

CIS, TRANS AND LESBIAN WOMEN IN SITUATIONS OF VIOLENCE AND ACCESS TO JUSTICE IN NORTHWEST ARGENTINA: FROM DIAGNOSIS TO ACTION*

MARÍA FERNANDA ROTONDO, FERNANDO ESTEBAN BARRIENTOS,
PARACHE ROCÍO GRAMAJO, MARTÍN EMILIO GONZÁLEZ,
FLORENCIA VALLINO MOYANO**

Abstract:

This paper is an excerpt of the project, “Cis, trans, and lesbian women in situations of violence and access to justice in Northwest Argentina. From diagnosis to action,” carried out by ANDHES and CLADEM in Jujuy and Tucumán from 2020 to 2023. The project presents the results of the participatory research carried out to determine the status of the Argentine legislation regarding LGBTI+ people in relation to the general context and their vulnerability in access to rights and obstacles in the access to justice faced by trans and transvestite women in the Northwest of Argentina.

1. Introduction

Beyond the regulatory advances in Argentina, the population of trans and transvestite women continues to be subject to acts of violence, oriented by discrimination against non-normative gender identities. This discrimination becomes visible in structural obstacles to access to basic rights such as the right to education, health, work, access to justice, identity, and the right to a life free of violence, among others.

As a result of this structural discrimination, the average life expectancy of a trans/transvestite woman varies between thirty-five and forty years, in contrast to the general life expectancy in the region, which is seventy-five years. Transvesticides and transfemicides represent the main causes of death for this population. It is the end of a continuum of violence that begins with expulsion from the home, exclusion from the education system, the health system, and the labor market, early initiation into sex work, the permanent risk of contracting sexually transmitted diseases, criminalization, social stigmatization, pathologization, persecution, and police violence. This web of violence constitutes the reality in which their lives develop from the moment they decide to manifest their identity as trans women and transvestites.

In this context, ANDHES¹ and CLADEM² carried out a project called

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** Institutional Affiliation: Andhes (Noa Lawyers for Human Rights and Social Studies).

1. See ANDHES, <https://www.andhes.org.ar/> [<https://perma.cc/5LXS-2R5U>] (last

“Access to justice for cis, trans, and lesbian women experiencing violence in Northwest Argentina: from diagnosis to action.” The project was developed in Jujuy and Tucumán over three years (2020–23) and was sponsored by the UN Trust Fund under the Spotlight Initiative.³

The main objective of this project was to contribute to the elimination of barriers to access to justice for cis, trans, and lesbian women in situations of violence in Tucumán and Jujuy. This was accomplished through the construction of a participatory diagnosis of the main issues, education, and democratization of legal tools, including the defense of these rights and advocacy in public policies.

Access to justice does not refer to mere access to state courts but to the right of persons without distinction of sex, race, sexual identity, political ideology, or religious beliefs to obtain a satisfactory response to their legal needs. Access to justice implies both the relationship between a given group of people and the state institutions that resolve conflicts as well as the structural conditions that must be in place to access justice in the first place.⁴ The project’s participant group consisted of more than twenty cis, trans and lesbian women belonging to disadvantaged neighborhoods, LGBTI+ organizations, and indigenous, peasant and migrant communities living in urban, rural and peri-urban areas of Tucumán and Jujuy.

Thus, this paper is a summary of the results obtained during the first year of the participatory research process that reflects the state of affairs in Argentina through an analysis of its LGBTI+ legislation and the general context of access to rights and the obstacles to access to justice that specifically affect trans and transvestite women in Northwest Argentina.

2. Methodology

During the process of construction of the participatory diagnosis on the obstacles in the access to justice of cis, trans and lesbian women, we worked from a *qualitative research* approach since this immerses the researcher in the conditions, contexts and institutional processes to understand the discursive practices of their social actors. The epistemological perspectives that support it are the *interpretative* and *sociocritical paradigms*, focused on the understanding of the meaning of people’s actions that reveals the imaginary and representations of the subjects, as well as on the transformation of their realities.

From this point of view, we assume that knowledge is constructed, that people interpret reality, and that the researcher is involved with the object of

visited Sept. 20, 2023).

2. See CLADEM, <https://cladem.org/> [<https://perma.cc/VEG8-2A5F>] (last visited Sept. 23, 2023).

3. Grantees, Spotlight Africa and Latin America (2019), U.N. WOMEN, https://unfpa.org/en/grant-giving/unfpa-grants/grantees-spotlight-africa-and-latin-america-2019#_Americas_Caribbean [<https://perma.cc/75Z3-YG3U>] (last visited Nov. 15, 2023).

4. INECIP, MANUAL DE POLÍTICAS PÚBLICAS PARA EL ACCESO A LA JUSTICIA. AMÉRICA LATINA Y EL CARIBE (2005).

study.⁵ With this logic, we try to identify the deep nature of realities, their dynamic structure, that which gives full reason for their behavior and manifestations.⁶ Furthermore, from this perspective, the existence of valuations and interpretations is recognized at the time of constructing knowledge. Behind any production lies a political-ideological positioning and an epistemological stance. In this sense, we distance ourselves from the positivist and empirical-analytical approach, which seeks to reduce socio-historical reality to objective, linear and descriptive measurements, and then generalize it, thereby eluding its complexity, contradictions, and underlying and symbolic processes.

In this framework, *scientific data* are constructions realized by the researcher from a set of generative procedures that are far from the mere act of “copying” facts of reality or a record presented to us through the senses. It is rather an invention of research activity, an intellectual production oriented by the research objectives and modeled by the theoretical-conceptual structure. Scientific data are meta-discourses through which a certain way of conceiving the facts and phenomena of reality is described, explained, understood, symbolized and communicated.

The method that guided the project is *Action-Participatory Research*. This method appeared in Latin America at the end of the 1960s and beginning of the 1970s in the historical context of the rise of popular struggles, in the expansion of social movements and the criticism of the Social Sciences of classical research methods for their supposed neutrality and apolitical nature, and in the questioning for whom and for what purpose research is carried out.⁷ Thus, in the 1970s, talk of integration between theory and practice, or between research and action, became commonplace among professionals committed to the processes of change that were emerging on a global scale. In the words of Ander-Egg, it became clear that there was a lot of text without context, pure geometry of social space without any impact on concrete realities and without any contribution to the solution of social problems.⁸

In this sense, the objective of participatory research is not only to identify problems, but also to seek solutions to them by providing the resources and actions necessary for the people of that community to solve them themselves:

Action research implies a democratic approach in the way of doing research, a community perspective. It cannot be carried out in isolation; group involvement is necessary. It is considered fundamental to carry out joint decision making, oriented towards the creation of self-critical

5. JOSÉ A. YUNI & CLAUDIO A. URBANO, *TÉCNICAS PARA INVESTIGAR Y FORMULAR PROYECTOS DE INVESTIGACIÓN* (2003) [hereinafter YUNI & URBANO 2003]; JOSÉ A. YUNI & CLAUDIO A. URBANO, *TÉCNICAS PARA INVESTIGAR: RECURSOS METODOLÓGICOS PARA LA PREPARACIÓN DE PROYECTOS DE INVESTIGACIÓN* (2d ed. 2006) [hereinafter YUNI & URBANO 2006].

6. Miguel Martínez M., *La Investigación Cualitativa (Síntesis Conceptual)*, 9 REVISTA INVESTIGACIÓN PSICOLOGÍA, no. 1, 2006, at 123.

7. EZEQUIEL ANDER-EGG, *TÉCNICAS DE INVESTIGACIÓN SOCIAL* (1983).

8. *Id.*

communities with the aim of transforming the social environment.⁹

This allows us to think of Participatory Action Research as a form of democratization and socialization of knowledge in an emancipatory sense because the participating sectors begin to acquire mastery and understanding of the social processes and phenomena in which they are immersed and of the significance of the problems that afflict them.

Undoubtedly, this research methodology has as its source of inspiration and knowledge the pedagogy of Paulo Freire, which from its beginnings sought its coherence in the attempt to be constituted from and with the oppressed, rather than for them; and, above all, it is built with its mentality placed in the Latin American situation in terms of its most acute problems.¹⁰

John Elliot, taking up the contributions of Lewin, the author who created the methodology in question, states that action research implies a spiral model of cycles.¹¹ This model begins with the identification and clarification of the general idea. In other words, it is the situation or state of affairs that we wish to change or improve. In this case, it is about the obstacles and barriers to access justice for cis, trans, and lesbian women in Northwest Argentina. The second activity is that of recognition and review, which can be divided into a) describing the facts of the situation as accurately as possible, and b) explaining the facts of the situation. In other words, it is a matter of moving from the description of the facts to the critical analysis of the context in which they arise.

During this process, the original general idea was constantly revised during the action research process. This is why, instead of “fixing” the object of the research from the very beginning, the author foresaw this possibility in each cycle of the spiral. Part of the author’s revision deals with the fact that it is often necessary to take several steps in each cycle.

At the same time, we guided this Participatory Research process by the methodological designs proposed by decolonial feminisms. These methodologies propose that the recovery of women’s point(s)-of-view(s) is key because the androcentrism of sciences and disciplines has excluded it. This implied we start from their daily and everyday experiences, attending to the matrix of oppression and the co-constitution of race-class-sex-gender that harbors multiple subjects that have been and are oppressed. It allowed us to think of a research methodology that, hand in hand with epistemology, is constructed as a criticism.¹²

At the same time, during the participatory research process, the integrity, confidentiality, and consent of the women with whom we worked were ensured.

9. GREGORIO RODRÍGUEZ GÓMEZ, JAVIER GIL FLORES, & EDUARDO GARCÍA JIMÉNEZ, *METODOLOGÍA DE LA INVESTIGACIÓN CUALITATIVA* (1996).

