

ABOSEX (Abogad*s por los Derechos Sexuales)¹



GLOBAL INITIATIVES
FOR HUMAN RIGHTS
A HEARTLAND ALLIANCE PROGRAM

ADDITIONAL INFORMATION FOR REVIEWING ARGENTINA'S PERIODIC REPORT SUBMITTED TO THE HUMAN RIGHTS COMMITTEE Session 117 – June 20 to July 15, 2016

ABOSEX, Akahatá - Equipo de Trabajo en Sexualidades y Géneros, and Heartland Alliance for Human Needs and Human Rights bring to the Committee some aspects of the human rights situation faced by trans persons and *travestis*² in Argentina.

This report will address the following issues, related to Articles 2 and 26 of the Covenant and Question 5 in the List of Issues:

- 1 | Violations of the Gender Identity Law: discrimination in access to health**
- 2| Violations and/or lack of implementation of the *Travesti*, Transgender and Transsexual Quota Law (Buenos Aires Province)**

The report will also address the following issues, related to Articles 2 and 26 of the Covenant and to Question 7 ("Right to life, prohibition of torture and other cruel, inhuman or degrading treatment") in the List of Issues:

- 3 | Cuts in the Sexual Health and Responsible Procreation Programme at the Ministry of Health and its effects on sexual and reproductive health of the population.**

1| Violations of the Gender Identity Law: discrimination in access to health

¹ Website: <https://abosex.wordpress.com/>. Email: abogadosderechossexuales@gmail.com

² In Argentina, many persons assigned to the male gender at birth whose gender identity and expression are feminine define themselves as *travestis*. *Travestis* live permanently in their self-perceived feminine gender identity and adjust their bodies through cosmetic surgery and hormones treatments.

The National Gender Identity Law, or Law No. 26743³ (LNIG in Spanish), passed in 2012, depathologizes the recognition of gender identity because it grants it upon the sole expression of an individual's autonomous will before the National Registry which is the competent authority (Arts. 2, 3 and 4). The law also recognizes the comprehensive right to health that includes access to surgeries and hormonal treatments without other requirements beyond informed consent. With an aim to guarantee access to the rights recognized by the law, it obligates public health providers – be they from the State, private or union/insurance providers – to provide trans specific health coverage and includes it in the Compulsory Medical Plan (that is, the list of treatments that have to be covered by medical insurance – Art. 11 LNIG and its regulatory decree No. 903/15).

However, despite there being some union and pre-paid insurance schemes that have started to cover a few treatments, trans persons' right to health is far from being guaranteed. Most providers refuse to fulfill what the law mandates and it has been documented that some companies even force their clients to declare themselves as being trans persons and to classify the hormonal treatment they received as “pre-existing condition”. In the public health system, there are different responses per institution and jurisdiction. A few programmes have already been providing adequate care for some years but they are scarce and do not work in a coordinated fashion; sometimes, they provide only part of the treatment.

These circumstances force trans people to start legal actions or pay for costly treatments privately, even though they are contributing monthly to their health insurance. AboSex and other organizations have promoted and will continue promoting legal actions to guarantee that the right to health is respected as part of the right to one's gender identity, whenever relevant. But the law aims at trans people being able to exercise their rights without having to resort to the Courts and for that to happen, their access to health needs to be guaranteed without delays, obstacles or illegal barriers placed by public or private entities.

Trans identities are still pathologized when trans people are required to seek mental health counseling before being allowed hormonal treatments and surgical interventions, in flagrant violation of the LNIG.

So, even though the LNIG has been regulated, health providers continue to refuse to conform to its dispositions protecting the right to self-perceived identity, to bodily integrity, to the free development of one's personality and to non-discrimination in access to health.

³ Available at (in Spanish): <http://www.infoleg.gov.ar/infolegInternet/anexos/195000-199999/197860/norma.htm>

The State also lacks a clear policy to mandate union and pre-paid health insurance to abide by the law. As said, each trans person who sees his/her rights violated is forced to undertake a bureaucratic and prolonged procedure to demand access to what the law guarantees. The time it takes is inadmissible, because in most cases the affected person cannot interrupt the ongoing treatment and the arbitrary imposition of parameters that differ from those prescribed by the law result in a violation of fundamental human rights.

