuche>>.

⁸⁷ Shawn Schulenberg, “LGBT rights in Chile: On the verge of a gay-rights revolution?” 2:2 (November 2019) at 98, *Sexuality, gender & policy*.

questions of social issues.”⁸⁸ The Catholic Church has been seen to have a stronger impact on law and policy in Chile compared with other Latin American countries, given the collaboration between the church and democratic parties during the country’s transition to democracy.⁸⁹

Religious groups opposed to advances in gender equity and sexual diversity in Chile and Latin America have used “gender ideology” to endorse their criticisms.⁹⁰ In 2017, when the National Congress was discussing the Gender Identity Law, conservative groups organized protests and supported the “Bus of Freedom” which drove around the streets of several cities spreading messages against the law. In addition, universities teaching Catholic theology in Santiago organized seminars on “gender ideology” and promoted therapies to “cure” homosexuality.⁹¹

Media Portrayals of SOGIE-Diverse Individuals

Emilio Maldonado, General Director of Iguales Servioos Educativos y Consultoria, notes, “LGBT people are somewhat visible in media [in Chile], particular gay men and some trans activists. However, lesbians and bi people are much less visible.” Matias Valenzuela Cortez and Franco Fulca from Asociacion OTD Chile further specifies “There have been some steps towards trans visibility. The release of *A Fantastic Woman*, which won an Oscar, has been hugely influential... Trans people and trans issues are somewhat visible in the media but are often not addressed sensitively.”⁹²

Telenovelas on Chilean television have also made gay and lesbian identities visible in Chilean society. However, in a study of over 50 gay or lesbian characters appearing on programming between 1990-2018, it was found that Chilean telenovelas, “have privileged representations of non-heterosexuals that do not destabilise the status quo, but contribute to the reproduction of sexist, homophobic and/or classist discourse.” This has been done through utilizing four types of characters: funny *locas* (gay men), serious machos, fighting (lesbian) mothers, and confused lesbians.⁹³

Treatment of LGBTQ+ Organizations

⁸⁸ *Ibid* at 103.

⁸⁹ Victor Gigueoa and Fiona Tasker “‘I Always have the Idea of Sin in my mind...’ Family of Origin, Religion, and Chilean Young Gay Men.” (2014) at 271, 10:3 *Journal of GLBT Family Studies*.

⁹⁰ Guzman-Gonzalez et al. “Romantic Attachment and Relationship Satisfaction in Gay Men and Lesbians in Chile,” (25 October 2019) at 1026, 57:8 *The Journal of Sex Research*.

⁹¹ Pablo Lizama and Jaime Barrientos Delgado, “ The Sexual Diversity Pastoral Care Group and the Catholic Schools in Chile: An Attempt to Confront Heteronormativity in School Spaces,” in *Queer Social Movements and Outreach Work in Schools: A Global Perspective*, (2020) at 99, *Springer Nature Switzerland*.

⁹² Stonewall, “Stonewall Global Workplace Briefings 2019: Chile,” (2019) online (pdf): *Stonewall* <https://www.stonewall.org.uk/system/files/global_workplace_briefing_chile_final.pdf>.

⁹³ Ricardo Ramirez, “Simplified identities: Four ‘types’ of gays and lesbians on Chilean telenovelas” (2020) at 1480, 23:8 *Sexualities*.

Within Chile, the LGBTQ+ movement remains very split into two different factions. On one hand, there is MOVILH and several similar organizations which belong to a coalition called *Fedisex*. The other faction is led by Fundacion Iguales and joined by ACCIONGAY, MUMS, Organizacion de Transexuales por la Dignidad de la Diversidad (ODT), and Todo Mejora (It Gets Better). These latter groups created the federation known as Frente Aplio de los Derechos Humanos de Gente LGBT.⁹⁴

Outright Action International classifies Chile as a country where registration is possible and there are minimal impediments to operation.⁹⁵ The Stonewall Global Workplace Briefing for Chile in 2019 also states, “LGBT groups can operate freely and aren’t usually harassed or persecuted.”⁹⁶ In 2020, however, Ramon Gomez, a representative from MOVILH reported that their office had been attacked three times, and their activists have received over 5,000 death threats.⁹⁷

Terminology Used to Describe SOGIE-Diverse Individuals

- Effeminate and gender non-conforming gay men are frequently called ‘*maracos*’ (faggots)⁹⁸ or ‘*locas*’.⁹⁹
- The word “*camiona*” deriving from the Spanish *camionera*, which means female lorry driver, has largely been used to insult ‘butch lesbians’, however young lesbians have reclaimed this word.¹⁰⁰

General Willingness of SOGIE-Diverse Individuals to Openly Identify

⁹⁴ Shawn Schulenberg, “LGBT rights in Chile: On the verge of a gay-rights revolution?” 2:2 (November 2019) at 101, *Sexuality, gender & policy*.