10. EZEQUIEL ANDER-EGG, *REPENSANDO LA INVESTIGACIÓN-ACCIÓN-PARTICIPATIVA* (3d ed. 2003).

11. JOHN ELLIOTT, *EL CAMBIO EDUCATIVO DESDE LA INVESTIGACIÓN-ACCIÓN* (3d ed. 2000).

12. Mariana Noel Guerra Pérez, *Notas para una metodología de investigación feminista decolonial. Vinculaciones epistemológicas*, 3 *RELIGACIÓN: REVISTA CIENCIAS SOCIALES & HUMANIDADES*, no. 9, 2018, at 90.

3. Data collection techniques

The technique of **life histories** is a favorite technique of research, whose main focus is the analysis and transcription that the researcher makes as a result of the stories of a person about his life or specific moments within it,¹³ and also about the stories and documents extracted from third parties. These include stories and contributions made by other people about the subject of the life history.¹⁴

In this sense, life history was chosen as a technique because it enables a research strategy that generates alternative versions of social history based on the reconstruction of personal experiences. It constitutes a first-order resource for the study of different social facts because it facilitates knowledge about the relationship of subjects with social institutions and their representations. This technique made it possible to translate everyday life into words, gestures, symbols, anecdotes, stories, and constitutes an expression of the permanent interaction between personal history and social history.¹⁵ Life history corresponds to a conception that seeks different alternatives to those research processes that privilege quantitative data. It provides a reading of the social through language in which thoughts and desires are expressed. It makes possible the encounter between the time of each person and the time of the world.

As a complement, the **survey** technique was used, which allowed for a more in-depth gathering of information on situations of rights violations, the types of violence they identified, their knowledge of the places to which they could turn, and the obstacles to accessing them, among other aspects.

In its implementation, the interest does not lie in the specific subject who answers the questionnaire but in the population to which he/she belongs. The main instrument of the survey is the questionnaire. Sierra Bravo defines it as a carefully prepared set of questions on the facts and aspects relevant to an investigation.¹⁶ Through it, the respondents answer in writing, without the direct intervention of any researcher.

It is essential to translate the objectives into concrete questions, and on the other hand, the ability to elicit sincere and clear answers to each question from the addressees, which can then be treated scientifically, i.e., classified and analyzed. The questionnaire of this research included closed, categorized and open-ended questions.

Another technique used was **participatory mapping**, a modality that allows

13. Antonio Víctor Martín García, *Fundamentación Teórica y Uso de las Historias y Relatos de Vida como Técnicas de Investigación en Pedagogía Social*, 7 AULA 41, 42 (1995); SALVADOR PERELLÓ OLIVER, *METODOLOGÍA DE LA INVESTIGACIÓN SOCIAL* (2009).

14. Carl Chiarella, Giulia Iori & Josep Perelló, *The impact of heterogeneous trading rules on the limit order book and order flows*, 33 J. ECON. DYNAMICS & CONTROL 525 (2009).

15. Yolanda Puyana V. & Juanita Barreto G., *La historia de vida: recurso en la investigación cualitativa. Reflexiones metodológicas*, 10 MAGUARÉ 185 (1994).

16. R. SIERRA BRAVO, *TÉCNICAS DE INVESTIGACIÓN SOCIAL: TEORÍA Y EJERCICIOS* 305 (9th ed. 1994).

recording in a participatory graphic form, the different components of a place under study, allowing them to be located and described in space and time, as well as documenting the perceptions that people have about the state, distribution, and management.¹⁷

Its conceptual foundations are based on participatory-action research based on the territory as a fundamental element of the methodology. The community is a participant in the research by contributing its knowledge and experience. In this way, the collective construction of maps allows the updating of individual and collective memory. Participation must be active, organized, efficient, and decisive; experience is recognized as the starting point for discovering the territory; it is from those who inhabit it that it is constructed. It is a participatory exercise that took place in the face-to-face workshops that were carried out. The main objective was for the participants to recognize, locate, and identify in their neighborhoods/collectives and community/territories the institutions that seem important to them (e.g., state, organizations, and NGOs) and that play an important role in eradicating violence against women and girls in order to investigate the *common* problems that it presents collectively.

In order to use it, the following guidelines were used as suggested by Ardón: a) to document the perception of community space management by community inhabitants; b) to identify and graphically locate community resources and their description by local inhabitants; c) to facilitate the orderly collection of information; and d) to make an inventory of basic infrastructure services at the community level.¹⁸

Finally, the **interview** technique was used, through which the researcher obtains descriptions and information provided by the same people who act in a given social reality.¹⁹ In line with the Life Histories, the central objective of the interviews was to capture what was important in the minds of the informants: their meanings, perspectives, and definitions; in short, the way in which they see, classify, and experience the world. In the interview, the value of subjectivity was recovered, and we had the possibility of accessing relevant and significant information about the lives of the subjects, which allowed us to interpret and understand the social, cultural, and political dimensions of the scenarios in which they act. In this case, we will seek to identify the advances, changes and new perspectives that CTL women can share by implementing this technique with the advanced process.

As a variant, the **group interview** technique or the so-called **focus group** was implemented, which is more interactive than the interview since each participant's response constitutes a stimulus for the others.²⁰ In short, the group interviewer participates in the idea that the discovery and capture of meanings takes place starting "from the group," in collaboration with the group, or working

17. MARIO ARDÓN MEJÍA, MAPEO PARTICIPATIVO COMUNITARIO 4 (1998).

18. *Id.*

19. YUNI & URBANO 2003, *supra* note 5.

20. RUT VIEYTES, METODOLOGÍA DE LA INVESTIGACIÓN EN ORGANIZACIONES, MERCADO Y SOCIEDAD: EPISTEMOLOGÍA Y TÉCNICAS (2004).

“within the group.” The term group is understood as synonymous with the collective of people who share interests, values, social situations, or the same experience.²¹

4. Regulatory Framework²²

In Argentina there is a fairly complete set of regulations, both at the international and local levels, that contemplates the rights of the LGBTI+ community. This is structured in the following manner.

4.1. Montreal Declaration

On July 29, 2006, the International LGBT+ Human Rights Conference occurred within the framework of the World Outgames, a sports and cultural event organized by the LGBTI+ community held in Montreal, Canada.²³ This conference sought to raise awareness about the rights of this collective and included the participation of jurists, activists, and renowned personalities such as Claire L’Heureux-Dubé (former Supreme Court of Canada judge) and Louise Arbour (former United Nations High Commissioner for Human Rights 2004–08), among other speakers.

It is in this context that the Montréal Declaration emerged, which covers all aspects of the lives of LGBTI+ people and is divided into five sections.

The first, “Fundamental Rights,” calls for safeguarding and protecting the most basic rights of LGBTI+ people. To this end, the first section sets out and details how these rights are violated and highlights the enormous concern that the situation generates.

The second section, entitled “Global Challenges,” describes a diagnosis of the situation, mentioning the next goals to be achieved at the global level.

Thirdly, the “Diversity of the LGBT+ community” theme is developed. This community consists of a plurality of people, so it is of great importance to maintain respect and non-discrimination both outside and inside the group.

In a fourth point, reference is made to “Participation in society” concerning the different aspects of the life of any person, such as work, education, health care, and media, among others. It is intended to transcend the legal framework and appeal to the respect of all people who make up society towards LGBTI+ people.

Finally, the last section, called “Creating Social Change,” is a call for everyone to make an effort to improve the local and global situation of the

21. YUNI & URBANO 2006, *supra* note 5.

22. This section is an excerpt from a complimentary publication: BARRIENTOS, FERNANDO ESTEBAN & GONZÁLEZ, MARTÍN EMILIO, PROTOCOLO PARA LA INVESTIGACIÓN Y LITIGIO EN LOS CASOS DE TRAVESTICIDIOS Y TRANSFEMICIDIOS 14 (2022).

23. *Launch of the 1st World Outgames and the International Conference on LGBT Human Rights*, MONTREAL 2006 (July 26, 2006), https://www.montreal2006.info/en_release_26_july_2006.html [<https://perma.cc/HV72-PQCZ>].

LGBTI+ community.

The preamble to the Declaration states that “[t]he world has gradually accepted that individual human beings have different sexes, racial or ethnic origins, and religions, and that these differences must be respected and not used as reasons for discrimination. But most countries still do not accept two [sic] other aspects of human diversity: that people have different sexual orientations and different gender identities; that two women or two men can fall in love with each other; and that a person’s identity, as a female or male or neither, is not always determined by the type of body into which they were born.”

Although it is not binding, this declaration was relevant to make visible and guarantee the recognition of the rights of the LGBTI+ community pronounced at the international level.

4.2. Yogyakarta Principles

In November 2006, an international group of experts met in the Indonesian city of Yogyakarta to develop a set of principles for applying international human rights law standards to issues affecting LGBTI+ people.²⁴ Out of this meeting emerged the Yogyakarta Principles, a set of international legal principles on sexual orientation and gender identity that identify specific rights and related obligations and duties incumbent upon States to ensure that LGBTI+ people can exercise and enjoy their human rights.

Although not legally binding, the Yogyakarta Principles soon became a very useful reference for parliamentarians and other relevant actors, and an important source of interpretation of national and international legislation, as will be seen in the analysis of some related rulings.

Among the rights included in the 29 Principles are the right to non-discrimination; human and personal security; economic, social, and cultural rights; the right to expression, opinion, and association; the right to asylum, and to participate in cultural and family life. In turn, each principle includes specific recommendations on how to end discrimination and abuse.

Although these principles cover a very broad spectrum of situations and vital aspects of LGBTI+ people, a decade after their launch, it was agreed to revise them to include elements that had been left out and that different actors had been missing, for example, those related to gender expression and sexual characteristics. Thus, in November 2017, the Yogyakarta Principles plus ten were adopted as a supplement to the original Principles.²⁵

24. LOS PRINCIPIOS DE YOGYAKARTA: PRINCIPIOS SOBRE LA APLICACIÓN DE LA LEGISLACIÓN INTERNACIONAL DE DERECHOS HUMANOS EN RELACIÓN CON LA ORIENTACIÓN SEXUAL Y LA IDENTIDAD DE GÉNERO (2006), <https://yogyakartaprinciples.org/principles-sp/> [<https://perma.cc/A5AS-CRDU>].

