

**REPORT ON ARGENTINA
FOR THE THIRD CYCLE OF THE UNIVERSAL PERIODIC REPORT (UPR)**

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Executive summary

1. This report addresses human rights violations faced by **travestis² and trans women who migrated to Argentina from other Latin American countries** and reside in Buenos Aires Province (BAP), the most populated in the country (39% of the total population).³
2. We focus on BAP because it is there where these violations have been documented the most thanks to grassroots organizations. We analyze those violations from an intersectional perspective, as **discrimination based on gender identity and expression, migratory and socioeconomic status** as this population has been historically marginalized.
3. Migrant *travestis* and trans women are **criminalized**, in a disproportionate manner with regard to the rest of the population, for alleged violations to Law 23737 regulating possession and commercialization of drugs. In all cases documented by us they are arbitrarily arrested during police raids or based on anonymous reports that never involve someone who is not a *travesti*, contravene standards set by the Interamerican Court of Human Rights and include searches that are always performed only on the *travestis*' bodies and never, for instance, on their bags. Then, they are subjected to **cruel, inhuman and degrading** treatment and even to **torture** that in some cases (such as those of Angie Velásquez and Pamela Macedo Panduro) lead to their **deaths**.
4. The National Migration Board (DNM in Spanish) and the National Registry (RNP in Spanish), in-charge of regulating the implementation of the national Gender Identity law (Law 26743) impose requirements that **make it harder for migrants to access identity documents** that reflect their gender identity. This leads to the persistence of irregular migratory situations and scarce employment opportunities outside street prostitution that exposed them to police harassment. Recent amendments to the National Migration Law (Law 25871) through Decree 70/2017 (considered to be "regressive" by the Interamerican Commission on Human Rights⁴) increases the **risk of expulsion** for migrant *travestis* and trans women sentenced in a discriminatory manner in drug-related legal cases.
5. Ongoing police harassment also hampers their possibility to have a life project and it has a **negative impact on their rights to health, to work, to education and to take part in cultural life**, making it harder for them to overcome their economic vulnerability and be less exposed to institutional (police) violence.
6. Argentina fails to comply with its international human rights commitments and it has not implemented agreed recommendations from the first two UPR cycles by: perpetrating institutional violence against this population through their police and legal officers; failing to properly investigate these facts, to punish those responsible and to take non-repetition measures, including reforms towards non-discriminatory implementation of Law 23737 and Law 26743 and applying international and regional protocols that Argentina has endorsed like the Mandela Rules for the treatment of prisoners; the Istanbul Protocol on effective documentation of torture, cruel, inhuman or degrading treatment and punishment; the Bangkok Rules for the treatment of female prisoners; and the Brasilia Rules on access to justice for vulnerable groups. In the last section of our report we summarize the recommendations from the first two UPR cycles that have not been implemented and suggest recommendations for this third cycle.

