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GUATEMALA

Beauty and the beast: how transgender activists won the right to gender identity in Argentina

In 2012 Argentina passed a law that put in place some of the most liberal rules on changing gender in the world. It is now legal in Argentina for a person to alter their gender designation on official documents without getting a psychiatric evaluation or without first having gender reassignment surgery. Furthermore, transgender people in Argentina are now entitled to free hormone therapy and gender reassignment surgery if they want it.

Most incredibly in a country known for its machismo, where the lives of transgender women and men have been characterised by violence and exploitation for decades, the legislation sailed through the senate totally unopposed. Not only was the law almost certain of victory by the time it was drafted, its adoption was also virtually guaranteed.

This insight explores how this happened. It tells the story of how the lesbian, gay, bisexual and transgender (LGBT) community in Argentina won the most progressive law in the world.

In an era of dwindling funds and diminishing trust in the value of good, old-fashioned activism, transgender people and their allies demonstrated that with a little bit of money, a lot of creativity and a firm knowledge of human rights and legal strategies, even the most marginalised groups can fight stigma, violence and soaring HIV rates – and win.



In the beginning

The beginnings of this human rights victory can be traced back to 2006, when five organisations joined together to “create a new national articulation of different lesbian, gay, bisexual and transgender issues”.¹ The movement was called La Federación Argentina de Lesbianas, Gays, Bisexuales y Trans (FALGBT) (the Argentine Federation of Lesbians, Gays, Bisexuals and Trans),² and their work represents one of the most forceful and important examples of transgender activism anywhere in the world. FALGBT’s achievements, led by a powerful and determined group of transgender activists, are a testament to what an oppressed minority can do when it is strategic, well organised and invested in both normative and legal change.

Alongside allies in the human rights community and the Argentinian state, FALGBT was central to winning the right for Argentinians to decide on their gender identity without interference from the state. The organisation achieved this in the same way as other organisations in the AIDS response have fought for justice during the last two decades: through persistence, strategy, ingenuity and the application of international human rights law to a national context.

A tale of activism

Before the passage of the law, transgender people encountered severe discrimination and violence in Argentina, with transgender women in particular being killed by the police with impunity.

The statistics tell the tale more starkly: the average life expectancy in Argentina is 70 years; for transgender women it is just 30 years.³

The indicators related to poverty are equally bleak. Marcela Romero, activist and member of ATTT (Asociación de Travestis Transexuales y Transgéneros de Argentina/the Association of Transvestites, Transsexuals and Transgender Argentina), has noted that in 2010, before the passage of the Gender Identity Law, 99% of transgender women in Argentina were unemployed or involved in sex work. Their lack of identity papers – crucial for opening bank accounts, paying taxes and registering at educational and medical facilities – played a major part in this. A systematic denial of their rights to education, healthcare and housing has also contributed to the rights violations that continue today.

In 1976, Jorge Rafael Videla came to power in a *coup d'état* that deposed Isabel Peron. For five years, Videla continued to preside over a repressive and bloody military dictatorship. He and his Generals instituted a National Reorganization Process, also known as the Dirty War, that systematically violated the human rights of all those who opposed them. Those who had “subversive ideas” or who were accused of committing “crimes against morality”⁴ were harassed, tortured and killed. Between 9,000 and 30,000 people were forcibly disappeared during the Dirty War, mainly through a network of detention centres around the country.

1. LGBT (2014), *Objetivos y propuestas de la Federación Argentina de Lesbianas Gays Bisexuales y Trans*. [Online] Available at: www.lgbt.org.ar/02-objetivos.php [Retrieved: 20 February 2014].

2. LGBT (2014), *Objetivos y propuestas de la Federación Argentina de Lesbianas Gays Bisexuales y Trans*. [Online] Available at: www.lgbt.org.ar/02-objetivos.php [Retrieved: 20 February 2014].

3. “Our situation is different from the lesbian and gay community. We are the poorest sisters of the movement. The average life expectancy in Argentina is 70 – for travestis it’s just 30.” Baird, V. (1913), *Trans Revolutionary*. Available at: <http://newint.org/features/2013/06/01/argentina-transgender-rights/>

4. Rapoport, M. and Spiguel, C. (2003), ‘Modelos económicos, regímenes políticos y política exterior argentina’, in Sombra Saravia, F. (ed.) *Political regimes and foreign policies: a comparative approach*, Brasilia: University of Brasilia.