⁹⁵ Felicity Daly, “The Global State of LGBTIQ Organizing: The Right to Register,” (2018) at 26, online (pdf): *OutRight Action International* <https://outrightinternational.org/sites/default/files/CSOReportJuly2018_FINALWeb.pdf>.

⁹⁶ Stonewall, “Stonewall Global Workplace Briefings 2019: Chile,” (2019) online (pdf): *Stonewall* <https://www.stonewall.org.uk/system/files/global_workplace_briefing_chile_final.pdf>.

⁹⁷ Movilh, “Government creates Labour Unit to face violence against LGBTIQ+ people,” (12 November 2020) online: *Movilh* <<https://www.movilh.cl/gobierno-crea-unidad-de-trabajo-para-hacer-frente-a-la-violencia-contrapersonas-lgbtqi/>>

⁹⁸ Shyam Anand Singh, “Overcoming Heteronormative Hegemony: Queer Resistance to Neoliberalism in Chile,” (2015) at 87, online: Thesis submitted for the *National University of Singapore* <<https://core.ac.uk/download/pdf/48812255.pdf>>.

⁹⁹ Ricardo Ramirez, “Simplified identities: Four ‘types’ of gays and lesbians on Chilean telenovelas” (2020) at 1485, 23:8 *Sexualities*.

¹⁰⁰ Megha Mohan, “The Red Zone: A place where butch lesbians live in fear,” (23 June 2019) online: *BBC News* <<https://www.bbc.com/news/stories-48719453>>.

Emilio Maldonado, General Director of Iguales Servicios Educativos y Consultoria, states, “many LGBT people are out to friends and family in private. In public, it depends on whether a space is considered safe.”¹⁰¹

MOVILH’s 2019 Annual Report on Human Rights of Sexual and Gender Diversity states that LGBTI people are increasingly expressing their identity in their families, in their neighbourhoods and with friends. The report calls this a “withdrawal of double lives,” where LGBTI individuals are refusing to live hidden lives and demanding respect of their rights. This increase in living openly, however, is linked to greater reporting of abuse in families and discrimination in the environments closest to LGBTI victims.¹⁰²

Sebastian Urrutia Lutz, a gay man who was attacked in 2012 in Santiago, notes how society’s increasing acceptance of the LGBT community has been met with violence. “That has made a lot of people that dislike (LGBT people) become more frustrated that our society is accepting us and considering us normal people.” He goes on to say, “I have heard stories of other people who have died and friends telling me that others have been beaten up... you hear this every day and no one does anything about it.”¹⁰³

Treatment at Home

SOGIE-diverse individuals in Chile usually face rejection from their families due to religious beliefs that have shaped gender norms and family values.¹⁰⁴ In a study on the impact of family values on sexual identity development, Roberto, who identifies as a gay man, tells of how his father’s rejection of him was “closely related to his father’s adherence to evangelical values and connected specially to the belief that same-sex attraction was abnormal or unnatural and contravened definitions of manhood.”¹⁰⁵

A 2020 report on Adolescence and Suicide notes that higher levels of psychiatric symptoms and suicidal thoughts in LGBT young people are directly linked to the negative reactions of parents.¹⁰⁶ LGB young adults who experiences high levels of family rejection were 8.4 times more likely to report having attempted suicide during adolescence and 5.9 times more likely to

¹⁰¹ Stonewall, “Stonewall Global Workplace Briefings 2019: Chile,” (2019) online (pdf): *Stonewall* <https://www.stonewall.org.uk/system/files/global_workplace_briefing_chile_final.pdf>.

¹⁰² Movilh, “Homophobia and transphobia increase 58% and add more than a thousand cases, the highest number in the history of Chile,” (24 March 2020) online: *Movilh* <<https://www.movilh.cl/homofobia-y-transfobia-aumentan-un-58-y-suma-mas-de-mil-casos-la-cifra-mas-alta-en-la-historia-de-chile/>>.

¹⁰³ Marilia Brocchetto, “The perplexing narrative about being gay in Latin America,” (3 March 2017), online: *CNN World* <<https://www.cnn.com/2017/02/26/americas/lgbt-rights-in-the-americas/index.html>>.

¹⁰⁴ Victor Gigueoa and Fiona Tasker “‘I Always have the Idea of Sin in my mind...’ Family of Origin, Religion, and Chilean Young Gay Men.” (2014) a 285, 10:3 *Journal of GLBT Family Studies*.

