

## **THE RIGHTS OF TRANSVESTITES IN ARGENTINA**

From April 3-14 2001, IGLHRC is sponsoring the United Nations advocacy of Lohana Berkins--an Argentinian transvestite activist, and the founder of ALITT (Asociación Lucha por la Identidad Travesti y Transexual), a transvestite advocacy group in Buenos Aires. Ms. Berkins, accompanied by Scott Long and Alejandra Sarda of IGLHRC, will be attending the 57th session of the United Nations Commission on Human Rights in Geneva. She will meet with Special Rapporteurs and other UN officials, and will hold a briefing for staff of the Office of the High Commissioner for Human Rights.

This document on the rights of transvestites in Argentina has been prepared by ALITT(Lohana Berkins) and IGLHRC(Alejandra Sarda and Scott Long) for distribution at the UN Commission on Human Rights.

### **1. Recommendations**

**Transvestites in Argentina are subject to the daily reality of discrimination, and to the threat of murders, violence, and arbitrary arrest. We begin by calling on Argentina to act. The following steps would show indispensable progress toward full respect for all Argentina's citizens. The rest of this paper will explain why action is urgent, and legal and social change essential.**

- **Federal authorities in Argentina must legalize sex reassignment surgery, and enact legal provisions enabling post-operative transsexuals to change their papers and identity cards to reflect the gender of their choice.**
- **All states in Argentina which retain legislation penalizing transvestite identity--such as laws criminalizing people "who wear the clothes of the opposite sex"--must repeal those laws.**
- **All states in Argentina must repeal any legislation in which the ambiguity of language allows scope for arbitrary arrests based on police prejudice. This includes laws penalizing "public scandal" or "instigation to commit carnal acts," as well as all similar legislation.**

- **State and federal authorities in Argentina must launch thorough investigations into allegations of police abuses, and must punish all persons found responsible.**
- **State and federal authorities in Argentina must open public dialogues with transvestite communities, and must institute training programs in non-discriminatory behavior for police and other public officials.**
- **Federal authorities in Argentina must launch educational campaigns to assist the general public in understanding transvestite identities and in overcoming intolerance toward them.**

## **2. Who are transvestites?**

"Tranvestite" or *travesti* is a term for a group of people facing persecution and abuse for the way they experience and live their *gender identity*.

*Gender* is a concept important to human rights. The term *gender* encompasses the ways societies and cultures assign meanings to biological facts: it refers to the multiple social and cultural interpretations of the physical fact of *sexual difference*. As the UN Development Fund for Women has explained, it "refers to the ways in which roles, attitudes, values, and relationships regarding women and men are constructed by societies all over the world."

*Gender identity* refers to *a person's own self-identification* within a gender system. In English, the term *transgender* is used to describe persons who identify themselves as belonging to a gender different from that assigned to them at birth. Such persons may or may not express that identification through dress, other forms of behavior, or physical or surgical modification of the body. In refusing to conform to social expectations attached to their physical sex or birth gender, transgender persons face particular forms of discrimination and abuse.

In Argentina, the term "tranvestite" has been used by many activists to identify themselves. A transvestite is a person identified as a man at birth, who later chooses to identify as a woman. A transvestite may or may not wish to undergo so-called "sex reassignment surgery." Certainly, however, she will wish to adjust her appearance to her inner image, whether through dress, hormone therapy, or silicone prosthesis. The transvestite adopts a female name and lives full-time in the gender of her choice. Most activists consider "transvestite" a gender in itself: they claim to be neither women nor men, but, as transvestites, to possess an identity they have constructed for themselves. "Tranvestite" is a less

comprehensive term than "transgender" is in English, as it applies only to a portion of the wider transgender population.

Being transvestite or transgender in Argentina immediately confronts the opposition of the State. Sex reassignment surgery—the most comprehensive way in which transvestites assert control over their own gender identity—is illegal there. Moreover, it is illegal for transvestites or transgender people to change their State identity cards and papers to reflect the gender they have assumed. This disparity between their appearance and their official identification creates innumerable legal and social problems. It makes it difficult or impossible for them to hold jobs, rent apartments, open bank accounts, drive, and travel. Transvestites are forced into a shadow realm of illegality. The State divests them of civic personhood.

