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human rights



Situation of Travestis and Trans Persons in Argentina

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ABOSEX – Abogadxs por los Derechos Sexuales (Lawyers for Sexual Rights); Synergia – Initiatives for Human Rights and Akahatá – Equipo de trabajo en sexualidades y géneros (Working team on sexualities and genders), are honored to bring the following report to the Committee on Economic, Social and Cultural Rights with the aim of assisting it in reviewing the implementation by Argentina of the International Covenant on Economic, Social and Cultural Rights regarding LGBTI persons, particularly travestis and trans persons, based on the work Abosex has been carrying out during the past years.

List of Issues:

Inequality emerging from violations to the right to gender identity – Unfulfillment of laboral quotas for travestis and trans persons – Program “To recognize is to repair” – Right to health for travestis and trans persons.

INTRODUCTION

Formed in 2012, Abogadxs por los Derechos Sexuales (AboSex)¹ has the purpose of defending sexual rights and human rights from a critical and creative vision of law, working for social and political transformation. Our actions have a political and legal nature and are aimed at influencing on those community areas where persistent segregation and discrimination based on gender, gender identity or expression and sexual orientation can still be seen, in spite of advances in the recognition of LGTBI rights.

In that regard, it has to be noted that Argentina has been suffering setbacks in human rights issues since December 2015, when the new government took office. Since then, the national government has put in place several measures which resulted in severe setbacks in the socio-economic situation of the population, with an alarming rising in poverty and destitution rates², with a direct effect on the exercise of rights and disproportionately affecting people who are in a situation of structural inequality, such as children, travestis and trans people and the LGTB community in general, as well as other social groups.

The recent agreement with the International Monetary Fund³, together with the repeated and unrestrained raisings of public services’ rates, massive dismissals of employees from several national State agencies and private businesses, among other measures, presage a near future plagued with severe restrictions making most of the population unable to achieve a decent standard of living.

It is in this context that the legal achievements of the recent years recognizing LGTBI rights – Law 26.618 of Egalitarian Marriage⁴, Law 26.743 of Gender Identity⁵, Law 14.783 of Work

¹ For more information, please see www.abosex.com.ar

² For more information, please see: <https://www.infobae.com/politica/2018/04/29/segun-la-uca-la-pobreza-infantil-aumento-al-625-y-hay-8-millones-de-ninos-privados-de-algun-derecho/>; <http://www.economista.com.ar/2018-03-linea-pobreza-subio-33-;febrero/>; <https://www.laizquierdadiario.com/El-71-de-los-pobres-en-Argentina-son-jovenes>

³ For more information, please see <http://centrocepa.com.ar/informes/45-un-memorandum-para-el-ajuste-los-impactos-del-acuerdo-con-el-fmi>

⁴ For more information, please see http://www.psi.uba.ar/academica/carrerasdegrado/psicologia/sitios_catedras/electivas/816_rol_psicologo/materia_l/unidad2/complementaria/ley_de_matrimonio_igualitario.pdf

⁵ For more information, please see <http://servicios.infoleg.gob.ar/infolegInternet/anexos/195000-199999/197860/norma.htm>

Quotas for Trans people in Buenos Aires Province⁶, and the new National Civil and Commercial Code⁷, among other laws and rules⁸— are facing setbacks, obstacles and unjustified delays—both by action or neglect— when it comes to its fulfillment by the State and to guarantee the full enjoyment of economic, social and cultural rights.

Inequality in the enjoyment of Economic, Social and Cultural Rights emerging from violations to the right to gender identity

Non-discrimination (Article 2)

Equality (Article 3)

1. Full recognition of gender identity as a basic right is a key prerequisite for travestis and trans people to enjoy their human rights without discrimination, particularly their economic, social and cultural rights, such as education, health and work.
2. State duties are greater when it comes to children and adolescents, due to the current legal frame that seeks to guarantee them a life free from discrimination and violence, especially to trans children⁹.
3. In this regard, we are worried to witness unjustified delays and obstacles posed by the offices of the civil registry in several jurisdictions when children underage wanted to change their registered gender identity (that means a change on the birth certificate and on the ID card), as is provided by the current law. Below, we describe some cases we have assisted.
4. In June 2017, the General Direction of Civil Registry of Córdoba Province delayed the procedure for the gender identity recognition of a trans teenager. The procedure was started, but the civil registry office alleged there existed some local resolution which would pose obstacles to the modification of the recorded data. Such resolution was based on a pathologizing conception of gender identity and had requirements such as arbitrary psychological interviews, while it ignored basic rights of children such as the recognition of their progressive capacity, the right to be heard to, and the right to choose a legal representative of their trust. Several civil registry offices disregard the current legal frame, denying or impeding the modification of registered gender identity when it comes to minors under legal age¹⁰.
5. In January 2018, the office of the Civil Registry of Buenos Aires Province started to impede several procedures demanded by trans children under 13 years old, clearly