¹⁰⁵ *Ibid.*

¹⁰⁶ Tomicic et al, “Adolescence and Suicide: Subjective Construction of the Suicidal Process in Young Gay and Lesbian Chileans,” (2020) at 3, 67:14 *Journal of Homosexuality*.

display depressive symptoms. Such treatment includes stigmatizing comments, direct rejection by parents of their child's sexuality, disappointed reactions, and attempting to convince them to attend a sort of "conversion therapy" (i.e. insisting they should consult a psychologist to help with their "issue").¹⁰⁷

In 2019, MOVILH received 167 human rights violations against LGBTI victims as the result of actions from family members, neighbours, and friends. This was a 131.9% increase from the previous year.¹⁰⁸ Reports of family violence include that of a lesbian teenager who was raped by her stepfather with the permission of her father and mother because of her sexuality.¹⁰⁹

In July 2019, in Quilpue, a city outside of Valparaíso, an 18-year old was stabbed by his father after his parents had an argument about his sexual orientation, according to the man's mother. During the argument, the father said that he was embarrassed to have a "f**got son."¹¹⁰

MOVILH also reported that on June 16, 2019, a 54-year-old man was attacked by his sister and nephew because of his sexual orientation in Pedro Aguirre Cerda, a community in Santiago. The sister and nephew reportedly beat him all over his body, including hitting him on the head with a bottle.¹¹¹

As a result of COVID-19 mandatory quarantine measures, there has also been an "alarming increase" in attacks on LGBT individuals in their homes. MOVILH specifies that since the quarantine came into place there was a 38% increase in homophobia reported. This includes a 58% increase in psychological violence, a 41% increase in verbal violence, and a 1% increase in physical violence.¹¹²

Treatment in Educational Institutions

In 2015, the Fundación Todo Mejora released the results of a survey on homophobic bullying. Out of 886 SOGIE diverse high school students in Santiago interviewed, 32.4% of the students

¹⁰⁷ *Ibid* at 17.

¹⁰⁸ Movilh, "Homophobia and transphobia increase 58% and add more than a thousand cases, the highest number in the history of Chile," (24 March 2020) online: *Movilh* <<https://www.movilh.cl/homofobia-y-transfobia-aumentan-un-58-y-suma-mas-de-mil-casos-la-cifra-mas-alta-en-la-historia-de-chile/>>.

¹⁰⁹ *Ibid*.

¹¹⁰ Patrick Kelleher, "Man stabs 18-year-old son in Chile for being gay," (3 July 2019) online: *Pink News* <<https://www.pinknews.co.uk/2019/07/03/man-stabs-son-gay-chile/>>.

¹¹¹ Gay Star News, "Man stabs 18-year-old son after calling him 'embarrassing f*ggot' (3 July 2019) online: *Gay Star News* <<https://www.gaystarnews.com/article/man-stabs-18-year-old-son-after-calling-him-embarrassing-fggot/>>.

¹¹² Cooperativa.cl, "'Quarantine effect': Movilh warned of an increase in violence against LGBTI population in homes" (16 April 2020) online: *Cooperativa.cl* <<https://www.cooperativa.cl/noticias/sociedad/salud/coronavirus/efecto-cuarentena-movilh-advirtio-aumento-de-violencia-contra/2020-04-16/030058.html>>.

reported that they were discriminated against because their peers believed that they were gay, lesbian, or bisexual. Further, 15% reported having suicidal thoughts as a result of homophobic bullying.¹¹³

As a result of the widespread bullying, the Ministry of Education and the Office of the Superintendent of Education published guidelines for the educational community for the inclusion of lesbian, gay, bisexual, transgender and intersex persons in 2017.¹¹⁴

Despite the guidelines, bullying has persisted in Chilean schools. In June 2019, Matias Guevara, a 16-year old who identified as transgender, committed suicide due to bullying in the city of Copiapo.¹¹⁵ The Superintendence of Education reported 30 complaints of gender identity discrimination in 2017 and 2018, a number OTD finds alarming given that many cases are not reported. OTD further states, “The case of Matias shows that the educational system in Chile has failed and is putting the lives of trans children and young people at risk.”¹¹⁶

In November 2020, Marcela Guevara De la Fuente, Matias Guevara’s mother, and Daniella Cicardini, the sponsoring parliamentarian, drafted and put forth the so-called “Jose Matias Law.” The initiative proposes modifications to the general education law to incorporate the obligation to inform parents, students and the educational community in relation to existing rights and provision on respect and inclusion of students of sexual diversity.¹¹⁷

Treatment in Employment

Based on a labour-specific survey it conducted in 2017, ILGA reported that LGBTQ+ individuals have a greater level of difficulty obtaining work in Chile than heterosexual and cisgender persons. Subsequently, this has led the United Nations Commission on Human Rights to issue two recommendations to establish a specific training program for the inclusion of transgender persons in the workplace.¹¹⁸

¹¹³ Javier Ignacio Orellana Albornoz, “Ser LGBTI en Chile Y Espana: Que Nos Diferencia,” (June 2017) at 63, Report for *Universidad de Chile*.