State refusal to recognize transvestites also makes them vulnerable to many still more severe human rights violations. This report offers some instances of those violations.

### **3. Right to life, liberty, and security of person**

Police forces in Argentina are agents of extralegal violence. The UN Human Rights Committee, in its 2000 review of Argentina's compliance with the ICCPR, noted indications that "torture and excessive use of force by police officials" are "a widespread problem and that government mechanisms established to address it are inadequate." CORREPI (Coordinadora contra la violencia institucional y policial), an Argentinian NGO working against police violence, has documented more than 800 deaths at the hands of police during the period 1983-2000—that is, under democratic rule. Between December 1999 and August 2000, 96 people were killed, either in police custody or in unjustified police shootings.

Less well known is that **transvestites are among the most common victims of police violence.** Transgender activists assert that over 100 transvestites murdered between 1983-2000 need to be added to CORREPI's figures.

Police violence and abuse are a daily threat to transvestites. In 2000, the Ombudsman's Office in the city of Buenos Aires joined the transvestite organization ALITT in surveying 147 transvestites living in the city. **86% of those interviewed** said they had suffered abuse at the hands of police officers at least once in their lives. The following table shows the abuses suffered:

<b><i>Forms of abuse</i></b>	<b><i>Percent</i></b>
Illegal or arbitrary detention	77
Physical abuse	75

Demands for bribes	57
Sexual abuse	29
Other abuses	10

### **Bad laws offer a basis for repression**

Transvestites are vulnerable because poorly written laws invite police to make arrests on the basis of prejudice and fear. These laws are enacted by many states and local communities. In Cordoba, for example, antiquated criminal provisions enable and encourage police harassment of both transvestites and sex workers. The local Code of Misdemeanors prescribes up to 10 days of arrest for those who "disturb others, affecting their decorum through gestures or words in public places," if the "offense" takes place at night, the penalty rises to up to 20 days of arrest (Title I, Chapter 1, Art. 42). A similar provision punishes those who "in public places utter words, make gestures or adopt corporal postures that are contrary to public decency" (Art. 43, same Title and Chapter). There is also a provision against "offenses that would provoke public scandal" with a penalty of 10 days in custody (Art. 51, same Title and Chapter). The offer of sex in public places is punished with up to 20 days in police custody if it "disturb others or causes scandal" (scandal is not defined). HIV and STD exams and treatment are compulsory for arrested sex workers (art. 44, same Title and Chapter). Activists affirm that many of these provisions are used to single out and harass the transgender community in Cordoba.

### **The consequences: violence. The Ledesma case**

In one notorious and illustrative case, Vanesa Ledesma (legal name "Miguel Angel Ledesma"), a transvestite activist and sex worker, was arrested in Cordoba on the night of February 11. Police used violence in arresting her. They took her to Precinto (station) number 19, later transferring her to Precinto 18. She was kept segregated from other inmates—local police have explained that transvestite inmates are separated so that other inmates need not be exposed to "sick" people.

Vanesa Ledesma never emerged from detention. Friends could obtain no information about her until, on February 16, police announced her death, attributing it to "cardiac arrest." Vanesa

Ledesma had no heart condition: but an autopsy showed strong evidence of physical punishment and torture.

Vanesa Piedrabuena, a fellow transvestite activist and sex worker in Cordoba, has campaigned for justice and a full investigation into Vanesa Ledesma's murder. She herself has been subject to death threats and harassment as a result. Police have searched her premises with no reason; in August 2000, four armed policemen ordered her to "stay locked in her house" and assured her that at any moment she would "be found in a ditch" and then "no one would stand up for her."

### **Indefinite detention: the case of Tamara**

On December 18, 2000, Tamara (legal name: "Alejandra Moreno") was arrested in the province of Santiago del Estero. The pretext was a provision in the local Code of Misdemeanors criminalizing "instigation to commit carnal acts." The judge in charge of Criminal Court 4 sent Tamara to the local prison, where, almost five months later, **she is still detained.** Astonishingly, the judge also condemned Tamara's attorney, Sandra Zamon, to a month's suspension of her licence merely for undertaking the case, commenting that "Transvestites are dirty and they deserve death." Tamara's life has been threatened by prison guards since information about the case became public; her lawyer has also received death threats.

