

report

# Human rights situation of *travestis* and trans women in Argentina

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## **ASSESSING STATE COMPLIANCE WITH THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)**

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# Human rights situation of travesti and trans persons in Argentina

## Introduction

In spite of Argentina's legal advances, the travesti and trans population<sup>1</sup> continues to be subjected to violence based on discrimination towards non-normative gender identities. This report will show how this discrimination is also grounded in structural obstacles to access basic rights such as the right to education, health, work, justice, identity and to live free from violence among others. As a result of this structural discrimination, it is estimated that trans and travesti persons have a life expectancy of 35 years in Argentina<sup>2</sup>. Thus, it is urgent that these problems are addressed.

Regional and international normative frameworks allow us to understand gender-based violence in ways that go beyond the heteronormative binary. The Yogyakarta Principles describe how international human rights law must be applied to sexual orientation and gender identity issues. The Inter-American Commission on Human Rights (IACHR) pointed out that the category of 'gender' includes sexual orientation and gender identity, and that it includes trans persons.<sup>3</sup> The United Nations High Commissioner for Human Rights has also stated that homophobic and transphobic violence constitute "a form of gender-based violence, driven by a desire to punish those seen as defying gender norms"<sup>4</sup>. In its General Recommendation No. 28, the CEDAW Committee itself affirms that "Intersectionality is a basic concept for understanding the scope of the general obligations of State parties contained in article 2" and that "The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity."<sup>5</sup>

This report is based on those same premises. It seeks to provide a description of the status of those structural issues directly affecting the trans and travesti population of Argentina as well as recommendations to eradicate institutional patterns of gender-based discrimination and violence.

## 1. Normative framework in Argentina

Law 26,743 on Gender Identity<sup>6</sup> was passed on May 9, 2012. It transformed the way in which travesti-trans bodies were politically and legally recognized. This law was an achievement of Argentinean trans activists and their political alliances.<sup>7</sup>

As Emiliano Litardo<sup>8</sup>, who drafted this law, points out, it prescribes that the information on public identity records is to be corrected when it does not match a person's self-

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1 The terms 'trans' and 'travesti' usually refer to persons whose gender identity differs from that socially assigned to them. In Argentina, the term travesti has a political connotation linked to 'struggle, resistance, dignity and happiness' (Berkins, Lohana, "Travestis: una identidad política" [online] <http://bit.ly/2ctwVzc>)

2 Berkins, Lohana, Cumbia, Copeteo y lágrimas, ALITT 2007; Fundación Huésped y ATTTA, "Ley de identidad de género y acceso al cuidado de la salud de personas trans en Argentina", ONUSIDA, 2014.

3 Inter-American Commission on Human Rights (2015), "Violence against LGBTI Persons", OAS/Ser.LV/II.rev.1, 12 November 2015.

4 United Nations High Commissioner for Human Rights, Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, A/HRC/19/41, November 17, 2011, para. 20

5 General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/2010/47/GC.2, 19 October 2010.

6 An English version of the Law is attached as Annex I

7 Five bills on the same topic had been previously submitted. See <http://frentenacionaleydeidentidad.blogspot.com.ar/>

8 Litardo, Emiliano: «Los cuerpos desde ese otro lado: la ley de identidad de género en Argentina», 2013. This section on the Gender Identity Law is based on this essay.

perceived gender.<sup>9</sup> It also guarantees access to health care including hormones and surgical procedures for total or partial genital reassignment without any requirement except "informed consent by the individual concerned" as well as coverage for this procedures by private or trade union-run insurance plans.<sup>10</sup>

In order to exercise these rights, the law does not require medical diagnosis as evidence; on the contrary, it condemns any act disturbing, hindering, denying or violating the rights it protects, considering such acts discriminatory.<sup>11</sup> The law considers that a person's will is enough and her/his right to see her/his gender recognized is not dependent on any additional judicial or administrative procedure. The individual's will is expressed by filling-in a simple form requesting the correction of the name. Surgical procedures require informed consent.<sup>12</sup> The Gender Identity Law avoids any normative definition of identity categories such as 'travesti', 'transsexual' or 'transgender'<sup>13</sup>, to value instead the right to bodily autonomy. It also guarantees the recognition of their gender identity for trans boys, girls and adolescents in the spaces in which they perform their activities<sup>14</sup>, particularly when they must be called and registered, along with respect for their chosen name and access to comprehensive health-care. To this end, it resorts to the "child advocate" that Argentinean law on children and adolescents has created to reinforce the protections granted to children and adolescents' right to bodily autonomy.<sup>15</sup> Through this law, that also includes migrants<sup>16</sup>, the Argentinean State acknowledges the political nature of trans identities that ceased to be labelled as pathological, sick or dysphoric.

Law 24,485 on Comprehensive Protection for Women, passed in 2009, states that "Violence against women is understood as any behaviour, action or omission that directly or indirectly, in public or private spaces and based on an unequal power relationship, affects their lives, freedoms, dignity, physical, psychological, sexual, economic or patrimonial integrity, as well as their personal safety. This comprises those actions perpetrated by the State or its agents"<sup>17</sup>. The Consejo Nacional de Mujeres (National Council of Women, CNM in Spanish) the main body in-charge of implementing this law, changed its name in 2010 (from Consejo Nacional de la Mujer - in singular - to the plural) indicating that from then on it would consider the whole diversity of the feminine universe including those that are migrants, transgender, Indigenous, older women, those deprived of their freedom, among others.<sup>18</sup>

This legal framework in which the Argentinean Gender Identity Law is inserted also includes Law 26,618 of Equal Marriage (Matrimonio igualitario) passed on July 15, 2010, and Law 26,862 on Medically Assisted Reproduction.

The National Civil and Commercial Code, that entered into force on August 1, 2015, constitutes a historical, social and legal landmark because it recognizes more and better rights for all families, those including same-sex and different-sex couples alike. This core legal text integrates equal (same-sex) marriage, de-facto unions and the

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9 See Article 3 of the Law

10 See Article 11 of the Law

11 See Article 13 of the Law

12 See Article 4 of the Law

13 See Article 2 of the Law

14 See Article 12 of the Law

15 See Article 5 of the Law

16 Art 9 of the Decree by which this Law is implemented - Decree 1007/2012.

17 Original language: «Se entiende por violencia contra las mujeres toda conducta, acción u omisión, que de manera directa o indirecta, tanto en el ámbito público como en el privado, basada en una relación desigual de poder, afecte su vida, libertad, dignidad, integridad física, psicológica, sexual, económica o patrimonial, como así también su seguridad personal. Quedan comprendidas las perpetradas desde el Estado o por sus agentes».

18 Consejo Nacional de las Mujeres, Plan Nacional de Acción para la prevención, sanción y erradicación de la violencia contra las mujeres, 2016-2017, page 20.

recognition of gender identity while also introducing positive changes in regulations on adoption and divorce.

In 2010, Argentina adopted Law 26,657 on Mental Health (LNSM in Spanish) that outlines one of the most advanced legal frameworks for this issue in the Latin American region. The law recognizes that mental health is a field in which violent practices have taken place aimed at controlling and dominating individuals, and is geared towards promoting human rights and preventing violations. In its Article 3, the LNSM defines mental health as "a process shaped by historical, socio-economic, cultural, biological and psychological elements and whose preservation and improvement implies a social dynamic linked to the realization of human and social rights for all persons"<sup>19</sup>. It also specifies that no mental health diagnosis can be based exclusively on "the lack of conformity or adjustment to moral, social, cultural or political values, or to religious beliefs prevailing in the community in which a person is living, or sexual choice or identity".<sup>20</sup>

This understanding of mental health, that constitutes the legal grounds on which the Argentinean State acts in this field, delegitimizes psychiatric classifications that are still in force such as gender identity disorder and transsexualism or dual-role transvestism<sup>21</sup>, remnants from the historical pathologization of sexual orientation and gender identity that the hegemonic medical power still uses to oppress many travesti and trans women in their daily lives.

## 2. VIOLENCE

The IACHR considers the existence of an institutional cycle of violence against this population in OAS member countries as proven: ... trans persons face poverty, social exclusion and high rates of lack of access to housing, pressing them to work in highly criminalized informal economies, such as sex work or survival sex. As a result, trans women are profiled as dangerous, making them vulnerable to police abuse, criminalization and to be imprisoned. Trans persons belonging to historically discriminated ethnic or racial groups can be even more vulnerable to enter into this cycle of poverty and violence"<sup>22</sup>.