25. LOS PRINCIPIOS DE YOGYAKARTA MÁS 10: PRINCIPIOS Y OBLIGACIONES ADICIONALES DE LOS ESTADOS SOBRE LA APLICACIÓN DE LA LEGISLACIÓN INTERNACIONAL DE DERECHOS HUMANOS EN RELACIÓN CON LA ORIENTACIÓN SEXUAL, LA IDENTIDAD DE GÉNERO, LA EXPRESIÓN DE GÉNERO Y LAS CARACTERÍSTICAS SEXUALES PARA COMPLEMENTAR LOS PRINCIPIOS DE YOGYAKARTA

These principles affirm the primary obligation of States to implement human rights, each of which is accompanied by detailed recommendations to States. The document also underscores that all actors are responsible for promoting and protecting the human rights of sexual diversity. Therefore, additional recommendations were made to the UN human rights system, national human rights institutions, the media, non-governmental organizations, and others to protect and ensure respect for the rights of this historically segregated minority.

Already in its First Principle, on the “right to the universal enjoyment of human rights,” it states that “all human beings are born free and equal in dignity and rights. Human beings of all sexual orientations and gender identities are entitled to the full enjoyment of all human rights.”²⁶ As noted, this principle emphasizes that international human rights law affirms that all persons, regardless of their sexual orientation or gender identity, are entitled to the full enjoyment of all human rights.

Then, for the avoidance of doubt, Principle 2 states that “all persons are entitled to the enjoyment of all human rights, without discrimination on the basis of sexual orientation or gender identity” and adds that “all persons are entitled to equality before the law and are entitled, without distinction, to equal protection of the law, whether or not the enjoyment of another human right is also affected. The law shall prohibit any discrimination and guarantee to all persons equal and effective protection against any form of discrimination.”²⁷ It then recommends that States enshrine in their national constitutions, or any other relevant legislation including by amendment and interpretation, the principles of equality and non-discrimination on the grounds of sexual orientation or gender identity, as well as ensure the effective realization of these principles.²⁸

Principle three, which refers to the right to recognition as a person before the law, states:

Every human being has the right to recognition everywhere as a person before the law. Persons in all their diversity of sexual orientations or gender identities shall enjoy legal capacity in all aspects of life. The sexual orientation or gender identity that each person defines for himself or herself is essential to his or her personality and constitutes one of the fundamental aspects of self-determination, dignity, and freedom. No person shall be forced to undergo medical procedures, including sex reassignment surgery, sterilization or hormone therapy, as a requirement for legal recognition of their gender identity. No condition, such as marriage or parenthood, may be invoked as such in order to prevent legal recognition of a person’s gender identity. No person shall be subjected to pressure to conceal, suppress or deny his or her sexual orientation or

(2017), <https://yogyakartaprinciples.org/principles-sp/los-principios-de-yogyakarta-10/> [<https://perma.cc/ZY2F-5ZHH>].

26. See LOS PRINCIPIOS DE YOGYAKARTA, *supra* note 24, at 10.

27. *Id.* at 10-11.

28. *Id.*

gender identity.²⁹

In turn, it obliges States to adapt their domestic legislation to make it easier for any person to rectify his or her personal documentation in order to make it compatible with his or her self-perceived identity.

Principle five refers to the right to security of person and expressly states that “Everyone, regardless of sexual orientation or gender identity, has the right to security of person and to protection by the State against violence or bodily harm, whether inflicted by public officials or by any individual, group or institution.”³⁰ And, among other obligations, it compels States to adopt all necessary legislative measures to impose appropriate criminal penalties for “violence, threats of violence, incitement to violence and harassment related to the sexual orientation or gender identity of any person or group of persons, in all spheres of life, including the family,” as well as to “ensure that the perpetration of such violence is vigorously investigated and, where appropriate evidence is found, that the persons responsible are prosecuted, tried and duly punished, and that the victims are provided with appropriate remedies and redress, including compensation.”³¹

Principle twenty-nine, entitled “Criminal accountability,” states:

Everyone whose human rights are violated, including the rights referred to in these Principles, has the right to hold those directly or indirectly responsible for the violation, whether they are public officials or not, criminally accountable for their actions in a manner proportionate to the gravity of the violation. There shall be no impunity for perpetrators of human rights violations related to sexual orientation or gender identity.³²

It recommends that States remove any obstacles that prevent the prosecution of persons responsible for human rights violations based on sexual orientation or gender identity, thus guaranteeing the right to access to justice for this vulnerable group.

These principles constitute a significant advance in the field of human rights, since the recognition of rights is done so on the basis of the conviction that all human beings, by the mere fact of being human beings, have dignity, a quality by virtue of which they deserve to be treated with certain consideration, as they are sensitive to offenses, contempt, humiliation and lack of consideration by civil society and especially by the States.

4.3. UN Declaration on Sexual Orientation and Gender Identity

At the international level, on December 18, 2008, at the initiative of France and with the support of the European Union, a declaration on human rights, sexual orientation, and gender identity was presented to the plenary session of the

29. *Id.* at 11-12.

30. *Id.* at 13-14.

31. *Id.*

32. *Id.* at 34.

United Nations General Assembly, read by the Argentine ambassador, which was supported by 66 countries out of the 192 that made up the international community.

The declaration expressly condemned all types of violence, harassment, discrimination, exclusion, stigmatization, and prejudice based on sexual orientation and gender identity, as well as murders and executions, torture, arbitrary arrests, and deprivation of economic, social and cultural rights carried out on these grounds.

4.4. Inter-American Convention against Racism, Discrimination and All Forms of Intolerance

In June 2013, in Antigua, Guatemala, the nations that make up the Organization of American States approved the Inter-American Convention against Racism, Discrimination, and All Forms of Intolerance.

The importance of this international instrument derives from the fact that for the first time in history, it recognizes, guarantees, protects, and promotes the right to non-discrimination based on gender identity and/or expression, together with the right to non-discrimination based on sexual orientation.

4.5. National Constitution

It is necessary to remember that some of the above-mentioned international instruments have had a constitutional hierarchy since the Argentine constitutional reform of 1994, as established in Article 75, paragraph 22 of the Constitution, and that all these treaties are those which, in accordance with the provisions of paragraph 23 of the Constitution, oblige the promotion and adoption of positive measures for the full enjoyment and exercise of human rights.³³

Also, in the 1994 reform, the prohibition of negative discrimination was expressly incorporated in various institutes. Thus, the international treaties incorporated into the “constitutional block” not only prohibit all forms of discrimination but also give directives to the Member States to verify and ensure compliance with these provisions in order to make the rules effective and, in turn, give individuals the right to denounce any non-compliance that may occur.

In this sense, the Argentinean Constitution establishes a system of containment against express or implicit forms of negative discrimination, specifically in relation to sexual orientation.

On the other hand, the right to equality is enshrined in Article 16 of the National Constitution, which categorically derives from the extract of the principles that arise from the jurisprudence of the Supreme Court of Justice of the Nation elaborated by Dr. Germán J. Bidart Campos.³⁴

At the same time, Article 19 of our Magna Carta establishes freedom of

33. Art. 75, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.).

34. *Id.* art. 16; BIDART CAMPOS, GERMÁN J., 1 MANUAL DE LA CONSTITUCIÓN REFORMADA 532 (1998).

privacy, which implies legal protection of the different beings and the exercise of that right.³⁵ Arbitrary discrimination is a denial of equality. The prohibition of arbitrary discrimination is a projection of the guarantee of equality in its broad sense, which is, before the law, before the administration, before the courts and between individuals.³⁶

Therefore, there is no doubt that in Argentina, it is absolutely forbidden to carry out or omit any act that arbitrarily discriminates or violates the rights of a person based on his or her sexual orientation or gender identity since the principles and rights recognized by international treaties are fully operative in the domestic legal system, without the need for a national law to regulate them.

4.6. Law 23,590 “Penalization of Discriminatory Acts”

On August 3, 1988, the first law on discriminatory acts was passed in our country, which represented a precedent in our legislation for the promotion and protection of rights. This law repudiates the acts and actions of those persons who arbitrarily prevent, obstruct, restrict or in any way impair the full exercise on an equal basis of the fundamental rights and guarantees recognized in the CN, obliging the active subject at the request of the injured party to “cancel the discriminatory act or cease its realization and to repair the moral and material damage caused.”³⁷

At first glance it seems that the law applies to acts of discrimination against the LGBTI+ community, however, the list of assumptions that the law sets out is exhaustive and does not include grounds such as sexual orientation, gender identity or gender expression. We understand that this law was passed in a social context where the WHO still pathologized sexual orientation and gender identity. Article 2 refers specifically to criminal matters and establishes the following:

[T]he minimum and the maximum of the penal scale of any crime punishable under the Criminal Code or complementary laws shall be raised by one third and one half when committed out of persecution or hatred of a race, religion or nationality, or with the aim of destroying in whole or in part a national, ethnic, racial or religious group³⁸

Thus, for example, a crime of injury or abuse of authority,³⁹ if perpetrated out of racial or religious hatred, will be subject to the aforementioned generic aggravating circumstance.

The same is not true when the crime is motivated by discrimination against the victim’s sexual orientation and gender identity – acts that are undoubtedly discriminatory – but which are not protected or covered by this law for the following reasons:

35. Art. 19, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.).

36. BIDART CAMPOS, *supra* note 34, at 534.

37. Law No. 23592, art. 1°, Aug. 23, 1988, B.O. (Arg.).

38. *Id.* art. 2°.

39. *See* CÓDIGO PENAL [CÓD. PEN.] [CRIMINAL CODE] art. 248 (Arg.).