### **Torture in detention: the case of Nadia Echazu**

One case can illustrate the threat of torture which is a daily reality for many transvestites. Nadia Echazu (legal name: "Mario Domingo Echazu") was arrested in Buenos Aires on March 11, 2001. She was brutally beaten at Police Station 25. In a complaint written after her release, she states: "I was arrested with six others, we were sadistically beaten, and denied the right to make a phone call . . . I demand due punishment to the police officers who insulted, handcuffed and kicked us, while shouting, 'We will finish off gays . . . It's time to finish off those who damage the police's image.'"

## **4. Discrimination in education, work, health, and housing**

Severe police abuse is not the only human rights violation suffered by transvestites in Argentina. Discrimination is everywhere. Basic rights to

education, work, health care, and housing are denied to transvestites in many or most cases.

## **Education**

When the Buenos Aires Ombudsman's Office, with the advocacy group ALITT, surveyed transvestites in the capital city in 2000, they found evidence of widespread discrimination.

Many transvestites are young—and the denial of basic rights and services cuts short the lives of many. More than half of those interviewed in the Buenos Aires study were between 19 and 29; 19% were in the 30-34 group and 12% were 35-45. Education is thus a primary concern for many. And most had been denied it. Of the sample, 76% had never finished high school:

<b><i>Educational level reached</i></b>	<b><i>Percent</i></b>
Primary school, unfinished	7
Completed primary school	19
High school, unfinished	50
Completed high school	13
College, unfinished	8
Completed college	3

Asked why they had left school, respondents gave the following reasons:

	<b><i>Percent</i></b>
Discrimination on the basis of gender identity	35
Lack of money	23
Lack of time	11
Lack of encouragement	4
Lack of information	2
Others	8

## **Work**

In a climate of hatred, and with papers which do not reflect their gender identity, transvestites find it almost impossible to obtain legal work. Sex work is often the only option. The survey showed the following income sources for Buenos Aires transvestites:

	<b>Percent</b>	
Prostitution	80	
Work in the streets *	9	* a euphemism for
prostitution		
Supported by partner or family	3	
Hairdresser	1	
Selling products door to door	3	
Others	3	

## **Health**

Transvestites are denied medical assistance in public hospitals, their confidentiality is violated, and their personal security is not protected. The very fact that sex reassignment surgery is illegal in Argentina makes transvestite existence counter to the law. Coupled with discriminatory practices on the part of health-care professionals, it forces transvestites to circulate in a para-legal health system where their lives are constantly at risk.

### *Discrimination in public hospitals*

Angela Vanni is a lawyer who works with transvestites in Argentina. One of her clients, Yiyi (legal name "David Walter Yldefonso Cuello"), a Peruvian citizen, was stabbed in the stomach by her boyfriend on February 2, 1998. When taken by friends to the Hospital de Clinicas in Buenos Aires, Yiyi was given a bed but no medical assistance. One of her friends heard a doctor saying "We are too busy to deal with Peruvian faggots who stab one another." She was refused antibiotics; two months later, she died of complications from her wounds. Ms. Vanni has sued the hospital for abandoning a patient, for malpractice, and for compounding injuries. The case is still awaiting trial.

The medical confidentiality of transvestites is routinely violated. Mónica León is a transvestite living with HIV. She went to Hospital Fenandez, a public hospital, for a test in October 1999. She was denied the usual procedure in which HIV testing is accompanied by private counselling from a doctor and a psychologist. Instead, a doctor shouted at her publicly in the waiting room, "You, the transvestite, have HIV."