⁶ For more information, please see <http://www.gob.gba.gov.ar/legislacion/legislacion/l-14783.html>

⁷ For more information, please see <http://servicios.infoleg.gob.ar/infolegInternet/anexos/235000-239999/235975/norma.htm>

⁸ For more information, please see <https://abosex.com.ar/documentacion/>;

<http://agenciapresentes.org/2018/04/30/mapa-asi-esta-el-cupo-laboral-trans-en-el-pais/>

⁹ The right of children and adolescents to identity is protected in Argentina under the Constitution, especially after it was reformed in 1994 and since the ratification of the Convention on the Rights of the Child in 1989. This right is also recognized by Law 26.061 of Comprehensive Protection of the Rights of Children and Adolescents, and in a specific way by Law N° 26. 743 of Gender Identity.

¹⁰ AboSex has filed several complaints before local authorities, which resulted in the affected person getting their birth certificate modified. See the whole press release at: <https://abosex.com.ar/2017/06/09/abosex-y-el-caf-logramos-el-primero-precedente-administrativo-de-rectificacion-registral-de-un-adolescente-trans-en-cordoba/>

violating the Gender Identity Law¹¹. There currently are other procedures that have been unjustifiably delayed.

6. By June 2018, there is a real risk for the Federal Council of Civil Registries –a federal entity that gathers several civil registry offices from different parts of the country– to put in place protocols establishing abusive prerequisites not included in the law. Particularly, they are considering the possibility to include “progressive capacity assessments”, but only for trans children.
7. In addition to that, a requirement for children’s advocates who represent them during the modification of recorded gender identity procedures¹² to have to be previously registered is being considered. Such requirement would be arbitrary, since it is not established by the law¹³ and violates the free exercise of the legal profession, because it would impose a mandatory enrollment. It would impede the procedure for gender identity modification for trans children, particularly for those who live in rural areas, indigenous communities or areas far from big cities, because until now there are not enough advocates enrolled in such registers.

Recommendations to the State:

8. To adopt any necessary measures to guarantee the right to gender identity for all travestis and trans people, especially the right to gender identity for children and adolescents, according to the international legal framework of human rights.
9. To guarantee the concretion of all procedures for the modification of personal data records due to gender identity, according to and strictly complying with Law 26.743 of Gender Identity in the National Registry of Persons and in all the offices of the Civil Registry across the whole territory of Argentina.
10. To adopt any necessary measures for all civil servants in all the offices of the Civil Registry across the country to be in full knowledge of the current legal frame regarding the rights of travestis and trans persons and to be properly trained to fulfill the procedures of register change due to gender identity and to comply with the procedure established by Law 26.743 without arbitrary delays, particularly when the persons asking for the procedure are underage children.

Unfulfillment of work quotas for travestis and trans people

Non-Discrimination (Article 2)

Equality (Article 3)

Right to Work (Article 6)

Right to just and favorable conditions of work (Article 7)

11. In September 2015, LGTBI organizations lead by human rights defender Diana Sacayán –who was brutally murdered in October of that same year– achieved the

¹¹ Please, see <https://abosex.com.ar/2018/01/29/grave-el-registro-civil-de-la-provincia-de-buenos-aires-viola-la-ley-de-identidad-de-genero/>

¹² See Law 26.743 of Gender Identity: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/195000-199999/197860/norma.htm>, particularly Article 5° — *Persons under legal age*.

¹³ See Law 26.061 <http://servicios.infoleg.gob.ar/infolegInternet/anexos/110000-114999/110778/norma.htm>, particularly Article 27.

sanction of Law 14.783 of Work Quotas for Trans Persons in Buenos Aires Province¹⁴. However, the law is still to be regulated, and therefore already two years after its passing it is not being implemented.

12. LGBTI organizations were called during 2017 to take part in the regulation of the law, but the process was interrupted by the government of the province without giving any reason for that, clearly failing to fulfill its conventional, constitutional and legal duties.
13. Although different jurisdictions¹⁵ across the country have passed rules of varying levels of importance establishing a quota for the benefit of trans people in order to ease their access to work, the national Congress has failed to discuss a bill on this matter that would be enforceable nationwide. Such a law is very deeply needed, taking into account that up to 98% of travestis and trans persons don't have a registered job and at least 90% of them earn a living from sex work¹⁶, in a high number of cases under exploitative conditions. This situation impacts directly and harmfully on trans persons, whose average life expectancy is barely 35 years old. The lack of a nationwide law renders the recognition of rights unequal, depending on where people live.
14. Travestis and trans people are not taken into account when work policies are produced and therefore those of them who have work are usually employed in informal jobs, in precarious or temporary conditions and so they are denied of their right to social security.