¹¹⁴ Tab 2.5 - Human Rights Council, “National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21- Chile” (7 November 2018) at 15, online (pdf) *United Nations* <<http://undocs.org/en/A/HRC/WG.6/32/CHL/1>>.

¹¹⁵ Equipo OTD, “OTD Chile mourns death of trans child who committed suicide due to bullying in Copiapo” (10 June 2019) online: *OTD* <<https://otdchile.org/us/otd-chile-mourns-death-of-trans-child-who-committed-suicide-due-to-bullying-in-copiapo/>>.

¹¹⁶ *Ibid.*

¹¹⁷ Iguales, “Congressmen and Deputies Present a Bill to Prevent Harassment in Schools Called “Jose Matias” in Memory of Young Trans Man who Committed Suicide in Copiapo” (6 November 2020) online: *Iguales* <<https://www.iguales.cl/diputadas-diputados-presentan-proyecto-ley-prevenir-acoso-escuelas-llamado-jose-matias-recuerdo-joven-trans-se-suicidio-copiapo/>>.

¹¹⁸ Tab 2.7 - Human Rights Council, “Summary of Stakeholders’ submissions on Chile,” (6 November 2018) at 6, online (pdf): *United Nations* <<http://undocs.org/en/A/HRC/WG.6/32/CHL/3>>.

The 2019 Stonewall Global Workplace Briefing for Chile in 2019 states, “Workplaces are conservative and most LGBT people, especially trans people, are afraid of being fired if they come out.” “When employed, trans people often lack contracts and social security, making it easy to fire people because of their gender identity. Trans people also face discrimination and harassment, but barriers to justice mean perpetrators are rarely held accountable.”¹¹⁹

According to the Organization for Economic Co-operation and Development (OECD), in 2019 with the same curriculum vitae, SOGIE-diverse applicants are 1.5 times less likely to be invited to a job interview than straight and cisgender applicants when their SOGIE is known based for example on their volunteer engagement or work experience in a gay and lesbian organization.¹²⁰

Treatment in Health Services

Treatment of Transgender men and women in health services

While Chile’s anti-discrimination law prohibits discrimination with respect to sexual orientation and gender identity in the delivery of health services, transgender individuals have continued to face barriers to health services due to their gender identity. In a 2019 investigation by the Superintendent of Health, five health insurance institutions (*Isapres*) discriminated against people based on their gender identity, considering transsexuality a pre-existing disease and consequently lowering coverage.¹²¹ Chile’s Supreme Court ultimately ruled that gender identity is not a pathology, however, one of the insurance providers (Isapre Colmena Golden Cross) then refused to cover sex reassignment surgeries, equating them with aesthetic interventions.¹²²

In 2019, a laboratory at Red Salud UC Christus, additionally refused to analyze the blood of a transgender woman unless she disclosed her name and legal sex at birth. This is contrary to the Gender Identity Law, which states that the name and legal sex at birth of trans people must remain strictly confidential after they change their identity.¹²³

¹¹⁹ Stonewall, “Stonewall Global Workplace Briefings 2019: Chile,” (2019) online (pdf): *Stonewall* <https://www.stonewall.org.uk/system/files/global_workplace_briefing_chile_final.pdf>.

¹²⁰ OECD, “Society at a Glance 2019: A spotlight on LGBT people: How does Chile Compare?” (2019): online (pdf): *OECD* <<https://www.oecd.org/chile/sag2019-chile-en.pdf>>

¹²¹ Movilh, “Serious: Superintendency of Health confirms that at least 5 Isapres discriminate against trans people,” (30 September 2019) online: *Movilh* <<https://www.movilh.cl/grave-superintendencia-de-salud-confirma-que-al-menos-5-isapres-discriminan-a-las-personas-trans/>>.

¹²² Movilh, “Isapre Colmena insists with her transphobia: now she refuses to cover the bodu readjustment of trans people because ‘it is only an aesthetic change’” (2 April 2020) online: *Movilh* <<https://www.movilh.cl/isapre-colmena-insiste-con-su-transfobia-ahora-se-niega-a-cubrir-la-readecucion-corporal-de-las-personas-trans-porque-es-solo-un-cambio-estetico/>>.

¹²³ Movilh, “They file an appeal against the UC Clinic for refusing to test trans people who changed their name and legal sex,” (28 August 2019) online: *Movilh* <<https://www.movilh.cl/presentan-recurso-contra-clinica-de-la-uc-por-negarse-a-practicar-examenes-a-personas-trans-que-cambiaron-su-nombre-y-sexo-legal/>>.