In Argentina, the National Institute for Statistics and Census (Instituto Nacional de Estadística y Censos, INDEC) conducted a First Survey on the Trans Population in 2012 and recorded that 83% of trans persons and travestis surveyed have suffered serious violence and discrimination by the police. We need to highlight here that available statistics and data do not reflect the real dimension of this violence. To the obstacles that exist in reporting a State agent for his/her involvement in acts of violence, it must be added that available records are not adjusted to the needs of this population so it is impossible to know, for instance, if the person reporting an incident is trans but has not changed his/her identity record.

In spite of the international obligations acquired by Argentina, the information produced by the State at the national and provincial level, through its different institutions and autonomous bodies is fragmented, scarce, fails to register the different forms of violence and is not connected as a whole. This renders invisible the violence perpetrated against trans persons and hinders effective responses by the authorities.

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<sup>19</sup> Original language: "un proceso determinado por componentes históricos, socio-económicos, culturales, biológicos y psicológicos, cuya preservación y mejoramiento implica una dinámica de construcción social vinculada a la concreción de los derechos humanos y sociales de toda persona".

<sup>20</sup> Original language: "la falta de conformidad o adecuación con valores morales, sociales, culturales, políticos o creencias religiosas prevalentes en la comunidad donde vive la persona, o la elección o identidad sexual".

<sup>21</sup> F64 in DSM-IV-TR and F64 in ICD-10, respectively.

<sup>22</sup> [http://www.oas.org/en/iachr/media\\_center/PReleases/2015/137.asp](http://www.oas.org/en/iachr/media_center/PReleases/2015/137.asp)

In the first four years since the Gender Identity Law entered into force progress has been made in acknowledging institutional violence<sup>23</sup> particularly against travestis and trans women. However, given the extreme structural vulnerability of the travesti-transsexual collective, it is not enough and it reflects how little the State Security machinery has done to implement the policies supporting the Gender Identity law. Also, in the months since the new administration has taken over, there have been serious setbacks and the institutional approach to these issues has not been adequate.

#### **A. USING LAWS THAT INDIRECTLY CRIMINALIZE TRAVESTI-TRANSSEXUAL IDENTITIES**

There is a direct link between criminalization of trans persons and travestis, hate-motivated crimes, police abuse and stigmatization due to their gender identity and also the migratory status of some members of this collective.

The history of Police Edicts (Edictos Policiales) is the history of social harassment policies implemented by the State and aimed at normalizing those social groups considered to be deviant and whose features were harmful to the Nation-State. Nowadays, a broad coalition of organizations and movements is advocating for a national bill ("Reconocer es reparar" - To acknowledge is to compensate)<sup>24</sup> to provide compensation for travestis and trans persons who suffered institutional violence at the hands of security forces. This applies particularly to those suffering the systematic and periodic enforcement of Police Edicts (repealed in 1996). This compensation is consistent with a policy of recognition aimed to keep alive memory and the search for truth about the times when certain gender identities and sexualities were criminalized by the State.

This bill is grounded on Principle 28 of the Yogyakarta Principles that says: "Every victim of a human rights violation, including of a violation based on sexual orientation or gender identity, has the right to effective, adequate and appropriate remedies. Measures taken for the purpose of providing reparation to, or securing adequate advancement of, persons of diverse sexual orientations and gender identities are integral to the right to effective remedies and redress".

Since the Gender Identity Law was passed four years ago and laws or other regulations directly criminalizing trans persons and travestis were tacitly repealed, security forces have been increasingly invoking laws that indirectly criminalize travesti and transsexual identities. So, travesti and trans women's identities are associated with crimes like the selling of illegal substances and the offer of sex services in public, both penalized by Contraventional Codes in some provinces. The persecution of prostitution is masked by a fake aim to criminalize customers; this pushes travestis and trans women underground, exposing them to greater risks and to being forcibly displaced from some neighbourhoods. The goal of this policy of harassment is to exert control over the population of certain areas.

In Jujuy and Tucuman, for instance, abuse and police violence characterize the arrests that take place anytime during the night.<sup>25</sup> Trans women are accused of engaging in prostitution just by being in the streets, regardless of what they are actually doing. Police fail to respect their identity and use the existence of contraventions to extort money or free sexual services from them.

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<sup>23</sup> Institutional violence is defined as violence against trans persons and travestis that results from State actions or omissions, and/or that has been perpetrated by State agents (including State security forces and those guarding spaces in which persons are deprived of their freedom).

<sup>24</sup> Bill No. 2526-D-2016

<sup>25</sup> This information was obtained through interviews with trans women in San Salvador de Jujuy.

In Jujuy, police officers are currently receiving training. There is also a Security Protocol being drafted that, if passed, will provide a mechanism to report police officers. However it is being delayed because of difficulties in reaching an agreement on how to punish police officers violating the law. In Tucuman, Law 5140 that regulates Misdemeanours is in force even though it was declared unconstitutional by the National Supreme Court of Justice as well as by the provincial Supreme Court. Its Article 19 states that "Prostitutes exhibiting themselves at the doors or from the windows of their houses, or who stroll through the streets stopping, calling or enticing passers-by"<sup>26</sup> will be punished with up to 30 days of imprisonment or a fine equivalent to 30 days of the minimum wage.

Law 23737 on illegal substances is one of the laws criminalizing the travesti and trans population and allows for discriminatory police practices. Its articles 5 and 14, in particular, punish life-styles and not criminal behaviours.<sup>27</sup>

In Buenos Aires province people are arrested in the streets during 'police prevention' operations, without anybody having reported a crime, or as part of a current criminal investigation. The police intervene on the basis of their 'instincts' (for instance, when they see a travesti standing in the street, climbing into or getting out of a car, talking to other people, etc.). Those arrested are charged with selling illegal substance, an offense for which no bail is allowed. The only evidence is the word of the police officers but the facts they describe, the money they have confiscated and the small amount of substance the person arrested was carrying do not point to selling but rather to individual use. Those who were supposed to have been buying substances from the travesti are never arrested. Trans women or travestis arrested in this way almost never have a police record, and if they have been arrested before it has always been in this same way. For instance, some travestis stated that they were detained at La Plata Police Station No. 9 but no records had been kept. As we will see in a separate section, many of those arrested are migrants, engaged in prostitution and in a situation of extreme vulnerability.

Court No. 4 of the Guarantees Chamber in La Plata reported that 91% of trans women and travestis that have been arrested by the Buenos Aires Province Penitentiary Service (Servicio Penitenciario Bonaerense, SPB) were accused of violating Law 23737.<sup>28</sup> In the case of trans women and travestis deprived of their freedom and in the custody of the SPB, 100% were charged with selling illegal substances. No other population group has all its members imprisoned for the same crime. This shows how Law 23737 is being used only as a pretext to criminalize trans women and travesti identities.

## **B. ARBITRARY DETENTIONS AND POLICE ABUSE**

Trans persons and travestis have been arrested for misdemeanours, for "identification purposes"<sup>29</sup> as the Buenos Aires Police Law allows, accused of committing the crime of possessing illegal substances for commercial purposes, or in the course of police

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<sup>26</sup> Original language: "Las prostitutas que se exhiban en las puertas o ventanas de sus casas, o recorran las calles deteniendo, llamando o provocando a los transeúntes".

<sup>27</sup> The "Ariola verdict" issued by the National Supreme Court of Justice declares article 14.2 of this law that punishes those taking illegal substances unconstitutional. Its "Vega verdict" considers that automatically enforcing Art.14.1 that punishes possession of illegal substances in small quantities is also unconstitutional. The UN and the IACHR also stated that to persecute the selling of illegal substances in small amounts is to criminalize the poor, and this is aggravated when no difference is made between the selling of small amounts and drug-trafficking and the punishment imposed is of 4 to 15 years of imprisonment with no other alternatives.

<sup>28</sup> Preventive Habeas Corpus HC 34/16 presented by OTRANS exposing discriminatory profiling against trans women and travestis in La Plata.