With relation to public health facilities, in many cases they lack enough medicines to cover the treatments under way, as well as human and material resources. This leads to delaying surgeries that, in turn, are not performed in every public hospital.

In some cases, trans persons have not been able to access healthcare if they lack a National Identity Card corresponding to their self-perceived identity.

The current suspension and slow dismantling of the Sexual Health and Responsible Procreation Programme⁴ since the change of government has an impact on its beneficiaries, many of whom are *travestis* and transgender persons. This issue will be addressed fully in Section 3 below.

Most trans people have no health coverage because they are excluded from the productive labour market. This leads to their resorting to practices like the use of industrial oils and contraceptive pills in lieu of hormone treatment that affect their bodily integrity and health along with their possibilities to plan for their future lives.

When the law refers to the “right to health”, it has to be understood as comprehensive health, not just hormone treatments and surgeries. The World Health Organization defines health as “a state of complete physical, mental and social wellbeing and not merely the absence of infections or illnesses”. Thus, the right to health also implies a series of prior conditions that allow a person to exercise this right, that is, access to decent housing, formal and not precarious employment, access to education and good food – this are all preconditions for good health. In that sense, when those correlative rights are not provided for, even though health and personal development are contemplated by the law, they exist only on paper.

⁴ Journalist account on the issue (in Spanish): <http://www.laizquierdadiario.com/Ministerio-de-Salud-ataque-y-vaciamiento-a-los-programas-de-salud-sexual-y-reproductiva>

Lastly, there are serious gaps in terms of health coverage due to the lack of basic information on the situation of the *travesti* and transgender population. The different health needs of trans persons that go beyond sexual reassignment and hormone treatment have not yet been addressed by the Argentinean state.

Thus, we would like to request that the Committee recommends to the Argentinean State:

- a) To guarantee access to trans specific health coverage as prescribed by Law 26743 and Decree 930/15 through the public health system.
- b) To fulfill its role to oversee and control private health providers by guaranteeing that union and pre-paid health insurance providers along with public health providers cover in a comprehensive and timely manner those treatments prescribed in Law 26743 and Decree 903/15, while also punishing those violating it.
- c) To pass resolutions condemning the discriminatory and pathologizing behaviour of union and pre-paid health insurance providers forcing their members to consider their identities and treatments as “(health) conditions” and to provide quick and simple complaint procedures that allow trans persons to have their fundamental rights that are at stake protected.

2 | Non-discrimination in access to the right to work: *Travesti*, Transsexual and Transgender Labour Quota Law

The Legislative power in Buenos Aires province passed Law 14783 setting a Trans Labour Quota, also known as the “Diana Amancay Sacayán Law”, to honour the trans activist who advocated for it and was killed in 2015. The norm prescribes that at least 1% of the provincial public sector labour force must be *travesti*, transsexual and transgender persons having the competences required for the position and that the province must reserve posts to be occupied by them in order to promote substantive equality in opportunities for public employment.

The Law was passed on October 19, 2015, by provincial Decree 1322. Its Article 3 establishes that the provincial Executive Power will appoint the authority in charge of implementing it.

Up to date, the provincial authorities have not moved forward in implementing the law, and particularly in appointing the executive power that has the duty to take the measures required to make effective the rights protected by this law.

Inspired by the leadership of Diana Amancay Sacayán who was murdered in 2015, social organizations Movimiento Antidiscriminatorio de Liberación M.A.L., Abosex, Conurbanos por la diversidad and Asociación de Lucha por la Identidad Travesti Transexual ALITT, are in a state of alert due to the lack of immediate implementation that the law prescribes. We have launched a Campaign for the Implementation of the *Travesti*, Transsexual and Transgender Labour Quota Law in the Province⁵.

In this context, the first measure adopted was to request the Executive to report to the Provincial Chamber of Deputies on this issue and also the issuing of ordinances in favour of immediate implementation by ten municipalities across the province.

On May 17, 2016, Administrative Court No. 4 from La Plata ordered the city's municipal government to reinstate Bella Valentina Pereyra, a trans worker who had been fired from her job, "in order to fulfill the dispositions of the Provincial Trans Labour Quota Law No. 14783". Pereyra was assisted by the Observatory on Gender Violence - Buenos Aires Province Ombudsman Office. Even though this decision is important as support for implementing the law, it is worth noticing that through the Court proceedings the Municipal government made no reference to it at all, and this raises concerns.⁶

It is also worth noting that there is a lack of basic data on the labour situation of *travestis*, transgender and transsexual persons, a basic element to understand the levels and modalities of inclusion in the labour market and to design, implement and monitor adequate public policies.

