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Chile: Gays Gain Ground, But Still Lack Legal Protections

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Cardinal Tarcisio Bertone, the Pope's top aide and Vatican secretary of state, drew the ire of gay-rights supporters the world over last month when he essentially blamed homosexuals for the Catholic Church's well-publicized sexual-misconduct problems.

"Many psychologists and psychiatrists have demonstrated that there is no relation between celibacy and pedophilia," the Italian cardinal said on April 12. "But many others have demonstrated, I have been told recently, that there is a relation between homosexuality and pedophilia. That is true. That is the problem."

Gay-rights groups in Bertone's home country, Italy, blasted the cardinal's comments, as did the French government, whose foreign ministry condemned what it called "an unacceptable connection [between homosexuality and pedophilia]." The openly gay mayor of Paris, Bertrand Delanoe, criticized the church statements as well, saying they "deliberately stigmatize an identity and harm the respect for diversity and individual liberty."

But perhaps nowhere in the world were Bertone's inflammatory remarks more immediately felt than in Chile, and not just because that is where the Italian cardinal actually made his comments. For homosexuals here, the incident was a glaring reminder of just how difficult it has been to gain public acceptance and equal rights in a predominantly Catholic country that did not even legalize divorce until just six years ago (NotiSur, Dec. 17, 2004).

Homosexuals have certainly made strides in Chile, which until 1998 had a "sodomy law" that basically outlawed consenting same-sex relations. Gay characters have now begun to appear in prime-time soap operas. Santiago's bohemian Bellas Artes neighborhood is very much an "open" neighborhood. An annual love parade takes place in nearby Parque Forestal. And some politicians, including recently elected President Sebastián Piñera, a conservative, are starting to voice measured concern about anti-gay discrimination.

"We've gone up and down this country and have the firm conviction that the Chilean society as a whole has evolved positively in this regard," said Rolando Jiménez, head of Chile's leading gay-rights advocacy group, the Movimiento de Integración y Liberación Homosexual (MOVILH). "We're no longer the conservative society we were 20 years ago. Things have changed dramatically because of the work of the homosexual movement itself and because of the globalization of communications."

Institutionally, however, age-old prejudices against homosexuals are still very much entrenched, spurred on by a hard-line Catholic Church that continues to influence public policy, particularly through conservative politicians from Piñera's center-right Renovación Nacional (RN) and the far-right Unión Demócrata Independiente (UDI). In March, the RN-UDI coalition known as the Alianza assumed power for the first time under Piñera, replacing the center-left Concertación coalition of previous President Michelle Bachelet (2006-2010), which had governed Chile since the end of the military dictatorship of Gen. Augusto Pinochet (1973-1990).
While the Vatican tried to downplay Bertone’s comments, Chilean Bishop Carlos Pellegrin of Chillán defended the cardinal’s position. "What the cardinal said is a product of the fact that the majority of pedophilia cases involve a homosexual orientation, that is, homosexuals who abuse minors of the same sex,” Pellegrin told the news agency Orbe. The bishop added that the controversy "has provided an opportunity for our church in Chile to offer its solidarity with the Holy See."

**Lobbying for legal guarantees**

MOVILH lashed back, accusing Bertone of "lying" and of "immorally using homosexuals as scapegoats." In a letter addressed to the Rancagua Diocese's Bishop Alejandro Goic, president of the Conferencia Episcopal de Chile (CED), the gay-rights organization asked that the incident be taken as an opportunity for the church to once and for all ease its discriminatory posture.

"You and the church are both familiar with the violent characterizations that your representatives have used to refer to sexual minorities and homosexuality," the letter read. "Not only have you associated us with 'pedophilia,' but also with 'sin,' 'deviance,' 'sadism,' 'lust,' 'immorality,' 'bestiality,' and the 'destruction of the family.'"

Not known for mincing words, MOVILH has distinguished itself in the past 20 years as a staunch human rights defender. The organization also serves as a bridge between sexual minorities and the country's political leaders. But even MOVILH admits that advocacy has its limitations and that all the terse letters and impassioned press conferences in the world will not prevent discrimination as long as Chile fails to provide concrete legal protections.

Chile's Pinochet-era Constitution promises citizens equality before the law, explaining in Article 19 that "neither the law nor any authority can establish arbitrary differences." But MOVILH and other minority-rights groups say that is not enough, that Chilean law ought to specifically define the parameters of that equal-rights guarantee.