Legal framework and discriminatory implementation

7. The **Gender Identity Law (Law 26743, May 2012)**⁵ was a step forward in the recognition of trans persons and *travestis*' rights and has significantly improved the conditions of living for many of them. It is a model law because it recognizes an individual's capacity to decide about her/his gender identity and does not require that they be subjected to forced medical or psychiatric treatment as a requirement for their identity to be recognized, while also creating the State obligation to provide trans persons with those medical interventions and treatment they consider necessary to exercise their right to the full development of their personality and to develop their life projects.
8. Law 26743 grants to migrant trans persons who are legally residing in Argentina those same rights. But they face **obstacles that make its implementation discriminatory**. Migrant trans persons are forced to apply for residency using their original identity documents⁶ - that is, with names that do not acknowledge their gender identity as most of these migrants have come to Argentina fleeing from more violent and discriminatory societies in which their identity is not recognized. Those who manage to overcome this barrier must wait for years until getting their new documents and only then will be able to request the change in name and gender, a procedure that also takes a few years. All along, the lack of identity documents consistent with their appearance blocks migrant *travesti* and trans women's access to formal employment, education and health services, and exposes them to abuses and discriminatory acts in those spaces, condemning them to a marginal status. Most of them never start these procedures, to avoid using identity documents that violate their identity.
9. **Law 23737** (1989) on drugs has a neutral language, particularly in the two articles that the police invokes in BAP (and across the country) to arrest migrant *travestis* and trans women: article 5.c (criminalizing commercialization) and 14 (criminalizing possession, even for personal use)⁷. However, its **discriminatory implementation** becomes evident when we analyze the impact of this law on migrant *travestis* and trans women.⁸ **Trans women and *travestis* are almost exclusively imprisoned because of alleged violations to Law 23737**⁹. This is, in itself, a strong indicator of discriminatory profiling against *travestis* and trans women¹⁰. In no other population group have all its imprisoned members been charged under the same offense; this shows how Law 23737 is employed to criminalize them. Also, 97% of migrant *travestis* and trans women are in preventive detention and more than half of them have spent more than 18 months in that situation.
10. **Migrant *travestis* and trans women are more represented among those deprived of their freedom than in the general population**. The overall prison rate for BAP is of 188/100 000 (1 of every 530 persons is in prison). Comparing this rate to that of *travestis* and trans women (between 340 and 1380/100 000 = of every 73 is in prison), **travestis and trans women are between 1.8 and 7.3 times more likely to be imprisoned** than cisgender (non-trans) persons. These features fit the criteria set by the United Nations Office of the High Commissioner for Human Rights (UNOHCHR) to define racial profiling (or that based on belong to a particular social group)¹¹.
11. To this it must be added that **while only 3% of those deprived of their freedom in BAP are foreigners, in the case of *travestis* and trans women this reaches 85%** - they are 28 times more likely to be imprisoned than their Argentinean peers.

Arbitrary detentions - cruel, inhuman and degrading treatment during arrest

12. During his electoral campaign, the current Major of La Plata (the BAP capital), Julio Garro, had already made stigmatizing statements against *travestis*, associating them with drugs.¹² Once the new authorities came to power (December 2015) a "security emergence" was declared, followed by an stigmatizing media campaign.¹³
13. The arrests of trans women and *travestis* in La Plata are arbitrary because they take place as part of **raids in public places that exclusively target trans persons** and that are not part of police operations identified as such or of legal investigations. Individual arrests are triggered by anonymous reports allegedly by neighbours, or by police having noticed "maneuvers consistent with the selling of drugs" what usually means they have seen a *travesti* standing in the street engaged in prostitution, getting into or off a vehicle or talking to other people.
14. Both mass and individual arrests fail to comply with the standards set by the Interamerican Court of Human Rights¹⁴ in the Bulacio and Penal Castro cases among other precedents. Migrant *travestis* and trans women are **undressed in public spaces** or taken to a police station where they are undressed also in public. This is followed by **degrading anal searches** that are forbidden by the law.
15. On September 4, 2016, about 25 Peruvian and Ecuadorean trans women and *travestis* were arrested in La Plata in what the media labelled an "operation against *travesti*-drug dealers". Only one of them had less than 1 gram of drugs in her possession. Six days later, Court No. 4 of the La Plata Appeals and Guarantees Chamber issued a historical decision (known as the "Zambrano decision") annulling the police procedure for considering it "extremely degrading" and affirmed the rights of migrant trans women and *travestis*. But the BAP police has ignored this decision¹⁵.
16. In addressing *travestis* and trans women and also when registering their arrests, the police uses an **abusive language** that also fails to acknowledge their gender identity, violating the dispositions of Law 26743¹⁶.
17. In March 2017 OTRANS studied 20 of these legal files (randomly selected) and found that the amounts of drugs found on *travestis* and trans women arrested in the streets go from 0.5 to 3 grams of cocaine and reach a maximum of 8 grams for those arrested in home raids. In all cases, the charges made by the police - and later validated by the intervening prosecutors and judges - were of "drug-selling."