<sup>29</sup> Law 13482, Article 15.c allows the police to "restrict an individual's freedom ... when it is necessary to know his/her identity, under circumstances that reasonably justify it, and he/she refuses to identify him/herself or lacks identification documents". Original language: "limitar la libertad de las personas (...) Cuando sea necesario conocer su identidad, en circunstancias que razonablemente lo justifiquen y se niega a identificarse o no tiene la documentación que la acredita..."

prevention tasks. These procedures – in which trans women and travestis are insulted, threatened and subjected to humiliating and inhumane treatment – are enabled by different political/penal measures such as the refusal to allow trans persons and travestis to circulate through specific areas in town. Many of these persons are Peruvian or Ecuadorean nationals, Afrodescendants or Indigenous.<sup>30</sup> In response to police procedures conducted in the La Plata's "red-light area", around Matheu Park, different human rights and trans-travesti organizations have condemned the Argentinean State in local and international spaces for forced nudity<sup>31</sup> imposed by security personnel<sup>32</sup> and without judicial order.<sup>33</sup>

If a travesti or trans woman is new in a neighbourhood, police will especially stop her, demand to see her identification documents, harass, humiliate, pressurise, sexually attack her and finally deprive her of her freedom. This happens in a systematic way. Each travesti-trans woman is subjected to such controls on a daily basis. The most vulnerable are those who engage in prostitution, who in many cities are regularly stopped by the police and searched every week. Police officers tend to be indifferent when third parties commit acts of violence against trans women-travestis.

The new "Protocol to conduct searches in facilities and individuals" (Protocolo de actuación para la realización de allanamientos y requisas personales) issued by the National Ministry of Security that, violating the National Code on Criminal Procedures, enabled security forces to stop and search persons without a judicial order on the basis of their "police instinct" and of anonymous information, along with the "Vera" decision by the Buenos Aires City Highest Court<sup>34</sup> had a negative impact on the guarantees protecting this collective against arbitrary detentions.

- In 2013, Diana Sacayán was in a bar in which she was insulted and attacked by other patrons. She sought help from two gendarmes (Border Police) that were nearby but they let the aggressors go free and beat up Diana. When she managed to go to a police station to report the incident, her complaint was not recorded; all the police officers did was to take her to a nearby hospital in which it was recorded that she had broken bones in her face. In September 2015 she and her colleagues from MAL (Movimiento Antidiscriminatorio de Liberación - Anti-discriminatory Liberation Movement) were beaten up and arrested without any reason by the Metropolitan Police, the local security force for Buenos Aires City. This attack was reported to the Courts. A month later, Diana was murdered in her home.
- The Zambrano verdict. In the early morning of September 4, 2016 about 25 travestis and trans women from Peru and Ecuador were detained during a police raid advertised as an "operation against narcotravestis (drug-travestis)". Nine of them were taken to Police Station 9 and four of them spent more than one week there under arrest. Only one of them had 1 gram of an illegal

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30 Report submitted by OTRANS to the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance, May 16, 2016

31 Report submitted to the UN Human Rights Committee by OVG in collaboration with Akahatá - Equipo de Trabajo en Sexualidades y Géneros - and Heartland Alliance for Human Needs and Human Rights. Available at <http://www.defensoria.org.ar/comunicados-institucionales/el-ovg-informo-al-comite-de-ddhh-de-la-onu-sobre-la-situacion-de-personas-trans-y-travestis>

32 In one of those procedures, police officers "pushed down the women's underwear and focused their flashlights on their anuses". Besides policemen, men in plainclothes who arrived in a grey car without identification were also involved and then arrested several of the women.

33 OTRANS has followed-up two cases that were brought to the Courts in which Afrodescendant and Indigenous migrant trans women and travestis were prosecuted. Both cases started with police personnel abusing and stopping travestis in public places, and conducted anal examinations on them under the assumption that it is there that they hide drugs that will be sold afterwards.

34 This verdict allowed the police to stop persons in public spaces for identification purposes. The story of police arrests without judicial order in Buenos Aires city is a long one. After the Bulacio case (1991), there was a growing consensus to repeal Police Edicts that led to the passing of the Lázara Law (23950) that modifies Decree 333/58 that still guides police operations. For more information see <http://www.cels.org.ar/comunicacion/?info=detalleDoc&ids=4&lang=es&ss=46&idc=2021>

substance in her underclothes.<sup>35</sup> On September 12, 2016 the Appeals and Guarantees Court annulled the police procedure considering it "degrading to the extreme". This is known as the "Zambrano verdict" and is a landmark for the travesti-trans community because it recognizes basic rights of trans and travesti migrant women that are not respected by the police or by the judicial system.<sup>36</sup>

- A.Z.P.<sup>37</sup> was arrested, beaten up and forcibly undressed in public by police officers. It happened on March 18, at 8 pm, in the "red area". She spent the whole weekend arrested in Police Station No. 4 and was charged with violating Law 23737. Provincial police argued that A.Z.P. had 1 gram of cocaine in her possession. She reported to the Court that the substance was "planted", that is, put by the police themselves among her belongings. She is still being investigated for possession of an illegal substance in small quantity by the Guarantees Court No. 2 of La Plata. Two other trans women, J.D.M and E.G.Z. are facing similar charges.
- Ximena was first frisked and then forced to strip in public by male police officers, without a legal order. She had 38 grams of marijuana in her bag and was charged with possession of illegal substances for commercial purposes. CIAJ took up her defence and reported to the Court that the police procedure was based on an illegal, degrading and discriminatory police search. Even though the procedure was conducted in open violation of rights and guarantees, the Court did not annul it. Also, Ximena's gender identity was not respected. In the Court procedures, it was proved that Ximena regularly consumed marijuana. In spite of that, the legal case went ahead and now Ximena has been benefited with what is called "suspension of trial on probation".
- In 2013, in Tucuman province, police officers illegally broke into the house of Celeste, arrested her and took her to a police station. She was deprived of her freedom for several days, forced to sleep on a mattress in the open air and to perform cleaning duties at the police station. She was not allowed to get in touch with her relatives or to have legal counsel. She was also subjected to physical and psychological violence by police officers, and to sexual abuse by some of them as well as by fellow inmates. Celeste managed to escape to a health facility where she was checked by doctors who documented the lesions she had on her body. Celeste reported the police officers and Criminal Court No. 3 ordered permanent police protection for her. In early October 2016 the trial against six police officers identified by Celeste started. However, all six are still working in the force.

The Buenos Aires Province Gender-Based Violence Observatory (OVG) has documented that until the recent Zambrano verdict no judicial procedure performed in open contradiction with basic rights and guarantees had been annulled, and no illegal police behaviour had been investigated by the Courts. On the contrary, the State legitimizes violence by denying it, rendering it invisible and validating it through Court procedures. Through these mechanisms, trans persons and travestis are stigmatized as criminals, obstructing the possibility of seeing them as victims of crimes committed by police officers.

### **C. RIGHTS VIOLATIONS AND VIOLENCE AGAINST TRANS PERSONS AND TRAVESTIS IN ALCALDÍAS<sup>38</sup> AND PENITENTIARY UNITS**

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<sup>35</sup> Habeas Corpus submitted by OTRANS exposing the police raid.

<sup>36</sup> See <http://www.pagina12.com.ar/diario/suplementos/soy/1-4766-2016-09-26.html>

<sup>37</sup> An activist from OTRANS who on March 7, 2016, was granted a preventive habeas corpus after having reported beatings and police harassment (HC 14/16)

<sup>38</sup> An *alcaldía* is a place to temporarily house inmates, for instance when in transit to the Courts to appear on trial.

Travestis and trans persons are treated by prison officers in ways that fail to respect their gender identity. This lack of consistency between the prison system and the Gender Identity Law can also be observed in their registries so it is difficult to know exactly how many trans persons are in prison in Argentina.

For instance, in Buenos Aires province there are only two pavillions for trans persons with female identities and travestis; one is located in Unit No. 32 -Florencio Varela and the other in Unit No. 2 - Sierra Chica. Trans persons, travestis and those that the SPB classifies as 'homosexuals' are housed there. This classification undertaken by the prison officers is also an expression of the persistence of discriminatory biases and behaviours against those whose gender identity and sexual orientations differ from heteronormative ones. It also shows how the provincial prison policy lacks definitions that are consistent with current laws.<sup>39</sup>

Travestis and trans women arrested and kept in police stations in La Plata city spend hours handcuffed to a desk to then be taken to the courtyard, in an open air construction in the shape of a 'cage' (2 x 2 meters), with iron rails. Inside this cage there is a wall dividing it into two that reaches half-way to the top and within each section there is a hole to be used as toilet. For their personal hygiene, they are taken to the shared showers, passing by the male jails. On weekends, those arrested are not fed.