Many on the political left agree, and in March 2005 the government of then President Ricardo Lagos (2000-2006) sent Congress a bill outlawing arbitrary discrimination based on "race, ethnicity, color, national origin, socioeconomic situation, geographic zone of origin, place of residency, religion or beliefs, language, ideology and public opinion, sex, gender, sexual orientation," among other factors.

Five years later, however, the anti-discrimination bill, bogged down by stiff opposition from conservative Alianza legislators, has yet to become law. Without such a statute in place, argue critics, gays remain vulnerable to unfair treatment in the workplace, in school, or even in the courts.

**Judging the judge, because she's gay**

A case in point is Karen Atala, an openly lesbian judge who lost custody of her three daughters in 2004 when the Corte Suprema de Justicia (CSJ) decided the children would suffer psychological damage were they to remain with their mother (and her female partner). Atala had won two previous lower-court decisions.

"In Chile having a different sexual orientation continues to be something people view in moral terms or as a behavioral problem. Those are the excuses used to start administrative disciplinary procedures [against gays], which in this case were used to strip a mother of the custody of her

Having exhausted her legal options in Chile, Atala took the case before the Inter-American Commission on Human Rights (IACHR), an autonomous, Washington D.C.-based branch of the Organization of American States (OAS). In 2008, after Atala failed to reach a friendly settlement with the Chilean state, the IACHR declared the case admissible. Just last month, the IACHR finally released its decision on the matter, determining that "the Chilean state violated Karen Atala's right to live free from discrimination."

"This is without a doubt a significant ruling because it's the first time, on the inter-American level, that they've determined discrimination based on sexual orientation," said Olea, who helped argue the Atala case before the IACHR. "In this sense, it establishes a precedent that's really quite positive. It's transcendent, historic."

**A gay-friendly conservative?**

The recently inaugurated Piñera government said it accepts the IACHR's nonbinding recommendation that it develop "legislation, policies, and programs" to do away with discrimination based on sexual orientation. It also agreed to set up a working group involving representatives of all concerned parties. The CSJ, however, has already said it will not participate, raising the possibility that the commission should the Chilean state fail to properly comply will eventually refer to the case to the OAS's Costa Rica-based Inter-American Court of Human Rights (IACHR), whose rulings are binding for Chile.

Given the Alianza's historic cultural conservatism, it's hard to imagine the Piñera government will prioritize either the anti-discrimination law or a civil-union bill submitted in 2006. Yet the new president, a billionaire businessman who has made every effort to distinguish himself from his far-right UDI partners and instead sell himself as a moderate, continues to make overtures toward Chile's gay community.

Prior to last December's general election (NotiSur, 2009-12-18), Piñera surprised many on both the right and left by appearing with a gay couple in one of his campaign ads. Political conservatives criticized the move, as did Bishop Goic, who urged the candidate to be "coherent in his values" and "limit" what he was willing to do for votes. Piñera defended the ad's content by saying he would not discriminate against anyone for "socioeconomic reasons, because of their ethnic origin, religious beliefs, or sexual orientation."

The new president has said he is open to passing civil-union legislation that would benefit both heterosexual and same-sex couples by extending, for example, health-care and inheritance benefits to common-law partners. But at the same time, he has attempted to appease conservatives by insisting that marriage can by definition only be between a man and a woman.

"I spoke this week with Bishop Goic, and we completely agree," Piñera told reporters last November, shortly after his pro-gay campaign ad first aired. "Our government is going to strengthen the family, which is the axis of society. It's what makes a community healthy. And we're going to strengthen marriage, which by essence and nature is between a man and a woman, who complement each other to form a family and, God willing, if they want, to have children."
How this hybrid position will actually play out in the next four years remains very much to be seen. Initial meetings with Piñera's government representatives have been positive, MOVILH reports. Last month the advocacy group met with the new head of the Servicio Nacional de la Mujer (SERNAM), Carolina Schmidt, who said she supports the anti-discrimination law.

MOVILH and other gay-rights groups have heard such promises before, including from President Bachelet, who insisted from the beginning of her term on prioritizing the law.

"During 20 years of Concertación leadership, what the government basically offered us was a willingness to talk. There were declarations of intention to ending discrimination against homosexuals, but in practice nothing ever materialized," said Jiménez.

"What we hope from this new government is that they be coherent. The president, in particular, said during his campaign that he would generate public policies against discrimination of gay and lesbian couples. But that will mean passing corresponding laws, taking concrete actions."

-- End --