Treatment of Bisexual and Lesbian women in health services

In the Spring of 2019, the Ministry of Health in Chile announced increase access to in vitro fertilization but only for heterosexual couples. In providing a reason for this limitation, the Ministry stated (pertaining to heterosexual couples, “that’s the largest number of couples we have in the country. So we are attacking that problem today.”¹²⁴ This action has been criticized for excluding lesbian couples.¹²⁵

In the same year an agreement between MOVILH and the AIDS Healthcare Foundation (AHF), to apply for free rapid HIV tests, was terminated because the tests were being given to women. AHF stated that the tests were only available for men.¹²⁶

Treatment Specific to Bisexual and Gay Men

As noted above, concerning societal attitudes, men who appropriate effeminate attributes are particularly vulnerable due to the fact that their conduct conflicts with the dominant *machismo* culture. Examples of attacks against gay men include:

On January 1, 2019 Jose David Munoz, 51, was assaulted in the town of Porvenir, and forced to sit in a tub of hot water because of his sexuality, resulting in severe burns. On the same day, another man, aged 24 was physically assaulted in the port city of Valparaiso after his attackers heard him speaking to his partner on the phone.¹²⁷

On June 23, 2020, Esteban Navarro, a 19-year-old gay man was attacked in Penalolen, a community in Santiago. Navarro was attacked by six people with machetes, knives and pieces of slate who repeatedly insulted him during the attack because of his sexual orientation.¹²⁸

In August 2020, four young people, including a minor under 16, were charged with kidnapping and torturing an acquaintance of the group after learning his sexual orientation. The harassment

¹²⁴ Nelson Quiroz, “Fertilization treatment: only for hetero couples in Chile,” (1 April 2019) online: *ChileToday* <<https://chiletoday.cl/fertilization-treatment-only-for-hetero-couples-in-chile/>>.

¹²⁵ *Ibid.*

¹²⁶ Movilh, “Complaint: AHF Foundation discriminates against women for application of HIV tests,” (2 October 2019) online: *Movilh* <<https://www.movilh.cl/denuncia-fundacion-ahf-discrimina-a-mujeres-para-aplicacion-de-test-de-vih/>>.

¹²⁷ Ella Braidwood, “Gay men tortured with lit cigars and boiling water in Chile homophobic attacks,” (4 January 2019) online: *Pink News* <<https://www.pinknews.co.uk/2019/01/04/gay-men-homophobic-attack-chile/>>.

¹²⁸ Movilh, “The state of Health of Esteban Navarro, a young man attacked by homophobes, continues to be critical,” (7 July 2013) online: *Movilh* <<https://www.movilh.cl/continua-critico-el-estado-de-salud-de-joven-gay-atacado-por-homofobicos/>>.

was broadcast live on Facebook and resulted in the victim having his jaw fractures from being kicked in the face.¹²⁹

On October 30, 2020 a young man was held against his will and beat at a Naval School in Valparaiso. The man was hit in the abdomen and genital area and homophobic insults were written across his torso.¹³⁰

On November 6, ILGA indicated the growing concern by LGBTQ+ activists in Chile concerning the rising number of gay and bisexual men that are being lured through dating apps and attacked.¹³¹

Treatment Specific to Bisexual and Lesbian Women

As the result of Chile's '*machista*' culture, lesbian and bisexual women in Chile are discriminated against, first because they are women, and second because of their sexual orientation.¹³²

Lesbians in Chile call the Fifth region, where the city of Valparaiso is located, the 'Red Zone' because of its history of anti-lesbian violence.¹³³ Sebastian Ayla, a film director making a documentary about the history of lesbian attacks in Chile states, "when you talk to camionas and trans women in Chile, women who are outwardly more masculine-looking, they all know about Valparaiso and they try not to go there. They know about the attacks."¹³⁴

In 2015, Nicole Saavedra Bahamondes, who identified as a lesbian, was brutally attacked by a neo-Nazi gang member in Chile's fifth region. On June of 2016, she was again attacked and killed. Police reports state that, "Nicole was killed by repeated blows to the back of her head. Her body had numerous open wounds and bruising. Her hands had been tied behind her back. Her wallet, money intact, was still in the pocket of her trousers."¹³⁵

¹²⁹ Iguales, "Fundacion Iguales for Torture of Young Gay men: 'We call on the Government to guarantee a Reform to the Anti-Discrimination Law that prevents cases like this one,'" (20 August 2020) online: *Iguales* <<https://www.iguales.cl/fundacion-iguales-tortura-joven-gay-hacemos-llamado-al-gobierno-garantice-una-reforma-la-ley-antidiscriminacion-prevenga-caso-este/>>.

¹³⁰ Iguales, "Iguales Foundation will meet with the Ministry of Defense for Homophobic Torture at the Naval School," (30 October 2020) online: *Iguales* <<https://www.iguales.cl/fundacion-iguales-se-reunira-ministerio-defensa-torturas-homofobicas-la-escuela-naval/>>.