- E.M. was arrested a year ago and put in preventive detention together with five other trans women. She reported that she spent 45 days in Police Station No. 4. Due to lack of space, she and her colleagues had to take turns to sit on the floor and to sleep. The mattress on which they slept was always wet so she got pneumonia that went untreated for six months. OTRANS submitted a habeas corpus on her behalf and she was granted treatment but in a prison hospital. She spent four months in solitary confinement "in consideration of her health"; Oral Court No. 2 in La Plata refused to allow her to be present at the hearings for fear of "contagion".
- In Tucuman, activists detected that among the almost 1000 men jailed in Villa Urquiza Penitentiary there was a trans woman who had not changed her identification documents and thus had not had her self-perceived identity respected. In the same province but in the Santa Esther Female Rehabilitation Centre there are two trans men deprived of their freedom who managed to change their identity documents while imprisoned.

Transfers. At the time of transfers, to a Court or because the inmate is moved to a different prison, trans persons with a female identity are transported together with male inmates and guarded by male security staff. This exposes them to different levels of violence, going from obscene remarks to groping and attempted rapes, that have an impact on their self-esteem and health.

Access to health. All trans persons and travestis in prison that were interviewed by OVG pointed out that being arrested had put a stop to the hormonal treatment they were undergoing while free, leading to serious implications for their physical and psychological health.

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<sup>39</sup> Observatorio de Violencia de Género de la Defensoría del Pueblo de la provincia de Buenos Aires (OVG). 2015 Report: "Monitoreo de políticas públicas y violencia de género". <https://www.defensorba.org.ar/publicaciones/informe-ovg-2014-2015/download/Informe-Anual-OVG-2014-2015-Monitoreo-de-Politicas-Publicas-y-Violencia-de-Genero.pdf>

Regulatory prohibitions. In male prisons, regulations forbid the entry of those elements that allow trans women and travestis to express their gender identity through their physical appearance, from female clothing to make-up.

Searches. Trans persons with a self-perceived feminine identity and travestis are searched by male penitentiary staff, often in the presence of several of them.

Intimate visits and visits by relatives. It is important to take into account that trans persons have been expelled from their families of origin at a very early age and their main emotional relationships are with individuals with whom no biological ties can be proven. We consider that the State needs to base the visitation regime on a broad understanding of 'family' that goes beyond traditional-biological notions.<sup>40</sup>

## RECOMMENDATIONS

On the basis of the considerations and situations described above, we request the CEDAW Committee to formulate the following recommendations for Argentina:

- Ensure that government and judicial entities at all levels register gender identities in an accurate way with an aim to produce statistics that will allow a better understanding of the human rights situation of travestis and trans persons and the development of adequate policies for the State to fulfil its international obligation in this matter.
- To guarantee the right to non-discrimination to trans persons and travestis in prisons by defining a penitentiary policy and adjusting internal regulations in ways that are respectful of those rights already recognized in terms of gender identity.
- To develop a national security policy that respects those rights already recognized in terms of gender identity and to make political decisions according to it; to train police and security forces on how to manage urban conflicts involving trans persons and travestis, and; punish security personnel violating the rights of and guarantees for trans persons and travestis during police procedures.
- To decriminalize the possession of illegal substances for personal consumption and for micro-trafficking.
- To promote discussion, passing and implementation of the bill 'Reconocer es reparar' (To recognize is to compensate) for trans persons and travestis subjected to institutional violence.

### D. VIOLENT DEATHS OF TRANS WOMEN AND TRAVESTIS: TRAVESTICIDES, FEMICIDES, TRANSFEMICIDES

By ratifying related human rights treaties, the Argentinean State took upon itself the obligation to define certain behaviours as crimes, with adequate definitions and penalties. On November 14, 2012, Law 26791 included the crimes of femicide/travesticide/transfemicide in Article 80, paragraphs 4 and 11 of the National Penal Code as aggravated kinds of homicide. In spite of this, the judicial system is showing a strong resistance to enforce it, as they minimize the violence and hatred that is present in the murders of trans persons and travestis, and it fails to investigate these murders, resulting in prosecutions and even more so, sentences for these crimes, being quite exceptional.

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<sup>40</sup> In March 17, 2014, the Buenos Aires Province Ombudsman recommended such a policy to the provincial Ministry of Justice.  
<http://www.defensorba.org.ar/ovg/>

- Laura Elena Moyano is the vice-president of Civil Association OTRANS and a student at the Journalism and Social Communication School at Universidad Nacional de La Plata (UNLP). On December 23, 2015, she was beaten up and brutally stabbed by two men in her apartment. She received several cuts on her body, her face was disfigured and one of the stabs injured her lung. She was hospitalized in a critical condition. The only person arrested in relation to this attack - labelled as "serious injuries" has been released.
- Marcela Chocobar was a 26-year-old transsexual woman. She was last seen on September 4, 2015, when leaving a disco in Rio Gallegos, Santa Cruz province. Twenty days later the police found bone remains in an empty lot in San Benito neighbourhood. Forensic tests confirmed the remains were Marcela's. Her body was mutilated and cremated, and only her skull was found. The only suspects that were identified were later released. Marcela's friend and the main witness in the case "left town". This case is still labelled as "homicide".<sup>41</sup>
- Brigitte Nieto, a 29-year-old trans woman, was kidnapped in downtown General Roca, Rio Negro province, on January 13, 2016 and taken to the rural area where she was shot. The bullet passed through one of her lungs and she almost died as a result. This case was labelled as a "robbery attempt". Nobody has been arrested for it.
- On January 17, 2016, the dead body of 40 year old Bella Inostroza, , was found in a canal also in General Roca, Rio Negro province, with signs of violence. Bella had been shot in the head. Nobody has been investigated for this crime labelled as "homicide".
- The dead body of La Jose Zalazar Maturano was found on the crossing of 513rd and 542nd streets in Florencio Varela, Buenos Aires province, on February 22, 2016, with signs of violence. She had been beaten up on her head and in different parts of her body; she had cuts on her face and her body was naked from the waist down - her underwear had been pulled down to her knees. Nobody has been investigated for this crime labelled as "homicide".
- Erika Rojas disappeared on April 1, 2016. Her body was found on April 21, 2016, in Formosa province's industrial park. Her friends and relatives had organized several demonstrations in downtown Formosa to demand that the police and the provincial government effectively look for her. Her family had reported that she was being discriminated against because of her gender identity. The body was partially burnt, and so were her clothes and belongings. Nobody has been investigated for this crime.
- Soledad Iturre is a transsexual woman engaged in prostitution. On October 7, 2015, she was standing at the Acceso Oeste highway, in Moreno district, Buenos Aires province. The next thing she remembers is that one week later she woke up from a coma and was in intensive care. Her skull had been reconstructed and she had 40 stitches on her head, two screws and a titanium plaque. Neighbours had found Soledad lying on the floor, bathed in blood. They called the police and a police van took her to the Moreno Hospital, but without reporting it (as they should have). It was a vicious attack and nothing was stolen from her. On November 12, Soledad tried to report the attack at the Moreno Prosecutor's Office, but she was rejected. Nobody has been investigated for this crime and the judicial system has not intervened.<sup>42</sup>
- Zoe Quispe, a trans woman and a member of the organization Damas de Hierro (Iron Ladies) in Jujuy province, was murdered by her partner on September 10, 2016. In spite of the demands by human rights and LGTTBI organizations for

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41 More information about this case can be found (in Spanish) at <http://www.elpatagonico.com/se-cumple-un-ano-del-asesinato-marcela-chocobar-n1508035>

42 The Gender-Based Violence Observatory, a programme of the Buenos Aires Province Ombudsman Office, accompanied Soledad in submitting her criminal complaint and is demanding that the provincial State provides her with access to healthcare. File No. 10456.

the criminal investigation to be labelled as “femicide”, the Prosecutor continues labelling it as “homicide doubly aggravated by the relationship and by perfidy” rendering invisible the context of gender-based violence in which this murder took place.