Dr. Sergio Maulen works in Hospital Muñiz, a public institution. He has worked with transvestites and with female and male sex workers for 12 years. He describes how transvestites are treated in the Argentinian hospital systems:

- Transvestites are routinely sent to male wards, and are forced to wear male clothing while hospitalized. Although they are often harassed by other patients, their complaints are not heard. In one instance, "E.," a transvestite, was hospitalized for pneumonia. On the first night of her stay, four other patients raped her in the showers. Nurses met her complaints with mockery. She ran away from the hospital and disappeared.
- Transvestites are routinely left to wait for hours in emergency wards, even if there are no other patients. Dr. Maulen says that colleagues have confessed they make transvestites wait in the hope that they will go away.
- As a result, the transvestite community itself provides medical support to its members. According to Dr. Maulen, every hospitalized transvestite is cared for by 3 to 5 others; the community will care even for unknown transvestites.
- On the other hand, prejudice and discrimination drive many transvestites away from professional medical care. HIV-positive transvestites avoid doctors until they are near death. One patient told Dr. Maulen, "I'd rather die than go to the hospital and be humiliated there." Six weeks later, she died at home.

### *Becoming oneself: medicine in back alleys*

Sex reassignment surgery is prohibited by law (Ley 17.132 del ejercicio de la medicina), unless carried out with judicial authorization, which in practice has only been granted in cases of intersexuality—largely, that is, upon children perceived as having ambiguous genitalia. The law classifies sex reassignment surgery as falling within the definition of "bodily harm causing loss of an organ or ... the capacity to engender or conceive." It is thus punishable by up to ten years' imprisonment according to Article 91 of the Penal Code.

Transvestites who wish to have the surgery which confirms their identity are forced to travel to Chile or other countries: the clinics they use are often both expensive and exploitative. Patricia Gauna, the president of a transsexual women's organization called MOTA (Mujeres Operadas Transexuales Argentinas), underwent surgery in Chile. According to her figures and testimony:

- Surgery costs U\$S 10,000 in Chile or Spain, U\$S 15, 000 in the UK—plus travel and lodging.
- Chilean clinics provide no psychological counselling or support. Medical exams include only routine blood and heart tests.
- Patients are released from the hospital four days after the operation. Follow-up studies are performed only if the patient can afford to stay in the country and pay for them. In most cases, patients return to Argentina immediately after release.

Most transvestites can obtain even minor cosmetic surgery only under dangerous and exploitative conditions. María Belén Correa is a transvestite activist and a founder of ATA (Asociación de Travestis Argentinas), the oldest transvestite organization in Argentina. Based on her own experience and also that of about 160 other transvestites who have attended ATA's support groups, she states:

- Surgeons in Argentina will not officially attest to performing even minor operations on transvestites, as they do not wish to be held responsible.
- Cosmetic surgery on transvestites is usually performed in medical offices rented by the hour. Most transvestites never know the permanent addresses of their doctors.
- Surgeons charge US \$1800 for such back-room silicone injections—over four times an average monthly income in Argentina.
- Transvestites thus often perform silicone injections on one another. Silicone is available over the counter in drugstores. The industrial variety is far cheaper than the medical variety, but is toxic to the human body—and is often used in such back-room operations.
- Belén Correa knows of two transvestites who have died after amateur silicone injections were delivered directly into their bloodstreams.

## **Housing**

By depriving transvestite identity of legal recognition, Argentinian law also ensure that transvestite life will be divested of stability and permanence. Renting an apartment presents insuperable difficulties. The law requires renters to demonstrate their income through receipts or certified tax forms. Since transvestite work is largely illegal, they have none of the needed documents. Moreover, the law requires that every rentor have a "guarantor" who owns property and can be held responsible for payment. Few transvestites know property owners.

As a result, most transvestites live in hotels, where owners exploit their situation by charging up to three times what non-transvestites pay. These fees can consume most of a monthly income from sex work.

Transvestites living in Hotel Güemes in Buenos Aires pay US \$300 per month for a room without bath; the hotel has a bathroom for "people" ("*gente*") and another marked for "transvestites." Another Buenos Aires hotel shut off all water for three months in summer.

The International Gay and Lesbian Human Rights Commission (IGLHRC) documents and advocates against human rights abuses based on HIV status, sexual orientation, and gender identity.

IGLHRC supports the efforts of thousands of activists and organizations worldwide. e-mail [alejandra@iglhrc.org](mailto:alejandra@iglhrc.org)

Asociacin Lucha por la Identidad Travesti y Transexual (ALITT) is an organization created to promote and develop transvestite identity and to fight for civil rights, employment, education, health and housing for transvestites in Argentina. It can be reached at [ALITT@arnet.com.ar](mailto:ALITT@arnet.com.ar).