Inhuman treatment and conditions in prison¹⁷

18. Preventive detentions in police stations are forbidden by the Supreme Court of Justice¹⁸. OTRANS has documented that *travestis* and trans women arrested in police stations spent from hours to months in inhuman conditions - for instance, handcuffed to a desk or a 2x2 metres cage with iron bars in the open. They are also isolated, without intimacy for their bodily functions or hygiene and without medical care. Their health conditions are not taken into account; they are not provided with drinking water or appropriated food. No food at all is provided to them during weekends. In some cases they have been kept in the same cell with men. In many cases, they are not allowed any visitors. Visitors that are *travestis* or trans women themselves have been stopped from accessing - sometimes with violence - or from taking food to their imprisoned friends.
19. In 2015 OTRANS submitted an habeas corpus on behalf of E.T.M. who had been arrested in La Plata for 45 days in a jail in which, due to lack of space, she and others had to take turns to sit on the floor or sleep. As the mattress they used was always wet, E.T.M contracted a pneumonia that went untreated for 6 months. The

habeas corpus granted her access to a prison hospital. She was placed in isolation for 4 months and La Plata Oral Court No. 2 refused to allow her to appear for fear of contagion.

20. Prisons in BAP have only two pavillions for *travestis* and trans women (Unit No. 32 in Florencio Varela prison and Unit No. 2 in Sierra Chica prison). The National Penal System (SPN in Spanish) has no established criteria for determined this classification that is left to the criteria of prison staff.
21. In **transfers**, to the Courts or to other prisons, *travestis* and trans women's gender identity is not respected as they are transferred together with men and under the surveillance of male officers. This exposes them to **different levels of violence**, from obscenities and insults to groping and even attempted rapes.
22. In February 2017, OTRANS together with Peruvian *travestis* and trans women imprisoned in Unit No. 2 Florencio Varela prison submitted a corrective habeas corpus (1/17) to expose the conditions of imprisonment that allowed to confirm the lack of healthcare, access to work and recreation, ill-treatment and degrading treatment to inmates and visitors, among others. The BAP's Executive power was mandated to implement corrective measures within 20 days but the SPN appealed. **Those who reported abused have been subjected to arbitrary transfers and other reprisals.**
23. Recently, **the inhuman prison conditions in BAP led to the deaths of two migrant trans women. Pamela Macedo Panduro** (29) was arrested on November 9, 2016, during a raid in her home triggered by an anonymous report. She was imprisoned in the Drugs Department of La Plata for 11 days together with men and two other trans women. After OTRANS reported it and the BAP Human Rights Secretary intervened, Pamela was placed along with the other two trans women in a room that was not suitable to lodge inmates as it lack a toilet and they were only given mattresses to sleep on the floor. They were fed only once a day and not fed at all on weekends. No *travesti* visitors were allowed. On November 21, she was transferred along with the other two trans women to Warden Office No. 1 but they were sent back at the door with an alledged diagnosis of TB (that was never verified). Back in their 'cell' they were isolated and forced to wear surgical masks. On December 23, Pamela was transferred to Prison Unit No. 32 but five days later she had to be taken to the Hospital Mi Pueblo where she passed away on January 1, 2017. OTRANS is a party in the legal case to establish who was responsible for her death but until now all requests to submit evidence presented by us have been rejected without justifications.
24. **Angie Velásquez** (36) was arrested on February 18, 2017. She suffered from several chronic diseases that, with proper medicines and healthcare, would have allowed her to lead a full life. During her arrest, she was subjected to forced nudity and to a search in her intimate parts (contravening the above mentioned Zambrano decision) that found less that 2 grams of cocaine. Without any medical test performed and without taking into account her situation of social vulnerability, she was charged with preventive detention. Angie was held in Ringuet Police Station No. 11 until March 9. On March 2, OTRANS submitted a corrective habeas corpus exposing how Angie's conditions of detention have worsened as she was not given food, water or the medicines she needed; and also that her place of detention was unsuitable for her medical condition as it was a small cell without access to a toilet, that she was sharing with male inmates while being guarded by male personnel. In her place of detention, Angie was subjected to ongoing abuse, insults, the humiliating use of male pronouns, and other discriminatory expressions linked to

her gender identity and her status as a migrant. This habeas corpus was rejected by Court No. 4 that failed to order any measures to improve her conditions of detention.