- Fernanda Coty Olmos, a 59-year-old trans woman, was murdered on September 25, 2015, in her home in the impoverished Barrio Alfonso, Santa Fe province. Her body was found by the bed. She had been beaten up in the face, stabbed repeatedly in the neck, also had deep knife wounds in the back and belly, and had been shot in the chest. Forensic experts said she had fought her attacker/s back. Nobody has been investigated for this crime labelled as “homicide committed with perfidy”.
- Amancay Diana Sacayán was murdered on October 11, 2015, in her house in Buenos Aires city. Her body was found on the 13th, and she had been stabbed more than a dozen times. LGBTTIQ organizations consider this as a hate crime (Article 80.4 in the Penal Code) and a travesticide. Diana was one of the leaders of the travesti and sexual diversity movement and she also was a regional leader. Her murder shocked the entire community. She was a founder and the then coordinator of Movimiento Antidiscriminatorio de Liberación (MAL), Global Trans Assistant-Secretary to the International Association of Lesbians, Gays, Bisexuals, Trans and Intersex (ILGA). As a journalist, she wrote for *El Teje*, the first periodical publication entirely produced by trans persons, and for the Soy suplement in *Página 12* newspaper. She authored the Trans Labour Quota Law (Ley de cupo laboral trans) in Buenos Aires province, passed in September 2015. At the time of her death, she was working at the Instituto Nacional contra la Discriminación, la Xenofobia y el Racismo (National Institute against Discrimination, Xenophobia and Racism, INADI). The IACHR highlighted in its press release that “Attacks on human rights defenders and leaders of trans and lesbian, gay and bisexual organizations have the effect of intimidating them and LGBTI persons in general. This fear is exacerbated by the impunity in which these attacks usually remain, resulting in their repetition”. This murder is currently under judicial investigation and two individuals are being prosecuted for “femicide”. A Commission has been formed to push for the resolution of this crime (Comisión de familiares y compañerxs Justicia por Diana Sacayán-Basta de travesticidios) and it has conducted different advocacy activities, including the First National Demonstration against Travesticides (June 28, 2016).

To properly investigate and punish crimes against trans women and travestis perpetrated with gender-based violence and motivated by hatred and bias contributes to the realization of the right to truth. The right to truth, in this case, the right to know if an act of violence was or was not motivated by bias against LGBT persons, is a key component of the right to access justice and reparations.<sup>43</sup>

Sasha Sacayán, coordinator of the MAL collective and Diana Sacayán's brother pointed out to the need of starting to “speak of travesticide ... There are many travestis killed that are not included in statistics, who are abandoned, beaten up and we learned of them through our compañeras, neighbours, sisters”.<sup>44</sup> Mariela Labozzetta, who heads the Prosecutor's Office's Violence against Women's Specialized Unit (UFERM), agrees: “It is interesting to use the term ‘travesticide’ in a penal case because it shows

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<sup>43</sup> “The right that all persons and society have to know the full, complete, and public truth as to the events transpired, their specific circumstances, and who participated in them is part of the right to reparation for human rights violations, with respect to satisfaction and guarantees of non-repetition. The right of a society to have full knowledge of its past is not only a mode of reparation and clarification of what has happened, but is also aimed at preventing future violations”. IACHR, Report No. 37/00, Case 11481, Monsignor Oscar Amulfo Romero y Gadamez, El Salvador, April 13, 2000, para. 148.

<sup>44</sup> <http://www.marcha.org.ar/sasha-sacayan-empecemos-hablar-travesticidio/>

a novelty, violence against a more vulnerable community, one that is more deprived of their rights, more exposed to institutional violence, to the health system and to the police and more excluded from workplaces".<sup>45</sup> In one of her last interviews, for CELS 2016 Annual Report, deceased travesti leader Lohana Berkins explained that: "We used to insist on having these crimes called 'travesticides' but within this fictionality that law is, we will take a category already created by feminists, femicide, without stopping the attempt to make 'travesticide' visible, to continue with the same political logic. But they will still be called femicide and we think this is progress because there is a link with the violence applied on the body, where you can read the hatred and loathing released on the victim. When we have to discuss it and become claimants, we are going to unpack the precariousness of our lives".<sup>46</sup>

## RECOMMENDATIONS

On the basis of the considerations and situations described above, we request the CEDAW Committee to formulate the following recommendations to Argentina:

- With the participation of trans and travesti organizations, to draft protocols for the prevention, punishment and proper labelling, investigation and compensations for travesticides/transfemicides.
- To guarantee that all cases of murders and serious injuries recorded by the judicial system and whose victims are trans persons/travestis be properly investigated and in an expedited way; that those responsible are identified, brought to trial and that the corresponding legal sanctions be applied to them while also provide comprehensive compensation to the victims and/or their families, including non-repetition guarantees.
- In the case of Amancay Diana Sacayán, that the crime not be impune and be punished as a travesticide; that the oral trial takes place effectively during the first semester of 2017 and that a travesti-trans perspective is present at the trial through public hearings, testimonies, amicus curiae and other resources, and that the State makes available compensation mechanisms for her family, trans and travesti organizations and communities.
- To implement effective protective and access to justice mechanisms for human rights leaders from the travesti and trans community who are exposed to criminalization and extreme forms of violence.

### 3. Economic and social rights

Human rights are indivisible and interdependent. Thus, the serious violations of their fundamental rights that travestis and trans women experience in Argentina, like the right to life, to live free from torture and cruel, inhuman or degrading treatment, and to personal liberty and security, as described in the first part of this report are directly related to the situation of social and economic vulnerability and exclusion that this population experiences. We consider that realizing any social rights is impossible when other rights in the same category are systematically violated.

#### RIGHT TO EDUCATION

Article 8 of the National Education Law (Law 26206)<sup>47</sup> affirms that the State "will provide the necessary opportunities to develop and strengthen comprehensive education throughout a person's life and to promote in each student the capacity to define her/his life project, based on values like freedom, peace, solidarity, equality,

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45 <http://www.pagina12.com.ar/diario/suplementos/las12/13-2016-09-12.html>

46 CELS, Derechos humanos en la Argentina. Informe 2016, Siglo XXI, Buenos Aires, p.249.

47 National Education Law (Ley Nacional de Educación) <http://servicios.infoleg.gob.ar/infolegInternet/anexos/120000-124999/123542/norma.htm>

respect for diversity, justice, responsibility and the common good".<sup>48</sup> This is widely different from what travestis and trans persons experience.

In 2006 the Law on Comprehensive Sexuality Education (Law 26150) was passed<sup>49</sup>. Enforcing this law is compulsory for the education system and it recognizes the right to comprehensive sexuality education including biological, psychological, social, emotional and ethical aspects.

In recent years the indicators on educational levels achieved by the general population have improved; according to the last official Census conducted in 2010<sup>50</sup>, 62.6% of Argentines have completed compulsory education (that is, high school or middle school). Now, for the travesti and trans collective the situation is very different. Research conducted by ATTTA and Fundación Huésped in 2014 showed high drop-out levels. Among the trans population 18 years and older, 6 out of 10 women and 7 out of 10 men had dropped-out of high school because of discrimination. Only 32.6% of surveyed trans persons 18 years and older had completed secondary school.

According to a report produced by Lohana Berkins and Josefina Fernández<sup>51</sup>, gender identities are assumed and socially expressed before the age of 18. In the case of travestis and trans women, 85% express their gender identity before that age. So, this deep and complex personal process happens at school age. "Mockery, abuse, discouragement and/or administrative barriers originated with peers (in 7 out of 10 reported cases) as well as with teachers and authorities (in 4 out of 10 cases). In all cases, these behaviours were based on the fact that trans persons expressed a gender identity and interests that were not consistent with the gender they had been assigned at birth."<sup>52</sup>

After the passing of the Gender Identity Law, 13.8% of those surveyed that were 18 and older and 50% of those who were under 18 were attending a formal education facility.<sup>53</sup> One out of every 10 trans women and 3 out of every 10 trans men went back to the educational system and incidents of discrimination decreased. But there is still much to do to guarantee that travestis and trans women fully enjoy their right to education.

### Popular Trans High School 'Mocha Celis'

This high school, the first of its type, was created on the basis of a belief in the human right to education and on a diagnosis about the lack of effective access to health by travestis and trans persons in Buenos Aires city. There are difficulties accessing public education in general in the city and to this must be added that a patriarchal, heteronormative pedagogy that is aimed at an allegedly hegemonic subject does not take into account or embrace the diversity of subjective experiences.

<sup>48</sup> Law 26206, National Education Law. Available at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/120000-124999/123542/norma.htm>. Original language: «brindará las oportunidades necesarias para desarrollar y fortalecer la formación integral de las personas a lo largo de toda la vida y promover en cada educando/a la capacidad de definir su proyecto de vida, basado en los valores de libertad, paz, solidaridad, igualdad, respeto a la diversidad, justicia, responsabilidad y bien común».

<sup>49</sup> Comprehensive Sexuality Education (Ley de Educación Sexual Integral) <http://servicios.infoleg.gob.ar/infolegInternet/anexos/120000-124999/121222/norma.htm>

<sup>50</sup> [http://www.indec.gov.ar/nivel4\\_default.asp?id\\_tema\\_1=2&id\\_tema\\_2=41&id\\_tema\\_3=135](http://www.indec.gov.ar/nivel4_default.asp?id_tema_1=2&id_tema_2=41&id_tema_3=135)

<sup>51</sup> This information seems relevant because up to now it seems that the Gender Identity Law has not made an impact on this issue. Lohana Berkins y Josefina Fernández, «La gesta del nombre propio», Ed. Madres de Plaza de Mayo, 2005.