- a. First, the standard does not contain an umbrella clause, as in the case of human rights covenants or treaties.
- b. Secondly, criminal law is governed by the principle of legality in its highest expression, which implies the exclusion of customary law in the first place.⁴⁰ No new criminal type or punitive aggravation may be created by the latter since the primary rank of the law as a formal source of law is reinforced by the guarantee function it fulfills.
- c. Our National Constitution determines that no inhabitant of the Nation may be punished without a prior trial based on a law prior to the fact of the process.⁴¹ The International Treaties incorporated into the Constitution of the Nation, granted constitutional hierarchy to the principle of retroactivity of the most benign criminal law.⁴²
- d. Finally, in criminal law, analogy (*legis* or *iusuris*) is prohibited in principle, *in malam partem* as a means of creation and extension of criminal precepts, as well as an aggravation of penalties and security measures. Thus, when faced with more than one possible rational meaning of the law, the interpreter must opt for the most restrictive of all.
- e. On the other hand, criminal definitions must be drafted as precisely as possible, avoiding elastic concepts or constant references and providing only for criminal frameworks of limited scope. This constitutes the material aspect of the principle of legality of guarantees against the use of absolutely indeterminate general clauses. Thus, generalization becomes inadmissible when it no longer allows the addressee of the law to understand and know what is prohibited and what is permitted.

Due to all this, the jurisdictional organ will never be able to increase the level of generalization of the positive elements of the criminal type, that is to say, to become more general, thus widening the scope of application. For this reason, no judge may apply the aggravating circumstance contemplated in art. 2 of this law when the crime is committed on the grounds of discrimination based on the sexual orientation or gender identity of a person.

It is important to point out that before the approval of Law 23.590 in 1988, the CHA - Argentine Homosexual Community - promoted the inclusion of sexual orientation and gender identity within the grounds on which discrimination could

40. Art. 19, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.).

41. *Id.* art. 18.

42. *Id.* art. 75, para. 22.; Law No. 23054, art. 9, Mar. 19, 1984 (Costa Rica); International Covenant on Civil and Political Rights, art. 15, para. 1, Mar. 23, 1976, 999 U.N.T.S. 171.

be based, but despite this, their requests were not taken into account.⁴³

Thus, it was not until 2005 that the first bill to amend the law, which proposed the inclusion of sexual orientation and gender identity, was presented. It was approved by the Senate in 2006 but lost parliamentary status in the Chamber of Deputies in 2007. That same year, a new bill was presented, which obtained the media sanction in 2008 but then lost parliamentary status in the Senate. With the support of the CHA and the FALGBT - Argentinian LGBT Federation -, the bill was reintroduced several times, but unfortunately, it was never dealt with by both chambers.

4.7. Law 26,150 on Comprehensive Sex Education

Law No. 26,150 establishes that all students have the right to receive ESI - Comprehensive Sexual Education - in all public educational establishments of state and private management.⁴⁴ This Law is the result and, at the same time, a necessary complement of an international and national legislative framework that Argentina has and promotes in the field of human rights.⁴⁵ This legislative advance, added to and articulated with another set of norms, positions the country in a scenario of special opportunities to make effective the rights of each and every child and adolescent with regard to Comprehensive Sexual Education.

4.8. Equal Marriage Law 26,618

On July 15, 2010, Argentina passed the Equal Marriage Law.⁴⁶ It was the first country in Latin America to recognize this right, whose historic achievement placed the sexual diversity agenda in the political, state, and public sphere, and its legislation, at the international forefront in terms of recognition of rights for the LGBTI+ community.⁴⁷

4.9. Gender Identity Law 26.743

The LIG (Gender Identity Law) was the result of a historical struggle in the political arena of different civil society organizations and LGBTQI+ NGOs, which promoted the inclusion and recognition of the rights of trans people, thus promoting a paradigm shift in terms of gender at the legislative level.⁴⁸ On May 9, 2012, the Congress of the Argentine Nation, sanctioned with force of law.

The passing of the Gender Identity Law gave public visibility to the problem of transvestites/trans people, and it became an important legal instrument to allow the members of this community to become full subjects of law by recognizing

43. See Law No. 23590, Aug. 17, 1988, B.O. (Arg.).

44. See Law No. 26150, Oct. 23, 2006, B.O. (Arg.).

45. See *id.*

46. See Law No. 26618, July 21, 2010, B.O. (Arg.).

47. See *id.*

48. See Law No. 26743, May 23, 2012, B.O. (Arg.).

different rights and providing them with different tools for the exercise and full enjoyment of their human rights.

Through the enactment of this law, the transvestite-trans community obtained the right to gender identity. Article 1 recognizes that everyone has the right to recognition of their gender identity, to the free development of their person in accordance with their gender identity, and to be treated in accordance with their gender identity and, in particular, to be identified in this way in all those instruments that prove their identity with respect to the first name/s, image and sex with which they are registered therein. In this way, the law obliges all persons to have their self-perceived gender identity respected, whether or not it corresponds to the sex and gender assigned by the State at birth, as well as to have such identities recognized fully. Thus, the human right to freedom of gender expression became an operative legislative right.

Article 2 defines gender identity, in line with the definition upheld by the Yogyakarta Principles, as the following:

the internal and individual experience of gender as each person feels it, which may or may not correspond to the sex assigned at birth, including the personal experience of the body. This may involve modification of bodily appearance or function through pharmacological, surgical or other means, provided that this is freely chosen. It also includes other expressions of gender, such as dress, speech, and manners.⁴⁹

By upholding this definition, the law undermined the structures of domination on which the heterosexist patriarchy was founded since it imposes a new paradigm. This paradigm was one where gender identities and expressions are constructed by a multiplicity of views and experiences, thus opposing the binary imposition -gendered sex-, with the consequent polarization and asymmetry of genders.

This law recognizes the rights of a highly vulnerable group and promotes the breaking of the male/female dichotomy, which sustains political, cultural, economic, and social asymmetry.

In short, through this law, non-binary gender identities were recognized and validated and became a fundamental piece of the legal scaffolding protecting Human Rights, being one of the first links in the chain of judicial recognition of the automatization of bodies and the very creation of genders as post-gender hybrids.

4.10. Law 26,791 on New “gender-based” crimes. Advancement of jurisprudence

In line with the generalized trend in comparative law, on November 14, 2012, the Chamber of Deputies of the Nation sanctioned this law that introduced, gender-based criminality to the punitive digest for the first time in the history of Argentine criminal law. Although only referring to the crimes of homicide and

49. See LOS PRINCIPIOS DE YOGYAKARTA, *supra* note 24, at 8.

intentional injuries, incorporating two aggravating factors, it provided answers to the problem that today we colloquially identify as hate crimes and femicide.⁵⁰

The first of the above-mentioned aggravating circumstances is enshrined in Article 80, paragraph 4 of the Criminal Code.⁵¹ It focuses on sexual orientation, gender identity and its expression. The second, femicide (Article 80, paragraph 11), strictly relates to the problem of gender violence.⁵²

Some renowned doctrinarians expressed their opinion on the content and scope of the concept of femicide when this law went into force, stating categorically that trans women could not be, under any pretext, passive subjects of this crime.

Despite this, there are currently several court rulings to the contrary. This is what happened in the city of Salta in 2016 when Carlos Plaza and Juan José del Valle were sentenced to life imprisonment. They were declared co-perpetrators of the crime of femicide committed to the detriment of **Gimena Álvarez**.⁵³

In the same vein, on April 18, 2019, the Accusation Chamber of the Province of Córdoba confirmed the trial requisition of Fabián Casiva, who was charged with the femicide of **Azul Montoro**, a twenty-four-year-old trans girl.⁵⁴

Subsequent to these sentences, the courts began to apply a new look at the time of qualifying and sentencing these crimes, including applying the aggravating circumstance for hatred to the gender identity of the victim. Thus, on December 18, 2019, Chamber IV of the Criminal Chamber of the Judiciary of the province of Tucumán sentenced the aggressor of **Lourdes Anahi Reinoso**, through an abbreviated trial, to life imprisonment for triple aggravated homicide for having mediated a relationship with the victim, for hatred of gender identity and for having mediated gender violence (art. 80 inc. 1, 4 and 11 CP).⁵⁵

On June 13, 2019, the Criminal Chamber of the First Judicial District of the Judiciary of the Province of Santa Cruz, in the case of **Marcela Chocobar**, convicted the aggressor of homicide qualified by hatred of the victim's gender identity.⁵⁶

50. See Law No. 26791, Dec. 11, 2012, B.O. (Arg.).

51. CÓDIGO PENAL [CÓD. PEN.] [CRIMINAL CODE] art. 80, para. 4 (Arg.).

52. *Id.* art. 80, para. 11.

53. Pía Ceballos, *Fallo histórico por el femicidio de una mujer trans en Salta*, UNIDIVERSIDAD (Aug. 2, 2016), <https://www.universidad.com.ar/fallo-historico-por-el-femicidio-de-una-mujer-trans-en-salta> [<https://perma.cc/96P5-D482>].

54. Alexis Oliva, *Juicio Azul Montoro: Inédita condena por femicidio a joven trans*, PRESENTES (Aug. 22, 2019), <https://agenciapresentes.org/2019/08/22/juicio-azul-montoro-inedita-condena-por-femicidio-a-joven-trans/> [<https://perma.cc/HT5N-VMVX>].

55. CÓDIGO PENAL [CÓD. PEN.] [CRIMINAL CODE] art. 80 para. 1, 4, 11 (Arg.); see Cámara en lo Penal Tucumán, sala 4 [Criminal Court of Tucumán], 18/12/2019, “Paladini Julio Tomas / homicidio agravado” (Arg.).

56. *Juicio Marcela Chocobar: expectativa por la sentencia del transfemicidio*, PRESENTES (June 12, 2019), <https://agenciapresentes.org/2019/06/12/juicio-marcela-chocobar-expectativa-por-la-sentencia-del-transfemicidio/> [<https://perma.cc/2KD7-HMDX>]; CÓDIGO PENAL [CÓD. PEN.] [CRIMINAL CODE] art. 80 para. 4 (Arg.).