¹³¹ Maddalena Tomassini, "Two weeks in LGBTI news: 23 October- 5 November," (6 November 2020) online: *ILGA* <<https://ilga.org/lgbti-news-175-ilga-news-2020>>

¹³² Javier Ignacio Orellana Albornoz, "Ser LGBTI en Chile Y Espana: Que Nos Diferencia," (June 2017) at 61, Report for *Universidad de Chile*.

¹³³ Megha Mohan, "The Red Zone: A place where butch lesbians live in fear," (23 June 2019) online: *BBC News* <<https://www.bbc.com/news/stories-48719453>>.

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*

On February 14th, 2019 Carolina Torres, in Santiago--Chile's capital city—was attacked by two men. That night she suffered a fractured skull, a broken nose, internal bleeding, and permanent damage to her hearing.¹³⁶ Carolina knew one of her attackers who, before the attack, said to her, “I am going to kill you,” calling her a lesbian and swearing at her.

Erika Monteconios, who runs Lesbians Breaking the Silence, notes that while Santiago does have an openly gay scene in the Bellavista neighborhood, outside this neighborhood the mood is very different. She highlights that her organization has been subject to intimidation and various threats from hate groups.

In a survey conducted by Lesbians Breaking the Silence, of 850 lesbian and bisexual women, 75% reported suffering street harassment. Her organization also set up a WhatsApp number called the Linea Violeta (the Violet Line) which received more than 100 reports of violence and intimidation in a month in 2019.¹³⁷ None of these incidents were reported to the police because the callers saw no point- convinced no action would be taken.¹³⁸

Treatment Specific to Transgender Men and Women

In the *First Survey on Discrimination and Affective-Sexual Health*, released in November 2020, MOVILH reported that, “without a doubt, trans women are the most discriminated and vulnerable LGBTI sector.”¹³⁹ The survey was conducted of 121 trans women from across the country, indicating that 93% have been discriminated against because of their gender identity, 39.5% have encountered obstacles in education, and 66.7% have experience employment obstacles.

Incidents of transphobia experienced by MOVILH's survey respondents included verbal (74.4%), psychological (74.4%), physical (34.9%) and sexual (25.6%) violence. 51.1% reported harming themselves as a result of discrimination and 39% attempted suicide.¹⁴⁰

On September 20, 2020 a trans woman, Marimar, was walking with a neighbour and relative in Penalolen, a commune in Santiago, when a man unknown to Marimar got out of a parked car

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

¹³⁹ Movilh, “They murder a young trans woman in Valdivia,” (2 November 2020) online: *Movilh*, <<https://www.movilh.cl/asesinan-a-joven-trans-en-valdivia/>>; Movilh, “Trans women in Chile: 93% have been discriminated against and 43% do not study or have paid work as a result of discrimination,” (4 November 2020) online: *Movilh* <<https://www.movilh.cl/mujeres-trans-en-chile-93-ha-sido-discriminada-y-el-43-no-estudia-ni-tiene-trabajo-remunerado-producto-de-la-discriminacion/>>.

¹⁴⁰ Movilh, “Trans women in Chile: 93% have been discriminated against and 43% do not study or have paid work as a result of discrimination,” (4 November 2020) online: *Movilh* <<https://www.movilh.cl/mujeres-trans-en-chile-93-ha-sido-discriminada-y-el-43-no-estudia-ni-tiene-trabajo-remunerado-producto-de-la-discriminacion/>>.

and began yelling vulgar words at her. When Marinmar asked the man to stop, he hit her on the back of the head with a blunt object and then broke her nose in two parts. Marinar fainted and then woke up in the hospital.¹⁴¹

Trans men additionally experience violence in Chile. In San Bernardo, part of the greater Santiago, on Nov 13, 2020 a 20-year-old transgender man was violently attacked by two people because of his gender identity. The man was insulted and then repeatedly hit on the head with a pistol by one of the attackers while the other stated, “kill him, hit him with a shot.”¹⁴²

Additionally, in October 2020, a young trans man Vicente Gonzalez Lora (25) was found dead partially undressed on the road in Valdivia, a city in Southern Chile. Signs pointed to the likelihood that he had been asphyxiated and that the crime may have been carried out by a transphobic family member.