Recommendations to the State:

15. To guarantee that a nationwide federal law of work quotas for trans people is passed.
16. To adopt any necessary measure to regulate the law of work quotas for trans people in Buenos Aires Province and that as far as the State is concerned it guarantees its effective implementation.
17. To put in place training programs for trans people in order to foster their full access to work.
18. To adopt any necessary measures to put in place training and awareness programs aimed at employers in the private sector on the rights of travestis and trans persons and to foster positive actions for travestis and trans people to access to work.
19. To guarantee that appropriate funding is allocated to the implementation of a nationwide work quota for trans people.

Reparations program for travestis and trans people – “To recognize is to repair” Bill Non-discrimination (Article 2) Right to social security and social insurance (Article 9)

¹⁴ Please, see <http://www.gob.gba.gov.ar/legislacion/legislacion/1-14783.html>

¹⁵ Please, see <http://agenciapresentes.org/2018/04/30/mapa-asi-esta-el-cupo-laboral-trans-en-el-pais/>

¹⁶ Please, see <http://agenciapresentes.org/2017/05/23/un-libro-clave-para-saber-como-viven-travestis-y-trans-en-ciudad-de-buenos-aires/>

Right to an adequate standard of living (Article 11)

20. Emerging from an idea that occurred to historical activists for the rights of travestis and trans people Loahana Berkins, Diana Sacayán and Marlene Wayar, in 2014 a bill named “To recognize is to repair” was introduced for the first time to the House of Representatives¹⁷, with the purpose of giving reparations to travestis and trans people victims of institutional violence, especially when perpetrated by security forces.
21. The bill lost parliamentary state in 2016, so Abosex together with other 30 LGTBI organizations introduced the bill again in the same House of Representatives. By 2017, the bill was still to be discussed, and therefore the LGTBI organizations decided to introduce it to the Senate, where it is now awaiting to be discussed, under file number S-4030/17¹⁸.
22. Taking into account the situation of structural inequality faced by the community of travestis and trans persons, the bill “Program of Reparations for Victims of Institutional Violence based on Gender Identity” (S-4030/1) was conceived to make the State accountable for the violence suffered by travestis and trans persons due to the enforcement of so called police edicts –which were in force until 1994– as well as from all actions perpetrated by security forces which constituted a violation of their human rights and to receive an appropriate reparation for such violations.
23. It is important to note that travestis and trans persons have been particularly affected by police security forces when they had the faculty of enforcement of Contravention Codes and Police Edicts¹⁹, norms that criminalized their gender identity and expression and that criminalized sex work, which for most of them was their main way to earn a living.
24. The right of travestis and trans people to a historical reparation does not end in the reparation of past violence, but it calls into question the current living conditions of that population, highlighting the essential conditions that constitute a prerequisite for the enjoyment of human rights and the pursuit of worthy life projects for travestis and trans persons. In sum, the bill is framed within the wide range of economic, social and cultural rights, specifically the right to social security as a means of reparation for the violence suffered from the State.
25. Travestis and trans persons have been and still are deprived of decent living conditions because of their eviction at an early age from their homes, from school and from the formal job market, and because they lack health care. Therefore, recognizing their right to a decent life and a decent old age is a historical demand for the travesti and trans community, because they were a group specifically targeted by police power through legal types that criminalized their gender identity and expression.

Recommendations to the State:

¹⁷ Initially introduced as file 8194-D-2014

¹⁸ The bill is available at: <http://www.senado.gov.ar/parlamentario/comisiones/verExp/4030.17/S/PL>

¹⁹ Police edicts represented the arbitrary of State power, deploying during many years social persecution policies targeted to the normalization of those social groups labelled as deviant, whose existence was made invisible through systematic confinement.

26. To guarantee that the bill “To recognize is to repair” –Bill “Program of Reparations for Victims of Institutional Violence based on Gender Identity” (S-4030/1)– is passed, securing a proper allocation of funds for its implementation.
27. To adopt any necessary measure to guarantee the right of travestis and trans persons to social security in every stage of their lives, in order to secure them decent living conditions and with the long term objective of increasing their current life expectancy.