In parallel, on June 18, 2018, the Oral Criminal and Correctional Courts No. 4 of the Federal Capital declared Gabriel David Marino criminally co-perpetrator of the *transvesticide* of trans-activist **Diana Sacayán**, under the figure of art. 80 inc. 4.⁵⁷ For the first time, an Argentine court used the word “Transvesticide” in its judicial sentence, abiding by both the meaning and scope of the sentence.⁵⁸

However, in the midst of so much progress, on October 5, 2020, the National Chamber of Criminal Cassation confirmed the life sentence for Gabriel Marino. However, the court went backwards and removed the figure of “transvesticide” from section 4 of article 80 of the Criminal Code, on the understanding that gender hatred was not proven. The court nevertheless maintained the aggravating circumstance of femicide.⁵⁹

In this way, the court narrowed gender violence to that committed by men against women, in a binary sense, ignoring other femininities, LGBTI+, and dissidence.

Thus, the doctrine and jurisprudence went through a quite vertiginous path. At first, there was disagreement as to whether the court should apply the aggravating circumstance of femicide to the deaths of trans women, which became accepted after the Gender Identity Law. Currently, some sectors of the LGBTI+ movement prefer that the violent deaths of trans and transvestite women be understood as a hate crime or a gender identity bias crime since this makes the difference between the violence suffered by cis women and that suffered by trans and transvestite women, the latter being the overcoming position.

4.11. The limitations of the aggravating circumstance of “hate crimes”⁶⁰

The following development is framed as a critical contribution in order to continue rethinking the margins and utilities of the criminal figure that criminalizes “hatred” of gender identity, gender expression, and sexual orientation.

As part of the team of the Human Rights organization, ANDHES, that filed the lawsuit for the transfemicide of Ayelén Gómez in 2017, we understood that it was not enough to speak only of hate or to limit ourselves to the structure of a “hate crime,” a proposal built in Anglo-Saxon law at the end of the 1980s as a result of ethnic-racial conflicts.

In Latin America, the concept of hate crime was adopted mainly to describe

57. *Aniversario del fallo histórico por el crimen de Diana Sacayán*, ARGENTINA GLOBAL (18 de junio de 2021), <https://www.argentina.gob.ar/noticias/aniversario-del-fallo-historico-por-el-crimen-de-diana-sacayan> [<https://perma.cc/77J6-9QT4>].

58. *Id.*

59. *Caso Diana Sacayán: el Ministerio Público Fiscal presentará un recurso extraordinario contra el fallo que quitó la agravante de “odio a la identidad de género”*, Fiscales (Oct. 6, 2020), <https://www.fiscales.gob.ar/genero/caso-diana-sacayan-el-ministerio-publico-fiscal-presentara-un-recurso-extraordinario-contr-el-fallo-que-quito-el-agravante-de-odio-a-la-identidad-de-genero/> [<https://perma.cc/F3X8-AKCU>].

60. *See* CÓDIGO PENAL [CÓD. PEN.] [CRIMINAL CODE] art. 80 para. 4 (Arg.).

homicides of LGBTI+ people, historically incorporated by the Gay Group of Bahia, led by a historian at the University of Salvador, Luiz Mott, who coordinated several reports of the group on violence against “sexual minorities” in Brazil since the mid-1990s.⁶¹

In recent decades in several countries (Peru, Chile, Colombia, Nicaragua, Argentina, among others), different meanings have been constructed for the definition of hate crime, expressed differently in the categories of analysis as well as in the typification of their legal systems.

In Argentina, section 4 of Article 80 of the Penal Code refers to crimes committed against a person because of their sexual orientation/gender expression and identity. Within these categories, it refers to those committed against transvestites and trans women. Thus, the unlawful conduct is attributable to “whoever kills for gender hatred of sexual orientation, gender identity or its expression,” it does not specifically mention the term “*transvesticide or transfemicide*,” but it is the jurisprudence that has interpreted the term in the appropriate manner, capturing the essence of the terminology and which was conceptualized in the first instance ruling for the murder of Diana Sacayán.⁶²

The judges of that court constructed, throughout the hearings of the debate, the concept of “*transvesticide/transfemicide*,” relying on the experiences of trans women and transvestites, on testimonies, and the history of the transvestite-trans collective in Argentina.

Following the doctrine, jurisprudence, and theoretical constructions of transvestite and trans activists, the position adopted by the criminal law in relation to understanding the crimes committed against this group as crimes motivated by “hate” is not useful at the time of substantiating a judicial process in terms of demanding a sentence that contemplates the contexts of life that make these contexts of death possible, but rather, what it does is to limit the interpretation of the assumptions provided in this section.⁶³

We understand that a correct interpretation of this criminal phenomenon must refer to the objective framework of discriminatory social stereotypes that place certain groups at particular risk of violence, which is why we propose to call them “crimes of prejudice” or “gender crimes.”

In this line of thought, we agree with what Rita Segato said when she mentions that it is better not to speak of the hate motive: “I do not use, for example, the expression ‘hate crimes’ because it is a monocausal explanation and because it alludes to the intimate, emotional sphere as the sole cause.”⁶⁴ While it

61. Renaud René Boivin, *El Concepto del Crimen de Odio por Homofobia en América Latina. Datos y discursos acerca de los homicidios contra las minorías sexuales: el ejemplo de México*, 6 REVISTA LATINO-AMERICANA DE GEOGRAFIA E GÉNERO 147, 149 (2015).

62. Tribunal Oral en lo Criminal y Correccional Nro. 4 de la Capital Federal [Criminal and Correctional Oral Tribunal No. 4 of the Federal Capital], 18/6/2018, “Gabriel David Marino / homicidio agravado” (Arg.).

63. CÓDIGO PENAL [CÓD. PEN.] [CRIMINAL CODE] art. 80 para. 4 (Arg.).

64. RITA LAURA SEGATO, LAS NUEVAS FORMAS DE LA GUERRA Y EL CUERPO DE LAS MUJERES 59 (2013).

is true that the idea of the aggressor's "hatred" of his victim is an easy premise to grasp and understand, even superficially, it is necessary to understand that this nomination has great limitations in practice, precisely because of its simplicity. Above all, when the criminal phenomenon that the figure of art. 80 inc. 4º of the PC, transvesticides and transfemicides, tries to explain turns out to be anything but simple.⁶⁵

It is not advisable to understand these crimes as hate crimes, because what we intend is to account for the highly complex scenes in which psychological and social dimensions are combined, such as social structures that, from a patriarchal perspective, provide a scenario in which the transvestite-trans collective is violated and excluded on a daily basis.

To speak of "hatred" is limiting because it is an explanation that refers to private emotions and to the effects of the aggressor's private sphere, when in fact, when speaking of transvesticides, we are talking about a scenario shaped by interests of orders that go beyond the sphere of the perpetrator's intimacy.

The monocausal and common-sense explanation that attributes lethal gender aggressions to the motive of "hate"—that is, that defines femicides, transfemicides and transvesticides as "hate crimes"—has done great damage to our ability to understand what really happens in the variety of gender crimes of our criminal normative digest.⁶⁶

For this purpose, it is necessary to know the applicable criminal dogma always from the point of view of the victims—transvestite and transsexual groups—of this criminal phenomenon, referring in this case to hate crimes as "gender crimes."

Another of the problems that usually arise in these cases, and which limit the prosecution of the crime, occurs at the beginning of the investigations. Upon receiving the case, the Prosecutor's Office on duty and of the matter usually classifies them as simple homicides, but it should be remembered that the classifications at the beginning of the criminal investigations are merely provisional.

Investigating transvesticides and transfemicides as gender crimes from the outset ensures that the most complex and broadest hypothesis is upheld from the beginning, which means that no clue or line of investigation is left without being evaluated, and it also implies a strong symbolic impact on society, by making visible the distinctive and characteristic element of the crime, which is violence against gender identities.

We can then define that violence or "hate crime" has its roots in structural discrimination, which in turn is a product of the patriarchal mandate that imposes certain social norms and behaviors, which considers deviant whatever deviates from them. These mandates are what legitimize the attack of the perpetrator of the crime, who in this homicidal act enunciates that any other sexual expression or orientation must be censured, corrected and punished.

The Inter-American Commission on Human Rights (IACHR) mentions in a

65. *Id.*

66. RITA LAURA SEGATO, *LA GUERRA CONTRA LAS MUJERES* 87 (2d ed. 2021).

non-exhaustive way some possible indications of hate crimes that understand hate as a cultural idea, a structural condition of oppression—and not as an intrinsic motivation of the aggressor:

- the high degree of violence with which the person perpetrated the crime and the signs that clearly exceed the mere intent to kill;
- prejudices harbored by the perpetrator and manifested before, during or after the crime;
- signs of aggression and symbolic violence expressed on the bodies, such as mutilation of genitals, implants, etc.; and
- the character of the victim as a reference and activist, whether the death had a great impact on this group and whether it had the symbolic effect of reproducing the feeling of lack of protection and insecurity suffered by its members.

It could then be affirmed that gender or gender-based crimes are more likely to be especially brutal compared to common crimes. All this makes it necessary to contextualize and record these facts in a scenario of violence to which transvestites and transgender people are exposed, who are attacked and killed in a space of permissiveness and impunity.

As explained above, some judges have opted for the implementation of the crime of femicide for the violent deaths of trans and transvestite women, as seen in section 11 of Article 80 of the Criminal Code. This trend, at the time, was a novel implementation, but current jurisprudence has opted to take as primordial the subsumption of the criminal figure in the 4th subsection because it is more in line with the reality of the collective and because of the great symbolic burden that comes with not identifying crimes against transvestites and trans women in criminal figures that are specific to the violent deaths of cis women, thus leaving aside the specificity and characteristics of crimes committed against transvestites. These crimes have their own characteristics and contexts in which they are committed, differentiating them from femicides.