V. Region/city-specific information

MOVILH reports that 2019 was the most violent year for lesbian, gay, bisexual, transsexual and intersex (LGBTI) people in Chile with a 58% increase in cases and complaints, totaling 1103, across the country. MOVILH additionally notes that for the first time, complaints and cases of discrimination increased in all regions of the country without exception.¹⁴³ The regions with the highest instances of violence include, Valparaiso (56.1%), Metropolitan, including Santiago (20.76%), and Biobio, including Concepcion (2.81%).¹⁴⁴ Notably, Santiago and Concepcion have recently been evaluated by Canada’s Immigration Appeals Division (IAD) with respect to being Internal Flight Alternatives.¹⁴⁵

Santiago:

Chile held its first Pride March in Santiago in 2006 with 12,000 people in attendance. In 2019, the XIX Pride March had over 100,000 in attendance. On the occasion, MOVILH and Iguales emphasized the urgency for the state to effectively commit itself to the prevention and eradication of discourses and actions that violate the human rights of people based on their sexual orientation. MOVILH noted, “Discrimination against LGBTI people also translates into

¹⁴¹ Movilh, “Transphobic attack: nose of trans woman fractured in Penalolen,” (2 October 2020) online: *Movilh*, <<https://www.movilh.cl/ataque-transfobico-fracturan-nariz-de-mujer-trans-en-penalolen/>>.

¹⁴² Movilh, “They attack a young transgender until he is left unconscious in San Bernardo,” (13 November 2020) online: *Movilh* <<https://www.movilh.cl/atacan-a-joven-trans-hasta-dejarlo-inconsciente-en-san-bernardo/>>.

¹⁴³ Movilh, “Homophobia and transphobia increase 58% and add more than a thousand cases, the highest number in the history of Chile,” (24 March 2020) online: *Movilh* <<https://www.movilh.cl/homofobia-y-transfobia-aumentan-un-58-y-suma-mas-de-mil-casos-la-cifra-mas-alta-en-la-historia-de-chile/>>.

¹⁴⁴ Ibid.

¹⁴⁵ X, Re 2019 CarswellNat 13542, Immigration and Refugee Board of Canada (Refugee Appeal Division)

beatings and murders... all of which urgently requires effective measures on the part of the State, where prevention, education and awareness are vital.”¹⁴⁶

Santiago may be perceived as a safe space for some LGBTI individuals due to the prevalence of social venues in the Lastarria-Bellas Artes and Bellavista districts where it would not be uncommon to see same-sex couples holding hands. The former district has a large quantity of self-defined gay-friendly cafes that operate mainly during the day and evening, while the latter has a higher concentration of bars, discos, saunas and motels primarily targeted towards gay men.¹⁴⁷ Notably, however, the venues in Bellavista are not visible from the street, often have physical barriers (front yards, fences, or halls), and do not display any signs that indicate their gay or lesbian orientation, such as a rainbow flag.¹⁴⁸

As detailed above, while Santiago has an openly gay scene in the Bellavista neighborhood, outside this neighborhood the mood is very different.¹⁴⁹ Anti-LGBTI sentiment in Santiago has, in part, been vocalized by Neo-Nazi groups including the so called Patriot Social Movement (MSP).¹⁵⁰ In 2017, this group distributed posters in Santiago with the phrase, “don’t mess with my children, not the gay dictatorship.”¹⁵¹ In December 2018, MPS publicly criticized the installation of the first LGBTI monument in the city¹⁵² which was subsequently destroyed the same month..

Besides attacks against LGBTI individuals listed above (concerning treatment of gay men, lesbian women and transgender individuals), in July 2020, four individuals, part of a Neo-Nazi group, attacked and beat a young bisexual man in Central Station, Santiago, because of his sexual orientation. The victim, Francisco Aranda, was stripped, beaten and tied to a pole located in the courtyard of the property, where the assailants also threatened to rape him.¹⁵³ Francisco suffered a maxillofacial fracture, a broken rib, and was taken to the hospital with hypothermia as he was tied up for six hours. In telling his story he states, “I share this now so that it is made public...unfortunately this will continue to happen if we do not change as a society.”¹⁵⁴

¹⁴⁶ Movilh, “More than 100 thousand people demand full equality in the XIX Pride March,” (23 June 2019) online: *Movilh* <<https://www.movilh.cl/mas-de-100-mil-personas-exigen-la-plena-igualdad-en-la-xix-marcha-del-orgullo/>>.

¹⁴⁷ Pablo Astudillo Lizama, “Homosexual Discretion and Good Taste: Two Rules That Govern Homosexual Sociability Space in Santiago de Chile,” (2015) at 1438, 62:10 *Journal of Homosexuality*.

¹⁴⁸ *Ibid.*

¹⁴⁹ Megha Mohan, “The Red Zone: A place where butch lesbians live in fear,” (23 June 2019) online: *BBC News* <<https://www.bbc.com/news/stories-48719453>>.

¹⁵⁰ Movilh, “Neo-Nazis deploy a new homophobic campaign in downtown Santiago,” (30 April 2017) online: *Movilh* <<https://www.movilh.cl/neonazis-despliegan-nueva-campana-homofobica-en-el-centro-de-santiago/>>.