25. On March 9, Angie was transferred to Prison Unit No. 32 that lacks medical facilities¹⁹ and so her health worsened. The judge ignored the information provided by OTRANS on this situation. The BAP Secretary of Human Rights was notified that Angie had been provided with medical care but when on March 14 representatives from the Secretary visited the prison and found that the information they had received was not consistent with reality. The Secretary had Angie immediately transferred to the prison hospital in Unit 22. On March 16, the Secretary notified OTRANS of the transfer and of the possibility to visit Angie. After many hours of wait, Unit 22 personnel informed us that Angie had passed away without providing any details on the circumstances of her death.

Recommendations and standards that have not been implemented

26.

Actions or omissions by Argentina	International obligations unmet	Recommendations from previous UPR cycles that have not been implemented
Discriminatory implementation of above mentioned laws and discriminatory treatment to migrant <i>travestis</i> and trans women during arrest and under detention.	ICCPR, ICESCR, CRD, CEDAW and ICPRMWF	No. 64. 1 (Algeria, Mexico, Nigeria, Republic of Korea) and No. 64.2 (Algeria, Republic of Korea) - UPR first cycle ²⁰ . 99.112 (Oman) and 99.117 (Bolivarian Republic of Venezuela) - Second UPR cycle ²¹
Persistence of inhuman conditions of detention in BAP police stations and prisons	ICCPR, CAT	No. 99. 35 (Germany); 99.36 (Hungary); 99.37 (India); 99.29 (Morocco); 99.41 (Slovenia); 99.42 (Spain); 99.43 (Switzerland); 99.44 (Algeria); 99.45 (Austria) - Second UPR cycle ²²
Poor investigation of reports on inhuman conditions of detention; impunity for those responsible	ICCPR, CAT	99.34 (Belarus, Slovakia, Tunisia, Austria) and 99.38 (Mexico) - Second UPR cycle
Setbacks in social policies that allowed migrant trans women and <i>travestis</i> to fully exercise their social and economic rights.	ICESCR, CEDAW, ICPRMWF	99.31(Plurinational State of Bolivia) and 99.112 (Oman) - Second UPR cycle

Recommendations suggested for the UPR Third Cycle

27. To improve the situation described in this report and to guarantee the human rights of migrant *travestis* and trans women in Argentina, we would like to suggest

the following recommendations to be presented to Argentina during the Third UPR Cycle:

28. 28.1: To implement all legal and administrative measures needed to avoid discriminatory implementation of existing laws against migrants, including trans women and *travestis*.
- 28.2: To re-establish in all its extent those public policies that provided work and educational opportunities to the *travesti* and trans population, guaranteeing that migrants will be included in those policies.
- 28.3: To define a security policy that respects enshrined rights related to gender identity and to train prison personnel on them..
- 28.4 To properly investigate claims of arbitrary arrest and institutional violence in police stations and prisons as well as punishing those that violate trans persons and *travestis*' rights and guarantees during police procedures and under detention.
- 28.5: To amend Law 23737 to set limits to imprisonment of individuals for drug consumption and micro-dealing.
- 28.6: To ensure the strict implementation of international protocols on conditions of detention (Bangkok Rules and Mandela Rules) and reparations for victims of torture (Istanbul Protocol) in all cases involving trans women and *travestis*.

¹Convocatoria Federal Trans y Travesti de Argentina: A newly created coalition of individual trans and *travesti* activists and organizations from all provinces of Argentina that are organizing themselves to promote and protect their rights.

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Akahatá Equipo de Sexualidades y Géneros is a team of individuals committed to human rights working on issues related to gender and sexualities from a human rights perspective.

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Sexual Rights Initiative (SRI)

A coalition created in 2006 whose members are Action Canada for Population and Development, CREA (India); Akatata-Equipo de Trabajo en Sexualidades y Géneros (Argentina-Paraguay), Polish Federation of Women for Family Planning and others. Its mandate is to promote the notion of sexual rights and to advocate for specific sexual rights issues before the United Nations Human Rights Council

www.sexualrightsinitiative.com

² *Travesti* is a term used mainly in South America to refer to transgender persons with a female gender identity or trans women.