4.12. Law 27,636 on Trans Labor Quota (2021)

In the year 2021, an affirmative action law was enacted to provide access to formal employment for transvestites, transsexuals, and transgender people. The “Diana Sacayán-Lohana Berkins” law, named in memory of two historical transvestite activists, establishes a minimum quota of 1% of the positions and posts of the National State for this population.⁶⁷ Its objective is to allow transvestites and trans women to have access to a formal job under equal

67. *Más derechos: a dos años de la sanción de la Ley de Cupo Laboral Travesti- Trans, más de 700 personas trabajan en organismos del Gobierno Nacional*, Argentina Global, (June 26 de 2023), <https://www.argentina.gob.ar/noticias/mas-derechos-dos-anos-de-la-sancion-de-la-ley-de-cupo-laboral-travesti-trans-mas-de-700> [<https://perma.cc/RJ9K-9WU8>].

conditions.⁶⁸

In order to guarantee compliance with the quota, the national State, including the three branches of government that comprise it, the Public Ministries, decentralized or autarchic agencies, non-state public entities, and State enterprises and corporations, must establish job reserves to be filled exclusively by transvestites, transsexuals or transgender persons, in all the regular hiring modalities in force.⁶⁹

The Transvestite Trans Labor Quota Law contemplates that those who have not completed their studies may finish them and continue training.⁷⁰ It will seek to guarantee compulsory education and training for transvestites, transsexuals and transgender people in order to adapt their situation to the formal requirements for the job in question.⁷¹

It also requires actions aimed at raising awareness with a gender and diversity perspective in the workplace, in order to guarantee the dignified treatment of transvestites, transsexuals and transgender persons in the workplace.⁷² In some provinces of Argentina, local regulations have been enacted to allow transvestites and non-binary transgender people to access employment in the provincial public administration.⁷³

5. Context

However, this legislative analysis, which began in the late 1980s in Argentina, was propelled and accompanied by LGBTI+ social movements that made this country a pioneer in regulating and recognizing the rights of diversities, mainly in Latin America.

This began at the end of the 19th century and opened the way for the discipline that linked neurology with psychiatry, relegating homosexuality to a pathological condition and incorporating it into criminology. Thus, as a counterpart to the pathologizing and criminalizing response to non-hegemonic sexual orientations and gender identities, human rights and LGBTI+ organizations began to politicize to defend their rights.

This process was undertaken with great difficulties, not only because of the social reprisals established in the *cisnorma*, but also because the 20th century was besieged by military dictatorships that had a negative impact on the respect for the most basic freedoms and guarantees which included punishing, persecuting and even disappearing members of these groups.

In Argentina, the 1976 civil-military dictatorship, within the framework of the systematic plan of disappearance of persons implemented through State terrorism, although its arrests, murders and disappearances were not strictly based

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

on the persecution, imprisonment and/or disappearance based on the sexual orientation of persons, the fact is that the treatment received by these persons was especially sadistic and brutal.

Rabbi Marshal Meyer, a member of the National Commission for the Disappearance of Persons (CONADEP) reported that he had been able to count the disappearance and death of at least 400 homosexuals, transvestites and sexual dissidents.⁷⁴ In this regard, it is also noted that there was a specific persecution device belonging to the Federal Police, which was the Morality Brigade. This device persecuted men who walked, looked or spoke “strange.”⁷⁵

The regulations that legitimized this action were the well-known “police edicts” that sanctioned those who publicly incited or offered carnal acts. This famous edict was the second clause H, for public scandal, and was used against LGBTI+ people, in the absence of specific laws of the Penal Code.

The Homosexual Liberation Front (FLH) was an essential part of the history of the struggles and resistance of people for sexual diversity in Argentina in the 1970s. The formation of this group led to the opening of new currents of action and avant-garde sexual identity representations.

Likewise, in 1984, the CHA, whose application for legal status was rejected in 1989 by the Argentine courts, finally achieved recognition in 1992 as a civil organization.⁷⁶ In 1993, the Argentine Transvestites, Transsexuals and Transgenders Association (ATTTA) was created. With even greater difficulties, trans and transvestite people worked on the collective search for recognition.⁷⁷

The collective action of trans people, especially transvestites, began in the 1990s, becoming visible in the city of Buenos Aires, which attracted migrants from the interior of the country. These migrants came mainly from the northern Andean provinces, which were conservative and predominantly Catholic areas, and they came to the capital city to escape discrimination and humiliation suffered in their communities in the interior.

In the 1990s and 2000s, diversities found strength in organizations that knew how to weave networks to claim their rights, thus achieving great things such as the Comprehensive Sex Education Law in 2006, the Equal Marriage Law in 2010, the Gender Identity Law in 2012, the Trans Labor Quota Law in 2021, among others.

74. Franco Z Ramírez, *Tortura, muerte y desaparición de la diversidad sexual durante la dictadura*, Norte Grande (25 de marzo de 2021), <https://www.radionacional.com.ar/tortura-muerte-y-desaparicion-de-la-diversidad-sexual-durante-la-dictadura/> [<https://perma.cc/UGJ2-S34E>].

75. Matías Máximo, “*Flores sobre el orín*”: los abusos de los edictos policiales contra los gays, ARCHIVO INFOJUS NOTICIAS (July 26, 2014), <http://www.archivoinfojus.gov.ar/nacionales/flores-sobre-el-orin-los-abusos-de-los-edictos-policiales-contralos-gays-4972.html> [<https://perma.cc/V9UQ-QU5G>].

76. Dora Barrancos, *Géneros y Sexualidades disidentes en la Argentina: de la agencia por derechos a la legislación positiva*, 11 CUADERNOS INTER.C.A.MBIO SOBRE CENTROAMÉRICA Y EL CARIBE, no. 2, 2014, en 23.

77. *Id.* at 33; see LOHANA BERKINS & JOSEFINA FERNÁNDEZ, LA GESTA DEL NOMBRE PROPIO: INFORME SOBRE LA SITUACIÓN DE LA COMUNIDAD TRAVESTI EN LA ARGENTINA (2005).

Although the recognition, guarantee, defense, protection and promotion of the human rights of the LGBTI+ community have legal support at the national and international level, discriminatory practices, rooted in a society marked by the heteronormative, binary and patriarchal paradigm, affect the lives and rights of all subjects of sexual diversity. This is due to the fact that the right to equality and non-discrimination, although recognized, is insufficient.

The most reluctant sectors of the state apparatus, resisting adaptation of their egalitarian criteria and generating a conflictive and tense relationship with society, are the legal system and the Judiciary. These are the ones that reflect and reproduce different forms of social inequality and constitute integral parts of socio-political conflicts that are generated from different forms of inequality, endorsed by the hegemonic paradigm of heteronormativity. The debate on the right to identity, equality and non-discrimination links tensions that manifest themselves in the social, political, legal and religious fields, that is, in the field where power is exercised.

Consequently, at present, the study of this phenomenon encompasses a wide spectrum of specific socio-legal circumstances of resistance, referring to the recognition of different rights by state and doctrinal bodies renowned in the local system, based on the claims made by various social groups.⁷⁸

The criminal offenses of femicide and homicides committed to the detriment of persons of sexual diversity and their application in judicial cases are an example of the complexity of the realization of these rights that the dissident collective possesses. This is due in part to the existence of heteronormative and binary interpretations regarding the concept of gender, gender violence and gender identity, and from this, different obstacles are emphasized that oppose their effective realization, giving rise to proposals for solutions that are also diverse and in more than one opportunity, discriminatory.

5.1. Criminalization of identities

Just to limit the scope of study of this document, we refer to trans and transvestites, who in Argentina have a life expectancy, of 35 to 41 years of age, these people are also expelled from their family and social environments at an early age, and are denied access to public health systems, housing, education and formal employment.⁷⁹ As if this were not enough, these identities were also historically victims of arrests and mistreatment by the security forces, the codes of offences, as well as police edicts, as previously mentioned. All of these were key tools for persecution and harassment, converging in the construction of the criminalization of LGBTI+ identities; and even today they continue to be so.

78. Debates on the concept of gender, femicide, so-called “hate crimes,” the right to health, access to justice, recognition of the legal personality of trans persons, gender equality, different sexual orientations, identities, sexual expressions and practices, etc. AB. GABRIEL ANDRÉS SAGEN, FOMICIDIO, TRAVESTICIDIO O TRANSFEMICIDIO 31 (2019).

79. LOHANA BERKINS, CUMBIA, COPETEO Y LÁGRIMAS: INFORME NACIONAL SOBRE LA SITUACIÓN DE TRAVESTIS, TRANSEXUALES Y TRANSGÉNEROS (2007).

Thus, transvestites and trans identities are the most criminalized identities, for the mere fact of being who they are, of perceiving themselves as such, because the agents of justice respond to prejudices, ideas and preconceptions already established about these vulnerable groups and specific sectors of society.

Police edicts, contravention laws, anti-drug laws and other related regulations are tools used throughout Argentina to penalize and prosecute certain subjectivities, especially gender expressions considered potentially dangerous, “disruptive of public order, morals and good customs.”

The edicts enabled the discretionary use of punitive power by the police forces, who, using legislative powers, not only exercised a disciplinary power, but also controlled the public space, directly attacking -without the possibility of defense-, the circulation and visibility of gays, lesbians, trans and transvestites, with greater emphasis on those who were linked to prostitution/sex work; resulting in a process of stigmatization and persecution - operating selectively - on the trans and transvestite collective, which is institutionally executed through police selectivity, the judicial process, and the penitentiary system, in what has been called the “punitive chain.”