<sup>52</sup> Asociación de Travestis, Transexuales y Transgénero de Argentina (ATTTA) y Fundación Huésped. Informe Final «Ley de Identidad de Género y acceso al cuidado de la salud de las personas trans en Argentina», page 27, 2014, Argentina. Available at <http://www.huesped.org.ar/wp-content/uploads/2014/05/OSI-informe-FINAL.pdf>

<sup>53</sup> ATTTA y Fundación Huésped, op.cit, page 27.

Those who created the Popular Trans High School 'Mocha Celis' also acknowledged that a structural problem its target population faces is lack of work. So the school also has as a goal to provide job opportunities for them as teachers, administrative and support staff.

There are several Popular High Schools in Argentina that are free, function without hierarchies and structure their pedagogical practices and relationships around the principles of Popular Education. 'Mocha Celis' places itself within a particular identity in terms of gender. But its doors are open for everybody: you don't need to be a travesti or a trans person to study in this school.

The school has been active since 2012. After working first for free and then as a cooperative, in 2014 the Buenos Aires city government finally agreed to pay salaries for the school teachers and administrative staff. The school has no funding for its monthly expenses<sup>54</sup> that are covered through voluntary contributions by its workers and also from individual donors.

#### **RIGHT TO NON-DISCRIMINATION IN THE LABOUR SPHERE**

Access to formal employment implies not only economic autonomy but also the possibility to access training and social security. Available data suggests that 6 out of 10 trans women/travestis are currently "linked to sex work". In Argentina, prostitution/sex work<sup>55</sup> is not penalized but also not regulated. In the ATTTA-Fundación Huésped report, these travestis/trans women define themselves as "self-employed" and lack social security along with work benefits. Only 18% of those surveyed have formal employment.

In 2012, the INDEC and INADI published a survey<sup>56</sup> that shows 80% of trans persons working in the informal economy. It also revealed that 7 out of 10 were looking for a different source of income and 8 out of 10 mentioned that they had difficulties finding it because of their (gender) identity. More than half of those surveyed had not had any occupational training and half of those who did go through such training reported that it was useful to find jobs.<sup>57</sup>

Also in 2012, the Ministry of Labour, Employment and Social Security created the "National Labour Inclusion Programme for Travestis, Transsexual and Transgender Persons" with an aim to integrate them into existing programmes to improve their employability. In 2013, the Employment Secretariat passed Resolution No. 331/13 extending the Training and Employment Insurance Scheme - a cash transfer programme to support work inclusion - to trans persons. During the period 2013-2015, 1,069 trans persons joined this programme with 58% of them receiving occupational training and finding jobs. Under the new national administration, the Employment Secretariat ratified this policy but there have been difficulties in its implementation because the call for new applications, the incorporations and their follow-up is now being managed through the Federal Network of Local Employment Offices to which the national government has stopped providing technical and financial assistance that is key for their functioning.<sup>58</sup>

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<sup>54</sup> Popular Trans High School 'Mocha Celis' operates from a building lent by Mutual Sentimiento, a civil society organization, and must cover its monthly expenses (electricity, water, etc.)

<sup>55</sup> The Coalition drafting this report has different positions on this issue so, except when quoting directly from a source, the report will use both terms as they are representative of those positions, alternating their order.

<sup>56</sup> Instituto Nacional de Estadísticas y Censos (INDEC) e Instituto Nacional contra la Discriminación, la Xenofobia y el Racismo (INADI). «Primera Encuesta sobre población trans 2012: Travestis, transexuales, transgéneros y hombres trans. Informe técnico de la prueba piloto- Municipio de la Matanza», pages 13-14, June 2012.

<sup>57</sup> INDEC-INADI op. cit, page 13.

<sup>58</sup> [http://www.radiofmq.com/detalle.php?articulo=Trabajadores denunciaron el cierre de la Oficina de Empleo&tipo=1&documento=71654&sistema=fmq](http://www.radiofmq.com/detalle.php?articulo=Trabajadores%20denunciaron%20el%20cierre%20de%20la%20Oficina%20de%20Empleo&tipo=1&documento=71654&sistema=fmq)

On September 17, 2015, Buenos Aires province passed Law 14783 on Trans Labour Quota (Cupo Laboral Trans), known as the 'Diana Sacayan Law' to honour her as its main promoter.<sup>59</sup> This law prescribes a quota of at least 1% of all job positions available in the provincial public sector for travestis, transsexuals and transgender persons.<sup>60</sup> This law has not yet been regulated. A campaign to this end was launched in March 2016.<sup>61</sup> As a response to this initiative, the provincial government organized a roundtable with LGBTTTTI organizations under the coordination of the provincial Human Rights Secretary<sup>62</sup> to which recommendations and contributions were submitted.<sup>63</sup> We warn that this process of regulated is taking place in a context in which public employees are being fired and entry into the public employment system has been frozen. The Buenos Aires province government issued a decree cancelling all new incorporations of State employees for one year.<sup>64</sup>

Up to now, only three local governments - Morón, Lanús and Azul - have accepted to implement the quota.<sup>65</sup> In Lanús, the "Social Protection Programme for travestis, transsexuals, transgender and trans men" secured a protection floor and in Morón, the "Trans Line" within the "Programme to Support Self-Organized Initiatives" provided technical and financial assistance for implementing autonomous employment projects. Both municipal programmes were suspended this year.

On April 1, 2016, Valentina Pereyra, a trans woman working for the local government in La Plata, capital of Buenos Aires province, sued the local administration demanding that her job position be immediately restored to her, invoking the Provincial Trans Quota Law No. 14783 and the rights consecrated in Article 14.b of the National Constitution. Valentina worked for the local La Plata government from September 1, 2013 to December 2015 when the newly elected authorities decided to cancel the Programme for which she worked and not renew her contract. Up to date, she has received no response from the municipal authorities and this has affected her quality of life. Valentina also reported the current city Mayor, Julio Garro, for his discriminatory

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59 <http://www.gob.gba.gov.ar/dijl/index.php?var=163062&out=1&recurso=1>

60 article 1. Purpose. The public sector of the Buenos Aires province must occupy, in a proportion of no less than one per cent (1%) of the total number of its staff, travesti, transsexual and transgender persons meeting the qualifications required for the position and reserve positions to be occupied by them, with the purpose of promoting real equality in opportunities to hold public employment. Original language: El Sector Público de la Provincia de Buenos Aires, debe ocupar, en una proporción no inferior al uno por ciento (1%) de la totalidad de su personal, a personas travestis, transexuales y transgénero que reúnan las condiciones de idoneidad para el cargo y establecer reservas de puestos de trabajo a ser exclusivamente ocupados por ellas, con el fin de promover la igualdad real de oportunidades en el empleo público.

article 5. Requirements. The effects of this law reach travesti, transsexual and transgender persons who are 18 and older, regardless of the fact that they had accessed the benefits of Law 26743 or not, and who have the required qualifications for the position they must occupy, according to their working and educational background. Those travesti, transsexual and transgender persons who have accessed the benefits of Law 26743 must only present evidence that they have done so. Travesti, transsexual and transgender persons who have not accessed the benefits of Law 26743 and do not wish to do so, must provide only their birth certificates. Original language: Requisitos. Se encuentran alcanzadas por los efectos de esta Ley las personas travestis, transexuales y transgénero mayores de 18 años de edad, hayan o no accedido a los beneficios de la Ley No. 26743 y que reúnan las condiciones de idoneidad para el cargo que deben ocupar de acuerdo a sus antecedentes laborales y educativos. Las personas travestis, transexuales y transgénero que hayan accedido a los beneficios de la Ley No. 26743 deben acreditar únicamente constancia que certifique el beneficio asumido. Las personas travestis, transexuales y transgénero mayores de 18 años de edad, que no hayan accedido a los beneficios de la Ley No. 26743 ni deseen hacerlo deben acreditar solamente copia de su partida de nacimiento.