³According to the National 2010 Census, BAP has a population of 15,625,084 and the total for the country is 40,117,096. See <http://www.ign.gob.ar/NuestrasActividades/Geografia/DatosArgentina/DivisionPolitica>

⁴Hearing called by the InterAmerican Commission on Human Rights (IACHR) on "Normative changes on migration in Argentina", 161st period of hearings, (March 20, 2017). See <https://www.youtube.com/watch?v=yMPoC03fn7o>

⁵<http://servicios.infoleg.gob.ar/infolegInternet/anexos/195000-199999/197860/norma.htm>

⁶Requirements can be found in: http://www.migraciones.gov.ar/accesible/indexP.php?identidad_genero

⁷The full text of the law can be found in <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/138/texact.htm>. Article 5.c: "The person who without authorization or to illegitimate ends ... Trades in narcotics, chemical precursors or any other raw material for its production or holds them for the purpose of trade, distributes them, uses them as a means for payment, stores or transports them, will be sentenced to imprisonment for 4 to 15 years and subjected to a fine of 45 to 900 fixed units".

Article 14: "The person who has narcotics in her/his power will be sentenced to imprisonment for 1 to 6 years and subjected to a fine of 300,000 to 600,000 Australes. The prison sentence will be of 1 month to 2 years when, because of its small quantity and other circumstances, it is unambiguously clear that the narcotics found are for personal use".

⁸ This is further developed in the Annex called "Informe de perfilamiento".

⁹ Hábeas Corpus 34/16 La Plata, submitted by OTRANS and its resulting report (Court No. 2, Chamber of Appeals and Guarantees)

¹⁰ Guía Práctica para elaborar informes sobre perfilamiento racial, OACNUDH, Alto Comisionado de las Naciones Unidas para los Derechos Humanos, diciembre de 2015, disponible en http://www.oacnudh.org/wp-content/uploads/2016/02/guia_practica_informes_perfilamiento_racial.pdf

¹¹ OACNUDH, op. cit.

¹² <http://www.lapoliticaonline.com/nota/89287/>

¹³ A few examples: <http://miradorvirtual.com.ar/un-travesti-detenido-por-venta-de-drogas-en-la-via-publica>; <http://www.eldia.com/policiales/cuatro-travestis-detenido-por-venta-de-droga-en-la-zona-roja-89144>; <http://www.eldia.com/policiales/zona-blanca-vivimos-en-un-barrio-tomado-por-la-droga-118137>.

¹⁴ Among others in the cases Bulacio v/Argentina

(http://www.corteidh.or.cr/docs/casos/articulos/seriec_100_esp.pdf)

and Penal Miguel Castro Castro v/Peru (http://www.corteidh.or.cr/docs/casos/articulos/seriec_160_esp.pdf)

¹⁵ Defensoría de Casación de la Provincia de Buenos Aires (press release)

<http://www.defensapublica.org.ar/noticias.aspx?id=153>

¹⁶ Law 26743, art. 1.c "Every person has the right ... to be addressed accordingly to their gender identity..."

¹⁷ The information in this section is based on OTRANS' own documentation gathered through visits to police stations and prisons as well as interviews with imprisoned *travestis* and trans women. It is also based on the reports of the Gender-Based Violence Observatory under the BAP Ombudsman Office (<http://www.defensorba.org.ar/ovg/>)

¹⁸ Verbitsky decision (May de 2005), available at <http://www.ppn.gov.ar/?q=node/260>

¹⁹ Habeas Corpus 00001-17 admitted by Court No. 6 in Florencio Varela proved the high degree of vulnerability and abuses suffered by *travestis* and trans women imprisoned in Unit 32 and the lack of medical care in the facility..

²⁰ A/HRC/8/34, May 2008.

²¹ A/HRC/22/4, December 2012

²² A/HRC/22/4, December 2012