The authorship of these crimes (against life and physical integrity of diversities) is usually in 8% of the cases perpetrated by security forces personnel in the exercise of their state function, configuring all of them as a whole, cases of institutional violence. The Argentine security forces and prison services show a particular viciousness and hatred towards LGBTI+ people, and particularly towards the community of trans women and transvestites.⁸⁰

Security forces tend to intimidate and threaten those who practice prostitution or sex work. This persecution does not end with the arrest, but many times they “build cases” against those who resist arrest without reason or court order. They are isolated in cells shared with men where they are exposed to other types of violence and even death while still in detention.

The authorities do not believe complaints made by the victims, and as a sign of the impunity that protects them, do not investigate the agents who carried out the arrests, much less sanction their behavior. This normalizes it and legitimizes the actions of other security force personnel.

5.2. Transvestite-trans; transvesticide and transfemicide

It is necessary, in order to understand this work, to expose what is understood in Argentina as being a transvestite. Part of the history of the transvestite-trans collective the violence that accompanied its transit through its history of activism and militancy, is reflected in the concept of “transvestite.” This is a social and political construction, mainly Latin American and Argentinean.

In her struggle for the recognition of transvestite identity, Lohana Berkins stated that Latin American transvestite identity had its own circumstances and characteristics that made transvestism a different phenomenon from North

80. OBSERVATORIO DE CRÍMENES DE ODIOS [LGBT], MOTIVADOS POR DISCRIMINACIÓN POR ORIENTACIÓN SEXUAL, EXPRESIÓN E IDENTIDAD DE GÉNERO (2021).

American or European transgenderism.⁸¹

First, Latina transvestites live in different circumstances than many transgender people from other regions who often have recourse to sex reassignment surgeries and aim to “re-accommodate themselves in the binary logic as female or male.”⁸²

Secondly, because most Latin American transvestites claim the option of occupying a position outside the male/female binarism, proposing alternative understandings of transvestism as an embodied identity that transcends the politics of binary corporeality and dichotomous sex-gender logic.⁸³

As we can see, identities have their own distinctive characteristics and consequently their own violence as well; therefore, the discrimination and inequality inflicted on these bodies have different names.

When we talk about violence committed against transvestites and trans people, we refer to what in the doctrine and jurisprudence of the Argentine legal system are known as the bloodiest forms of violence endured by this group, these are transvesticides and / or transfemicides.

This transfemicide terminology also includes women who self-perceive themselves as “trans,” since opting only for transvesticide could prove to be exclusionary. In addition, the word “trans” is understood as an umbrella term. Including “trans” also avoids assigning identity definitions that are too specific.

Through these specifications in the concepts, motivation for the crimes lying in gender and not in hatred is recognized. Consequently, this broadens the notion of gender-based violence, expanding its spectrum of modalities and victims. Using this differentiated terminology means not adopting the perpetrator’s point of view but focusing on the victims and thus attending to the systemic conditions of oppression, i.e., the way in which entire populations are excluded from life

81. Lohana Berkins was a pioneer transvestite activist in the struggle for gender identity. In 1994 she founded the Struggle for Transvestite and Transexual Identity Association (ALITT), which she chaired until her death. She was the driving force behind Law 3.062 on respect for the identity adopted by transvestites and transsexuals, passed in 2009, and was legislative advisor of the Autonomous City of Buenos Aires for the Communist Party, thus becoming the first transvestite with a state job. She also served as advisor to the Buenos Aires legislator Diana Maffia, on issues such as Human Rights, Guarantees, Women, Childhood, Infancy and Adolescence. She was a candidate for national deputy in 2001. In 2008 she led the creation of the Nadia Echazú Textile Cooperative and in 2010 she formed the National Front for the Gender Identity Law, an alliance of more than fifteen organizations that promoted the national sanction of the Gender Identity Law passed in 2012.

82. Lohana Berkins, *Travestis: una identidad política*, HEMISPHERIC INST., <https://hemisphericinstitute.org/es/emisferica-42/4-2-review-essays/lohana-berkins.html> [<https://perma.cc/YEZ8-MMBQ>] (visitado 21 de octubre de 2023).

83. ANDRÉS SAGEN, *supra* note 78, at 37. Before her death, Berkins wrote “those of us who assume ourselves as transvestites reject binarity, we place ourselves in an identity of our own, with the work that it costs us. To say ‘I am a transvestite’ is to assume our own beauty T, our bodies and a question that sometimes even leaves feminism paralyzed: we have a penis, which is not the same as talking about phallus.”

opportunities. It also allows us to understand these deficient distributions of life opportunities as a device for the production of premature and violent death.

The adoption of this terminology responds to a feminist and transfeminist analysis, which gives centrality to the role of the State -by action and omission- with respect to the impunity of crimes and State connivance, thus pointing out its responsibility and the lack of positive actions and public policies to eradicate them.⁸⁴

Another reason why it is convenient to use a differentiated terminology is because it differentiates them from femicides; to think of them as gender crimes, not as crimes committed against women, but against trans and transvestite women, who therefore have their own conditions of vulnerability, their own continuum of violence and their own contexts of consummation.

Clearly, since the implementation of the concept of transfemicides and transvesticides we have recorded progress, such as a sentence on June 17, 2018, where the Oral Criminal Court No. 4 sentenced Gabriel Marino to life imprisonment for the crime of Diana Sacayán, qualifying the act as a transvesticide - aggravated homicide due to hatred of the victim's gender identity. It was the first sentence in which a court in our country called the criminal offense by its name: transvesticide.⁸⁵

Shortly thereafter, the National Registry of Femicides of the Supreme Court of Justice of the Nation incorporated the monitoring of "transvesticides and transfemicides" in the annual statistics of the Office of Women (OM), monitoring that expanding its measurement guidelines for the 2019 report.⁸⁶ The report continues to expand collection of data year after year, which undoubtedly impacts the justice system, criminal policy and society.⁸⁷

5.3. Concept of transvesticide/transfemicide

In a country where life expectancy for the average population exceeds 76 years, the emphasis on establishing identity and the importance of the differential registration of deaths main purpose is to highlight the way in which entire populations are sent to their deaths. In this sense, it would be inadequate to say that the State is late: the State (re)produces the conditions that make these premature deaths possible.

Transvesticide/transfemicide is understood as the most visible and final expression of a chain of structural violence that responds to a cultural, social, political and economic system based on the exclusionary binary division between

84. See OBSERVATORY OF GENDER IN JUSTICE, BULLETIN N° 9 33 (2016).

85. Diana Sacayán, "La muerte violenta de una travesti es un transvesticidio", *dijo fiscalía*, PRESENTES (May 25, 2018), <https://agenciapresentes.org/2018/05/25/dianasacayan-la-muerte-violenta-de-una-travesti-es-un-travesticidio-dijo-fiscalia/> [https://perma.cc/Q66S-BBM5].

86. CORTE SUPREMA DE JUSTICIA DE ARGENTINA: REGISTRO NACIONAL DE FEMICIDIOS DE LA JUSTICIA ARGENTINA, FEMICIDIOS: DATOS ESTADÍSTICOS DEL PODER JUDICIAL 2019, <https://www.csjn.gov.ar/omrecopilacion/docs/informefemicidios2019.pdf> [https://perma.cc/EH42-NPZF].

87. *Id.*

genders. In this system, cis people -that is, those who are not trans- hold privileges that are not recognized as such but are assimilated as the ‘natural order.’ In this context, “being transvestite or trans has material and symbolic consequences in the conditions of existence.”⁸⁸ This cis privilege results in the structural precariousness of trans lives, subjected to an expulsive dynamic that, in the case of transvestites and trans women, keeps them carefully separated from society and places them in a material and symbolic place that is much more exposed to the frequent visits of premature and violent death.⁸⁹

In this context, we find two differentiable forms of producing death. In one, it is produced by the criminal execution of the act - action - attributable to physical persons who exercised violence and caused the death of these trans/transvestite women, which makes possible their criminal prosecution – criminal transfemicides – and in others by the inaction – omission – of the State through its institutions, in the face of this problem.

Explained from a necropolitical perspective, the production of death relates to the everyday experience of those forms of what Lauren Berlant has called a “slow death,” that is, the “physical attrition” both extreme and ordinary of a population, “and the deterioration of the people within it, which is virtually a defining condition of its historical experience and existence.”⁹⁰ The “slow death” to which Berlant alludes takes place in forms of “physical attenuation” that cannot always be directly attributed to the violent operations of particular agents, and that mostly emerge from structural conditions of oppression based on an unequal distribution of vital opportunities, welfare and misery.

We also find transvesticide/social transfemicide, understood in a broad sense as the death of a trans/transvestite woman, because we understand that it is that continuum of violence through which her life passes and that concludes with her death. Deaths that are the responsibility of the State for not having protected them.

We mention some of the elements that are recurrent in these crimes:

- Most of the victims are low-income and are engaged in stigmatized and risky occupations. Prostitution is usually the most common source of income.⁹¹

88. Mauro Cabral, *Cuestión de privilegio*, Página12 (7 de marzo de 2014), <http://www.pagina12.com.ar/diario/suplementos/las12/13-8688-2014-03-07.html> [<https://perma.cc/72NF-T247>].

89. Blas Radi & Alejandra Sardá-Chandiramani, *Travesticidio/transfemicidio: Coordinadas para pensar los crímenes de travestis y mujeres trans en Argentina*, OBSERVATORIO DE GÉNERO (2016), <https://www.aacademica.org/blas.radi/14.pdf> [<https://perma.cc/ZQ67-5VVS>].

90. BLAS RADI & MARIO PECHENY, *TRAVESTIS, MUJERES TRANSEXUALES Y TRIBUNALES: HACER JUSTICIA EN LA CIUDAD AUTÓNOMA DE BUNEOS AIRES* (2018); Lauren Berlant, *Slow Death (Sovereignty, Obesity, Lateral Agency)*, 33 *CRITICAL INQUIRY* 754 (2007).

91. The statistics show in “La gesta del nombre propio” that for 79% of the women surveyed, prostitution is the source of income; while this number is the same for all the women interviewed in “Cumbia, copeteo y lágrimas,” although it varies according to the level of education attained.