61 The campaign was launched by Movimiento Antidiscriminatorio de Liberación, Conurbanos Por La Diversidad, Abogados por los derechos sexuales and Asociación de Lucha por la identidad Travesti Transsexual. For more information see

<http://www.pagina12.com.ar/diario/suplementos/soy/1-4554-2016-05-20.html>; <http://www.pagina12.com.ar/diario/suplementos/soy/1-4554-2016-05-20.html>

62 The Gender-Based Violence Observatory under the Buenos Aires Province Ombudsman formally demanded to the Human Rights Secretary that this law be regulated and submitted a series of proposals to be taken into account. See

<http://www.defensorba.org.ar/comunicados-institucionales/pedido-del-ovg-a-la-secretaria-de-derechos-humanos-por-reglamentacion-del-cupo-trans> and <http://www.lanacion.com.ar/1904016-piden-la-implementacion-de-la-ley-de-cupo-laboral-trans>

63 Statement by MAL, Conurbanos por la Diversidad, ALITT and Abosex: "Histórico: Logramos que se inicie el proceso de reglamentación de la Ley Diana Sacayán de cupo laboral travesti-trans en la Provincia de Buenos Aires".

[https://www.facebook.com/permalink.php?story\\_fbid=101681323843867&id=961276250659042&substory\\_index=0](https://www.facebook.com/permalink.php?story_fbid=101681323843867&id=961276250659042&substory_index=0)

64 Decree No. 618, June 2016

65 <http://www.telam.com.ar/notas/201608/158316-municipios-moron-lanus-ley-provincial-cupo-trans.html> and

<http://www.lanacion.com.ar/1927666-jornada-historica-travestis-piden-la-reglamentacion-de-la-ley-de-cupo-laboral-trans-en-la-provincia>

and insulting statements against the trans community during an interview he gave in March 2015, during his electoral campaign. The then candidate said: "... I would not dream of employing a travesti...". The statement was reported to INADI. The Observatorio de Violencia de Género (Gender-Based Violence Observatory, OVG) submitted different amicus curiae and reports for the trial related to Valentina's employment situation and also reported this case to the OAS Rapporteurship on the Rights of LGBTI persons.

#### **RIGHT TO NON-DISCRIMINATION IN HEALTH CARE**

The National Gender Identity law has a key influence on trans women and travestis' access to health care. However, the dispositions of its Article 11 that are related to the right to comprehensive health care have not yet been fully implemented.<sup>66</sup>

The study conducted by ATTTA and Fundación Huésped in 2014 shows a decrease in the incidents of discrimination taking place in public healthcare facilities.<sup>67</sup> There is need to continue implementing new norms and policies.

The survey conducted by INDEC and INADI in 2012 shows that 3 out of 10 trans women and travestis have dropped out of medical treatment in health facilities due to discrimination. For the same reason, 5 out of every 10 ceased to seek healthcare. The same study shows a significant barrier to access healthcare: lack of health coverage. It is estimated that 80% of this population lacks access to pre-paid or union provided healthcare schemes<sup>68</sup>.

With regard to HIV and AIDS, research like that conducted by Red de Personas Trans de Latinoamérica (Latin America Trans Persons' Network, RedLacTrans) and by AMFAR points out that 34% of trans women and travestis surveyed live with HIV<sup>69</sup> and that there are serious obstacles to access antiretroviral treatments.<sup>70</sup>

With regard to hormone replacement treatment, even though the number of trans women and travestis consulting with medical professional has increased, the percentage of them that do it on their own is still high.<sup>71</sup> Due to lack of information and access to other treatment, many of them still inject aircraft oil to adjust their bodily appearance to their gender identity.<sup>72</sup>

Most travestis and trans persons are still excluded from the guarantees the State offers to the rest of the population: hospital care, medical treatment, access to medication, health advice, among others.

#### **RIGHT TO NON-DISCRIMINATION IN ACCESS TO ADEQUATE HOUSING (ARTICLES 2 AND 3)**

The Argentinean Constitution<sup>73</sup> guarantees access to decent housing for all its population. The study conducted by INDEC and INADI in 2012 shows that 46% of the surveyed trans population lives in inadequate houses<sup>74</sup> that in some cases also lack

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66 See the translated text of Law 26743 in the Annex

67 ATTTA and Fundación Huésped, op. cit., page 12

68 In Argentina, there are three systems to access health coverage: public healthcare (free), union provided (through discounts in workers' wages) and private (pre-paid).

69 RedLacTrans. Informe sobre el acceso a los derechos económicos, sociales y culturales de la población trans en Latinoamérica y el Caribe, 2014.

70 AMFAR and UNSA. Estudio de situación de mujeres trans PVVS en relación con la adherencia al TARV en Argentina. Santiago del Estero, 2015

71 ATTTA and Fundación Huésped, op. cit., page 14

72 INADI, op. cit., p. 16

73 Constitución Nacional Argentina, as amended in 1994

74 INDEC defines 'inadequate houses' as those meeting at least one of the following requirements: lack of running water; lack of water-discharge toilets; mud or other precarious floor. Recovered from [http://www.indec.gov.ar/textos\\_glosario.asp?id=70](http://www.indec.gov.ar/textos_glosario.asp?id=70).

garbage collection services (18.6%), pavements (61.9%) and public lighting (8.2%).<sup>75</sup> The ATTTA and Fundación Huésped study shows that 1 out of every 3 trans persons surveyed lives in an impoverished home, particularly in the North-Western region of the country.<sup>76</sup>

This population is generally excluded from the State housing programmes.<sup>77</sup> These programmes tend to be drafted from a perspective that includes only cissexual<sup>78</sup> women and men, with children, and have no schemes taking into account the specific needs of trans persons. This was already happening during the previous administration's Plan Federal de Vivienda (Federal Housing Plan)<sup>79</sup> and has been aggravated by the current administration.

As travestis and trans women operate mainly in the informal economy, even when they have economic resources they have no way to demonstrate a regular income, an indispensable requirement to rent a living space or access housing loans. This is why they tend to be relegated to inadequate housing and also find themselves helpless before abuse by their landlords/ladies that include excessive rates and arbitrary evictions.

In La Boca neighbourhood, located at the South of Buenos Aires city, many people live in precarious housing on the Rio de la Plata shores, with a high degree of sanitary risk as it is a very polluted area. Lamadrid is a settlement on government and also private land below the highway. In 2006, municipal Law 2240 declared an environmental and housing emergency in the area and the government obligation to relocate the population. This obligation has not yet been met.

In 2011, the city's Housing Institute (Instituto de Vivienda de la Ciudad, IVC) conducted a census that was a requirement for Lamadrid inhabitants to receive financial support from the city government and move to a different location.

Two trans women living in the settlement reported to the Institutional Violence Programme under the City Public Defence Bureau that they had been denied the right to be relocated.

When Programme staff investigated why these two women were considered unqualified for the support, different aspects of the structural discrimination faced by trans women in Argentina came to light: IVC had not made the necessary efforts to secure that the most vulnerable settlement inhabitants will be consulted in a timely and adequate manner. The fact that trans women and travestis tend to rent their houses in an informal manner was also not taken into account. Through the Programme's intervention, the judge in-charge of the case organized a hearing in which the two affected trans women could explain, in their own terms, the situation they were experiencing and urgent measures were agreed on to avoid an aggravation of their housing situation.

## RECOMMENDATIONS

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<sup>75</sup> INADI, op.cit, pages 15-16

<sup>76</sup> It comprises the provinces of Jujuy, Salta, Tucuman, Catamarca, La Rioja and Santiago del Estero.  
[http://www.mininterior.gov.ar/municipios/gestion/regiones\\_archivos/NOA.pdf](http://www.mininterior.gov.ar/municipios/gestion/regiones_archivos/NOA.pdf)

<sup>77</sup> Defensoría del Pueblo de la Provincia de Buenos Aires: Observatorio de Violencia de Género (OVG), «Monitoreo de la implementación de la ley de identidad de género en la provincia de Buenos Aires», submitted to the IACHR's Rapporteurship on the Rights of LGBT Persons, 2015.

<sup>78</sup> Those who identify with the gender assigned to them at birth.

<sup>79</sup> Federación Argentina de Lesbianas, Gays, Bisexuales y Transgénero (FALGBT, 2013) «Plan de Ciudadanía LGBT: de la igualdad formal a la igualdad real», quoted in Christian Gruenberg and Marcela Tobaldi, «De Yogyakarta al Riachuelo: el derecho a una ciudad libre de violencia cism normativa». Buenos Aires, 2015.

On the basis of the considerations and situations described above, we request the CEDAW Committee to formulate the following recommendations to Argentina:

Right to education:

- To fully implement Law 26150 on Comprehensive Sexuality Education, in all national jurisdictions, ensuring that perspectives on sexual-gender diversity are included with an aim to build educational spaces that are inclusive, free from gender, sexual and culturally-based discrimination, and equipped with the necessary financial and human resources.
- To developed integrated public policies for school completion, vocational training and job inception for travestis and trans women that includes granting scholarships.
- Taking into account the complex nature of social change processes and their necessary length, to provide financial and technical support to popular education initiatives serving marginalized populations like travestis and trans women, simultaneously with those initiatives aimed at their full insertion into the formal education system.