Thus, we would like to request that the Committee recommends to the Argentinean State:

- a) To effectively implement this and other laws promoting affirmative actions to remove obstacles creating inequality in access to human rights, in this case the right to decent work without discrimination based on gender identity.

⁵ See journalist coverage (in Spanish):

<http://www.pagina12.com.ar/diario/suplementos/las12/13-10098-2015-10-16.html>

<http://moron.enorsai.com.ar/sociedad/24951-organizaciones-sociales-reclaman-a-vidal-el-cumplimiento-de-la-ley-de-cupo-trans.html> http://www.laizquierdadiario.com/spip.php?page=gacetilla-articulo&id_articulo=36362

⁶ Press Release by Observatorio de Violencia de Género de la Defensoría del Pueblo de la Provincia de Buenos Aires.

- b) That the provincial state adopts administrative and other measures required to appoint the authority in charge of implementing the law guaranteeing its effective implementation.
- c) That the State provides the resources needed to promote, publicize and guarantee effective implementation of Law 14783.
- d) To put in place statistical instruments measuring the conditions of life of *travesti*, transsexual and transgender persons.

3 | Cuts in the Sexual Health and Responsible Procreation Programme at the Ministry of Health and its effects on sexual and reproductive health

The current government has made as part of their State modernizing policy a dramatic reduction in the number of public employees. The current number of public sector officers laid-off is 40,149⁷. This policy of dismantling State services has drastically affected programmes and projects at the National Ministry of Health, including those providing sexual and reproductive health services.

The national programmes for Comprehensive Adolescent Health (PNSIA in Spanish) and of Sexual Health and Responsible Procreation (PNSSyPR in Spanish) that used to be directly dependent on the Community Health Secretary have lost autonomy. Currently, the PNSIA is under the National Directorate of Motherhood and Childhood and the PNSSyPR under the Community Medicine Directorate; both Directorates in turn depend on the Primary Health Care Under-Secretary.

The PNSSyPR has a high risk of running out of supplies as the purchases prescribed for November 2015 have not been carried out and the new administration has increased the administrative procedures required for any purchase. This situation has led to the depletion of the stock in condoms and emergency contraceptives. It is estimated that around 6,500 health centres across the country are already facing or will soon face a shortage of oral hormonal contraceptives, injectable contraceptives, IUD and subdermal implants.

The different activities the PNSSyPR has been carrying out since 2003 have not yet resumed, even though – thanks to the pressure by civil society organization – a new coordinator for the programme was finally appointed in March (the programme had been without authorities since December).

Within this programme, the areas in-charge of Training, Sexual Diversity and Community Promotion are the ones who most urgently need to start working again with their peers in the provinces and with civil society organizations. In

⁷ <http://www.resumenlatinoamericano.org/2016/05/11/argentinaresumen-de-conflictos-gremiales-11-de-mayo-los-despedidos-ya-suman-140-mil-y-hay-38-mil-suspensiones-dirigente-juan-carlos-schmid-los-despidos-no-se-solucionan-con-voluntarismo-nu/>

February, 20 workers from the programme were fired and after negotiating through their union, all were reinstated as Ministry employees but only on the condition of not coming back to work at the PNSSyPR. This has seriously affected the capacity of the programme, as the total number of its workers in December was 53.

Another issue of concern is the future of the Remediar Programme in charge of distributing the medicines and other products corresponding to the PNSSyPR and others that are key for the Primary Health Care Centres (CAP in Spanish) and the health of the population. If the Remediar Programme stops distributing products, the provinces that systematically and historically have placed obstacles in people's access to sexual and reproductive services will be left to their own devices to buy reproductive health materials, and the national administration's influence on them will also be lower. This might happen particularly in the North-East and North-West of the country, where it has been historically harder to secure the population's access to reproductive health services.

Thus, we would like to request that the Committee recommends to the Argentinean State:

a) To implement all necessary measures to guarantee the continuity of the National Sexual Health and Responsible Procreation Programme at least at the same levels of efficiency it had reached by December 2015 and to work towards increasing its outreach and the services it provides.