- The documented crimes occur mostly on public roads, especially in deserted streets and at night. The bodies of transvestites and trans women show signs of extreme brutality and cruelty. According to the latest statistics carried out in 2021, the highest percentage occurred on public roads, with 55% of the cases. Thirty-six percent of the cases occurred in homes. Of this percentage, 30% corresponds to the victim's private home - and is directly related to gender violence and the practice of sex work in private homes without any type of security; 2% of the cases occurred in the aggressor's home; and 2% in shared homes; and the remaining 2% in another home. This makes public space the main scenario where this type of violence occurs.⁹²
- The perpetrators, or active subjects, do not usually have family ties with the victims—22% of the cases of crimes against LGBTI+ and sexual dissidents correspond to unknown persons—and are often members of the police forces or individuals linked to them.
- The perpetration of these crimes—against life and physical integrity—in 11% of the cases was perpetrated by security forces personnel in the exercise of their state function, all of them together constituting cases of institutional violence. Argentine security forces and prison services show particular viciousness and hatred against LGBTI+ people, and particularly against the community of trans women and transvestites.
- In some provinces of the country, there are codes of misdemeanors and contraventions that even today contain open figures that typify offenses against “morality and good customs,” “decency” or “decorum,” and are used by the police forces as a tool to justify their violent and discriminatory actions towards the trans/transvestite community (complementing the preceding point).
- Police and judicial practices are characterized by the lack of diligence in the progress of cases, the obstruction, precariousness and deficiency of investigations, often due to the concealment of the actions of the state apparatus in the investigated facts.
- The importance and seriousness of these crimes tends to be minimized and explained by the gender identity and/or source of

Among those who do not study, 81% responded that the main source of income is prostitution; on the other hand, among those who do study, the percentage drops to 62.5%, with the figure of “other jobs” taking on greater importance. Carolina Irschick, *Ciudadanía Trans.*, VII JORNADAS DE JÓVENES INVESTIGADORES, no. 8, 2013, at 15.

92. OBSERVATORIO DE CRÍMENES DE ODIO [LGBT], *supra* note 80, at 27.

income of the victims, attributing to them the responsibility for their own deaths.

- In many cases, these crimes in police proceedings are labeled as “natural causes,” which leads to the lack of an adequate investigation to find the true causes of death. This highlights the lack of investigation into actions of the police force.
- Often, the victims are registered as male NN individuals, or even consigning the name corresponding to the self-perceived identity as a “nickname” or “alias,” or derogatory terms such as “transvestite persons” are used, which presents additional difficulties in the investigations and in the statistical survey of these cases, because when trans/transvestite persons file complaints, their gender identity is discredited. The fact that a person is a transvestite or trans undermines their credibility and affects the impartiality of judicial officials.⁹³
- The title page of court cases usually reflects the non-recognition of their name and self-perceived identity since they are investigated and processed as simple homicides (art. 79 PC) and not as transvesticides or transfemicides - qualified homicide under art. 80 PC.⁹⁴
- Criminal prosecutions are affected by the negative prejudices that weigh on transvestites and trans women. The discrediting of their word places them in unfavorable positions as witnesses and victims and, in turn, favors their aggressors.
- Trans and transvestite women are often perceived more as suspects than as complainants or witnesses. This discourages them from approaching the justice and police forces, particularly in the case of those in prostitution.

93. In this regard, the UN Independent Expert on protection against violence and discrimination based on sexual orientation or gender identity, has pointed out in his Report on account of his mission to Argentina (2018), that consistently when trans people file complaints their gender identity is discredited, “the fact that a person is a transvestite or trans person undermines their credibility and affects the impartiality of judicial officials,” due to the prejudices and stereotypes that still persist so they stated that they expect the investigation to proceed with celerity and efficiency, respecting the principle of due diligence, and that the criminal charge of the fact to police personnel is urgently arranged, which has not yet happened. Informe del Experto Independiente sobre la protección contra la violencia y la discriminación por motivos de orientación sexual o identidad de género acerca de su misión a la Argentina, U.N. Doc. A/HRC/38/43/Add.1*, en 13 (Apr. 9, 2018).

94. CÓDIGO PENAL [CÓD. PEN.] [CRIMINAL CODE] arts. 79, 80 (Arg.).

- The persecution and criminalization of trans and transvestite women are usually located in scenarios that facilitate acts of violence, such as in public spaces where violence is more naturalized at night. The aggressors express their control by “writing” on the bodies of trans and transvestite women, by their ability to make them disappear, by making them suffer, and by killing them—because the environment allows them to do so.
- News stories tend to publicize the male name under which transvestites and transsexuals were registered at birth and tend to reinforce negative stereotypes about this group.⁹⁵ The media contribute to the construction of hate speeches that end up excluding trans/transvestite women from the public space because they challenge the reader or listener to feel included in the norm, and tacitly force them to differentiate themselves from this “other” constructed as a threat.
- In most cases, transvesticides/transfemicides happen and the bodies are found several days later, as a consequence of the exclusion suffered by the collective. This happens both in intramural crimes, as well as in crimes occurring in public.

6. Results

With respect to obstacles to access justice and since the majority of the participants have suffered situations of violence or witnessed or accompanied people going through this, where violence prevails. Verbal, physical, psychological, racial, occupational, sexual, economic, media, structural and institutional violence are the main forms of violence.

Types of obstacles are identified here:

1. Formal: Those related to public institutions and their procedures, requirements, and procedural actions that may affect or impede the performance of supporters.
2. Symbolic: Social practices that naturalize inequality and discrimination.
3. Materials: Social, economic, cultural, and related conditions of the group.

6.1. Formal Obstacles

The existing mechanisms for reporting gender-based violence are insufficient

95. Radi & Sardá-Chandiramani, *supra* note 89, at 7.

and have shortcomings and inefficiencies, becoming the main obstacle to access to justice for trans and transvestite women who are victims of violence. As a result of the excessive bureaucratization of the resolution channels, revictimization, endless circuits and slow and poorly integrated responses, trans and transvestite women end up distancing themselves from the judicial systems.

Trans and transvestite women are affected by mistreatment, invisibility, discrimination and depersonalization, dehumanization and lack of empathy in the assistance provided by public institutions. Some of these bad practices are related to prejudice and lack of knowledge, which are related to the lack of training in gender perspective of the personnel. In turn, this is manifested because of the lack of political commitment of the provincial and municipal states when applying the Micaela Law (27499) in a mandatory manner.

The offices that impart justice do not have specific protocols to investigate cases of murdered trans and transvestite women. This makes it difficult to seek justice and reparations for their families. In addition, they do not have a registry that allows the preparation of statistical reports on cases of transfemicides and transvesticides.

The shortcomings in the actions of security forces are centered on inaction, lack of knowledge of gender perspective, lack of knowledge of protocols, non-compliance with their functions such as refusal to take complaints, revictimization, lack of response when executing measures dictated by the justice system, mistreatment and discrimination in the assistance to trans and transvestite women. In addition, there is an abuse of power on the part of police personnel that is exercised against the bodies of trans and transvestite women both in places of detention and on public roads.

6.2. Symbolic Obstacles

Specific examples of symbolic obstacles include:

- a. Social practices that naturalize inequality and discrimination, distinguished above all, in those that are linked to the hetero-cis norm;
- b. Prejudice and discrimination against trans and transvestite women for engaging in sex work;
- c. Agreements and cover-up of the aggressors and transfemicides; and
- d. Trans and transvestite women are persecuted and see their rights doubly violated when they are in a situation of poverty and problematic substance use.

6.3. Material Obstacles

Specific examples of material obstacles include:

- a. The distance and distrust that transgender women have of state offices results in language and legal circuits that are difficult to access and understand.
- b. The State's responses to the right of trans and transvestite women to a life free of violence are insufficient and fragmented, since violence is accentuated when it is intertwined with economic inequality and other basic rights such as the right to housing and work are violated. Regarding the right to housing, many trans and transvestite women live in peripheral areas of urban centers where state offices are concentrated. Thus, they are strongly affected by geographical distances and the lack of their own means of mobility or economic resources to access public transportation.
- c. The series of exclusions that trans and transvestite women experience throughout their lives includes exclusion from the formal education system, as these spaces are hostile to their identities. As a result, many of them see their primary, secondary and university studies interrupted.

7. Conclusions

The participatory research for the construction of the diagnosis on access to justice for cis, trans and lesbian women made it possible to move forward with other aspects of the project in question, which involved generating a plan of action to reverse the problematic situation. Thus, the results of this report made it possible to generate dialogues with state agents to improve public policies for the full exercise of the rights of these groups. Likewise, it was possible to transcend from reading and analysis to action through the implementation of the training process in legal tools that made it possible for these cis trans and lesbian women participants to become Community Legal Counselors from their workplaces and activism. In this way, community and collective care mechanisms are put into practice in order to generate "shortcuts" to avoid the obstacles mentioned above through accompaniment and advice for access to justice for people in situations of violence.

At the same time, after completing the training process, the participating group was able to hold meetings in their own communities, neighborhoods and organizations in order to reflect on gender-based violence as a preventive measure and to inform about existing mechanisms for psycho-social and economic assistance. It is also worth mentioning that this project has produced great transformations in the work team and in the participating cis, trans and lesbian women, giving rise to collaborative and networked work, with a common political position on the issue of gender violence, which brings together different political positions, diverse realities and different life contexts. The group work built is one of the main achievements that allow the sustainability of the results achieved, and where trust and dialogue predominate.

Finally, we can affirm that, although the project was born with the intention

of contributing to eliminate the obstacles in the access to justice experienced by cis, trans and lesbian women victims of violence, during its implementation, we found complexities and tensions where other rights are violated and that conditioned the access to full citizenship (such as access to housing, work, among others). This undoubtedly puts existing legislation and policies to the test, urging the State to rethink its responses to make them more efficient and comprehensive for each group.