Right to work:

- To guarantee labour inclusion for travestis and trans women through specific plans that take into account their needs and enabling training spaces that are respectful of their identities and provide them with official degrees and internships to ensure their effective work inclusion.
- To guarantee social security for trans women and travestis through their access to formal employment on a basis of equality.
- To pass and implement a national Trans Labour Quota Law for public administration following the model of Law 14783 in Buenos Aires Province.
- To secure the prompt regulation and implementation of Law 14783 (Diana Sacayán Law for a Trans Labour Quota) creating a labour quota for travestis, transsexuals and transgender persons in Buenos Aires province.

Right to health:

- To take all necessary measures to ensure full implementation of Article 11 of the Gender Identity Law (Lay 26743) guaranteeing the trans population's access to comprehensive health care and paying special attention to specific segments within this population such as those living with HIV.
- Together with trans persons' organizations, to implement awareness campaigns on safe bodily modification procedures with an aim to decrease self-prescription and the risks it poses for trans women's and travestis' health.

Right to adequate housing

- To establish quotas for trans persons and travestis within existing housing programmes, respecting their specific needs and in cooperation with trans and travesti organizations.

## 4. Sectorial situations

### TRANS CHILDREN AND ADOLESCENTS

When we speak of trans identities, the image that tends to come to mind is that of a grown-up, self-sufficient person. The social imaginary continues to link them to "prostitution" and stigmatizes these identities without realizing how this creates an adverse context that trans children and adolescents must face. The average age in

which trans persons self-perceive their gender is between 8 to 14 years, even though there are "exceptions" in which this process takes place earlier.

In Argentina, the most well known case is that of Lulú that opened the way for other trans children to become visible. The State changed her national identification document and relevant records when Lulú was 6 years old. Key to the process was the strong support, acceptance and love shown by her mother, Gabriela Mansilla, who is now an outspoken activist advocating for "Trans children free from violence or discrimination". Gabriela was in turn subjected to different forms of violence by the professionals she contacted, who lacked information and training to understand trans children. The responses she received pathologized the child or recommended that she be compulsorily "normalized" by punishing her if she chose toys, clothes or colours that did not "correspond" to the gender she had been assigned. Now, Lulú herself says, "Toys and colours belong to all". Lulú's case is emblematic but most trans children and adolescents lack acceptance and understanding by their families. The family continues to be the first institution pushing them out.

Once expelled by their families, the only alternative society provides them is to exchange and commodify their bodies. Trans girls are offered higher amounts of money for not using condoms when having sex for money, jeopardizing their health. Girls tend to agree because they are unaware of the risks and also out of need. In some cases, they haven't learned basic maths so they don't really know how much money they are being offered. Trans boys are still subjected to rape by men in their families as a form to "redirect" them to be "feminine" and to respond to the gender assigned to their genitals.

These situations show how trans girls, boys and adolescents' rights are still being seriously violated. In our country, the State has not yet fully assumed its responsibilities or provided concrete solutions for these situations.

#### **MIGRANT TRANS WOMEN AND TRAVESTIS**

Migrant trans women and travestis face multiple discrimination because of their gender identity, their migratory status and their social origin. Many have left their countries to escape situations of extreme vulnerability. Arriving in Argentina, they realize they lack documents reflecting their self-perceived gender identity and this hinders their migration procedures. Many are criminalized for being involved in prostitution and in other cases for having small amounts of illegal substances for personal consumption. This criminalization directly affects migrants because it is impossible for someone with a criminal record to regularize her/his migratory status. The new administration has implemented "hard line" policies that have a particularly negative impact on the daily lives of migrant trans women and travestis.

The organization OTRANS followed-up legal cases against those arrested in public spaces for violating the national law against drugs and noticed that while only 3% of the total of those deprived of their freedom in Buenos Aires Province are foreigners, within the group of trans women and travestis deprived of their freedom, 85% are foreigners. This shows the impact of double discrimination. All those travestis and trans women arrested for possession of illegal substances in Buenos Aires province who are foreigners were caught in La Plata city, around Matheu Park, in what is known as the 'red-light area'.

#### **A discriminatory and xenophobic decision**

The Buenos Aires province courts condemned Claudia Córdoba - a Peruvian trans woman - through a verdict that mainly invoked her status as a migrant. The verdict condoned degrading police practices (forced nudity) that are common among police officers in the province, constitute rights-violations and should have been considered invalid procedures by the Court.

This legal decision was made by Oral Criminal Court No. 1 of La Plata, that resolved the case through only one of its judges. Throughout the legal records, the accused - who has a self-perceived female gender - was referred to by her male name and using male pronouns. The judge conducted a lengthy analysis of the differences that, according to him, the Argentinean Constitution makes between nationals and foreigners. He labelled the status of migrant as a "comfortable position".<sup>80</sup>

A situation reinforcing discrimination against this collective is the fact that the implementation of laws protecting the rights of trans persons and travestis in Argentina excludes migrants.

The Dirección Nacional de Migraciones (National Directorate for Migrations) requires permanent residency and an Argentinean identification document for a person to request a name change. Years can go by before a trans person can finally have an identification document according to her/his self-perceived gender identity. This constitutes a violation of travestis and trans women's human rights on the part of the State by not recognizing and respecting their self-perceived gender identity from the start of the migratory regularization process. This has a strong impact on travestis' and trans women's lives at many levels in terms of exclusion.<sup>81</sup>

Likewise, the decree regulating the Trans Labour Quota in Buenos Aires province that was passed in 2015 demands that in order to access a government job the person has to be "a native or naturalized Argentinean". These distinctions based on nationality and gender have encouraged violence on the part of police, judges and other State officers.

Recently the national government has announced the creation and opening of a Centro de Retención para Migrantes (Migrants' Retention Centre). This context of criminalization and harassment against all migrants in Argentina, raises concerns because trans and travesti migrants are likely to be among those most affected by this policy.

The migrant trans and travesti community also faces an alarming degree of social vulnerability<sup>82</sup> with precarious housing, health and food conditions, as well as lack of access to legal identification documents. This social vulnerability implies a higher risk to be exposed to serious violations to their right to personal liberty at the hands of the police, in a manner that is disproportionate when compared to the rest of the population. Different bodies such as the Secretaría de Derechos Humanos de la Provincia (Provincial Human Rights Secretary) and the Consejo Provincial de las Mujeres (Provincial Women's Council) along with national bodies like the Consejo Nacional de las Mujeres (National Council of Women) under the Social Development Ministry have made interventions in this regard.

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<sup>80</sup> On May 26, 2016, the OVG submitted a report to the IACHR Rapporteurship on the Rights of LGTTBI persons describing this verdict and analysing it. It also contacted the Peruvian Consulate in La Plata, headed by Mr. Carlos Alberto Chocano Burgos, about this verdict. The Provincial Ombudsman has submitted this case to the UN Special Rapporteur on Contemporary Forms of Racial Discrimination, Xenophobia and Related Forms of Intolerance.

<sup>81</sup> The requirements for name change for migrant persons can be found at [http://www.migraciones.gov.ar/accesible/indexP.php?identidad\\_genero](http://www.migraciones.gov.ar/accesible/indexP.php?identidad_genero)

<sup>82</sup> The IACHR has confirmed that structural vulnerability of migrants "is compounded by other factors such as discrimination based on race, colour, national or social origin, language, birth, age, sex, sexual orientation, gender identity, economic status, religion or other social conditions". IACHR, Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas (2015), para. 285. <http://www.oas.org/en/iachr/lgtbi/default.asp>

## RECOMMENDATIONS

- That the National Directorate for Migrations, in cooperation with the National Human Rights Secretary issue a resolution upholding the duty to respect and implement the Gender Identity Law in the case of trans migrants from the start of the administrative procedure to regularize their migratory situation, with an aim to guarantee their right to have their self-perceived gender identity recognized.
- To create a specific unit within the National Directorate for Migrations that can provide advice and follow-up to trans migrants in the procedures for sex and name change in legal documents.
- To work in an articulate manner with the relevant Consulates for the effective enjoyment of these rights.
- To allow migrant trans women and travestis in Argentina to join the inclusion programme Ellas Hacen (They Do) to guarantee the recognition and enjoyment of their economic and social rights.