¹⁵¹ *Ibid.*

¹⁵² *Ibid.*

¹⁵³ Daniela Salgado, “Two new suspects arrested in neo-Nazi attack on young man in Central Station squat,” (20 August 2020) online: *BiobioChile* <<https://www.biobiochile.cl/noticias/nacional/region-metropolitana/2020/08/20/detienen-a-dos-nuevos-implicados-en-ataque-de-neonazis-a-joven-en-okupa-de-estacion-central.shtml>>.

¹⁵⁴ *Ibid.*

Additionally, on August 9, 2020 in Lo Espejo, a commune in the Santiago region, Cynthia Leslie Velasquez, who referred to herself as Chico Leslie, died after being stabbed in the lungs. Witnesses reported a man dragging Leslie's dying body. ACCIONGAY details that the actions were not only motivated by sexual orientation but also by gender expression.¹⁵⁵

Concepcion:

In Concepcion, MOVILH-Biobio held its fifth annual Pride March in 2019 with 3000 people in attendance. During the event the president of MOVILH-Biobio in Concepcion noted, however, the need for inequality and discrimination to be faced given increased violence against LGBTI in the region.¹⁵⁶ The March was titled, "No more diversiphobia" (translated). While those in attendance marched for equal marriage and adoption rights for same-sex couples, many also dressed in black as a sign of mourning, demanding justice for those who die or are abused on a daily basis because of transphobia, homophobia, and lesbophobia.¹⁵⁷

In 2015, graffitied swastikas started appearing on streets in Concepcion accompanied by the words "death to homosexuals."¹⁵⁸ In 2018, murals with similar messaging appeared at the University of Concepcion and at Plaza Peru, in Concepcion. The murals have been attributed to "the existence of a serious neo-Nazi campaign in Concepcion that incited hatred and insult to lesbian, gay, bi, trans and intersex people (LGBTI)."¹⁵⁹

In 2018 MOVILH established the First House of LGBTI Diversity in Concepcion, Biobio, noting that the Biobio region had the third highest amount of recorded cases of LGBTI discrimination in the country that year. MOVILH-Biobio lawyer, Paola Laporte, highlighted the necessity of the house, detailing that complaints of abuses against LGBTI in 2018 increased by 88%.¹⁶⁰

¹⁵⁵ Marco Becerra, "Purple Alert! New Lesbicide," (13 August 2020) online: *Acciongay* <<http://www.acciongay.cl/alerta-morada-nuevo-lesbicidio/>>.

¹⁵⁶ Movilh, "More than 100 thousand people demand full equality in the XIX Pride March," (23 June 2019) online: *Movilh* <<https://www.movilh.cl/mas-de-100-mil-personas-exigen-la-plena-igualdad-en-la-xix-marcha-del-orgullo/>>.

¹⁵⁷ La Izquierda Diario, "This was the LGBTI pride march in Concepcion," (25 June 2019) online: *La Izquierda Diario* <<http://www.laizquierdadiario.cl/Asi-fue-la-marcha-del-orgullo-LGBTI-en-Concepcion>>.

¹⁵⁸ Movilh, "Movilh-Biobio requests the mayor to investigate the appearance of swastikas in Concepcion," (1 October 2015) online: *Movilh* <<https://www.movilh.cl/movilh-biobio-solicita-a-intendente-que-investigue-aparicion-de-suasticas-en-concepcion/>>.

¹⁵⁹ Movilh, "Neo-Nazis deploy homophobic campaign in Concepcion," (11 October 2018) online: *Movilh* <<https://www.movilh.cl/neonazis-despliegan-homofobica-campana-en-concepcion/>>.

¹⁶⁰ Movilh, "The First House of LGBTI Diversity inaugurated in Biobio," (18 December 2020) online: *Movilh* <<https://www.movilh.cl/inauguran-en-biobio-la-primera-casa-de-la-diversidad-lgbti/>>.

In May 2018, a lesbian nightclub in Chillan, an hour drive outside of Concepcion, was burned down by a man who yelled, “if they don’t burn here, they will burn in hell.”¹⁶¹ On May 17, 2020 a 23 year-old-man was insulted, attacked and robbed in Penco, a small city on the outskirts of Concepcion, due to his sexual orientation.¹⁶²

¹⁶¹ Carolina Abello, “Lesbian Social Club Disco burned in Chillan,” (15 May 2018) online: *Diario Concepcion* <<https://www.diarioconcepcion.cl/ciudad/2018/05/15/incendian-disco-club-social-lesbico-en-chillan.html>>.

¹⁶² Canal 9 Biobio Television, “Movilh Chile takes action in case of young man who received homophobic attack in Penco,” (27 May 2020) online: *Canal 9 Biobio Television* <<https://www.canal9.cl/programas/nuestra-casa/2020/05/27/movilh-chile-toma-acciones-en-caso-de-joven-que-recibio-ataque-homofobico-en-penco.shtml>>.