Health of travestis and trans people

Non-discrimination (Article 2)

Right to an adequate standard of living (Article 11)

Right to the highest attainable standard of health (Article 12)

28. Law 23.743 and its Regulating Decree²⁰ are framed in the depathologization of travesti and trans identities because it roots the right to gender identity and expression in self-perceived and self-determined identity²¹. In addition to that, it recognizes the right to comprehensive health, including access to surgical and hormonal treatments with no condition other than informed consent.
29. To guarantee access to the rights it recognizes, the law mandates the effectors in the health system, be them public, private or trade union’s health insurance, to offer a specific and proper coverage for the health requirements of trans persons, which are included in the Mandatory Health Plan²².
30. The average behavior of the system is far away from guaranteeing access to health for trans people, however some trade union’s health insurances and private medical companies cover the required treatments. The vast majority of private health companies refuse to provide coverage and it has been recorded that some companies force their clients to declare their condition as trans persons and in some cases, when the person has received hormonal treatment, they even consider it as a “pre-existent illness” (a reason to deny coverage).
31. Within the public system, attitudes vary depending on the institution and jurisdiction. Some establishments have years ago put in place programs offering proper care to trans people, but those are few and scattered experiences, which many times only provide a partial coverage of the required treatment.
32. Too often, the public system doesn’t have enough medicines in stock to address the requests for treatments. Lack of resources, both human and material, leads to only a partial coverage of hormonal treatments and to delays in access to surgical procedures, which are not performed in all hospitals.
33. Moreover, there have been cases where the lack of an ID card in keeping with the gender identity of the person has conditioned their access to health.

²⁰ Decree 903-2015. See: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/245000-249999/247367/norma.htm>

²¹ Law 26.743, Op. Cit. See Articles 2, 3 and 4.

²² Law 26.743, Op. Cit. See Article 11 and its regulating decree Nro. 903/15.

34. It must be noted that pathologization of trans identities still operates in some institutions, because access to hormonal treatments and surgical procedures is conditioned upon the acceptance of some treatment or upon showing some certificate issued by a mental health professional.
35. One of such cases is that of G., who by December 2016 was client to a well-known private health company. The attending physician ordered a surgical procedure during a trans-specific health treatment (affirmative of a masculine gender). When G. took the request before the health company, they asked him for psychiatric tests after which, by means of a document letter, G. was notified that they had “*detected pre-existent pathologies*”. In sum, they rebuked G. for not having declared, when he subscribed to the company services, that he was a transgender person and that he was on hormones, as if it was a pre-existing illness²³.
36. Since according to the current legal framework no mental health test is required and no gender identity can be subjected to a pathologizing diagnosis, the actions of the health company are illegal and discriminatory and configure a context of gender violence. The facts narrated above clearly violate Law 26.743 and Law 23.592 Against Discrimination.
37. The lack of a clear State policy forcing private health companies and union trades’ health insurances to comply with the law is evident –there are no sanctions for the cases when there is a failure to abide by the law. Therefore, is up to each affected person to put a demand, very often leading to a dilatory bureaucratic procedure to gain access to something already guaranteed by the law.
38. Since 2016, a worrying discontinuation and progressive dismantling of the Sexual Health and Responsible Procreation Program²⁴ has been taking place. The stoppage of this program directly affects many travestis and trans persons who were beneficiaries of it.
39. Due to the difficulties they face to access the job market, most travestis and trans persons lack health insurance which in turn results in a state of vulnerability regarding their access to comprehensive health. When it comes to affirming procedures, practices against people’s integrity and health are common, for example through the use of industrial oils or contraceptive pills –as a way of getting hormones–, practices that may carry very harmful consequences for the body.
40. According to international standards, the right to health implies a comprehensive understanding of health, which rely on a series of conditions such as access to decent housing, access to formal and stable job, access to education and to proper and enough food –all of them rights and conditions which most of the travesti and trans population cannot access nor enjoy. As a result, right to health and to personal development are legal fictions in spite of been provided for in the letter of the law.
41. Lack of proper information specifically oriented to travestis and trans people together with a lack of training of health agents result in serious deficits in prevention approaches. In addition to that, updated and accurate scientific studies about the

²³ Please, see <https://abosex.com.ar/2016/12/08/prepagas-y-obras-sociales-ser-trans-no-es-una-enfermedad-ni-preexistente-ni-existente/>

²⁴ Please, see <http://www.msal.gob.ar/saludsexual/ley.php>

health needs of travestis and trans people beyond hormonal treatments and surgical procedures are non-existent.

Recommendations to the State:

42. To guarantee the right to health for trans persons through the public and private health system, in keeping with their needs, as provided by Law 26.743 and its Regulatory Decree 903/15.
43. To adopt any necessary measures in its role as comptroller of private health systems, in order to make sure union trades' health insurances, private health companies and public health agents provide total and timely coverage of any health treatment provided for by Law 26.743 and its Decree 903/15 and to sanction those who do not abide by them.
44. To put in place any necessary measure through legislation and public policies to prevent and punish any discriminatory or pathologizing action carried out by union trades' health insurances or private health companies every time they force their clients to consider their identities or hormonal treatments as "illnesses".
45. To guarantee proper funding to provide for any medical procedure provided for by Law 23.743 and Decree 903/15, as well as of any other procedure that may be needed to guarantee comprehensive health care for travestis and trans persons.
46. To adopt any necessary measure to guarantee trans children and adolescents conditions of access to health equal to those of trans adults.