Minorities were particularly targeted, including the LGBT population. The University of Buenos Aires has identified 110 transgender people who died in unconfirmed circumstances. The junta's Cóndor and de Moralidad commando units tortured and murdered an estimated 400 people presumed to be homosexuals. Transgender women were considered especially "immoral".

The dictatorship ended in 1983, when Raul Alfonsín's civilian government took control of the country again. The situation then improved dramatically for many groups of people. Human rights work began to flourish, and new organisations sprang up to address the crimes that had taken place under the dictatorship. However, for transgender people the environment of abuse and repression remained firmly in place. The new civilian administration was not about to round up transgender people and lock them away, but neither was it prepared to defend their rights. A deep vein of anti-transgender sentiment ran through the Argentine population.

Over the years, many new organisations sprang up to address issues related to gender and sexuality. New HIV associations emerged, as did lesbian and gay organisations pushing for rights and greater access to services for their communities. However, it wasn't until 2003 that a small and brave group of transgender women organised in Buenos Aires to form ATTT.

ATTT worked hard to raise awareness of the situation of transgender people, starting from almost nothing. When the advocacy organisation was founded, there were no clear statistics related to HIV infection among transgender people. Five years later, ATTT had convinced authorities to include transgender people in HIV studies. The results of the first national sero-prevalence survey were frightening. They indicated that HIV prevalence among transgender sex workers was 35%. By way of comparison, the national rate at the time was 1.5%. There could be no denying it: the HIV needs of the transgender community were significant and were driven by high levels of stigma, humiliation and discrimination. A strong human rights approach was needed to address this.

Although it had a clear mandate and much to do, ATTT found it difficult to operate because of high levels of transphobia among the general population, as well as among some sections of the LGBT community. The visibility⁵ of transgender people – the result, sometimes, of an obvious dissonance between their biological and true gender identities – openly challenges established gender norms.⁶ This meant that ATTT members often encountered hostility while conducting their day-to-day activities. It was hard for them to move around without harassment, and difficult to access senior decision-makers let alone their gatekeepers. Nevertheless, over time ATTT found an ally in the Argentinian LGBT community. A strategy evolved whereby many of the objectives of the transgender movement were advocated for under the broader umbrella of the more 'accepted' gay rights agenda.⁷

The power of collective organising

By the time ATTT was created, LGBT collectives had already been working actively to end institutional discrimination based on sexual orientation and gender identity, mainly in partnership with the people who went on to form ATTT. In Buenos Aires,

5. See, for example, Comisión Nacional de los Derechos Humanos México (2010), *Special report by the National Human Rights Commission (CNDH) on homophobia-related human rights violations and crimes*, Mexico: Mexico D.F., para. 169. This states that while lesbians and gay men may suffer harassment only when they show affection in public, the visibility of transgender people, especially women, means that such harassment is constant.

6. See, for example, Organización Trans Reinas de la Noche (2011), *Informe Guatemala: transfobia, agresiones y crímenes de odio 2007-2011*, Guatemala, p. 27.

7. Comunidad Homosexual Argentina, 29 años de la CHA. [Online] Available at: www.cha.org.ar/nosotros/29-anos-de-la-cha

advocacy relating to gender identity included a long and ultimately successful fight for gay people to enter into civil unions, accomplished in 2003.⁸

Capturing the momentum created by this success, FALGBT was launched in 2006. As word spread, more groups joined, including LGBT religious groups, regional organisations, identity-specific organisations, LGBT factions of political parties and academic institutions. FALGBT developed a set of national priorities that focused on fighting for equal rights, education and the end of discriminatory laws, including marriage equality and introduction of a gender identity law.⁹

However, despite FALGBT's progress, homophobia remained alive and kicking. By 2008, 10 of the 23 provinces in the country still used the Fault and Misdemeanour Code to penalise and criminalise sexual minorities – in practice, to arrest and detain transgender women sex workers.¹⁰

Homophobia against the LGBT community, and the transgender community in particular, provided Néstor Kirchner's government with an opportunity to build alliances that demonstrated its own commitment to human rights issues. President Cristina Fernández continued along this path, embracing LGBT people as one among a number of historically excluded minority groups in Argentina.

Taking advantage of the new openness within government, FALGBT began to work actively and strategically with the media. At the same time as the organisation took on the legal cases of a number of individuals in order to force the justice system to take the rights of LGBT people seriously, it also made sure that the media was kept informed of developments. FALGBT was successful in this dual approach: a sophisticated litigation strategy combined with winning the hearts and minds of the public by using media channels wisely.

To build long-term, normative change, FALGBT began to invite famous people to endorse gay rights.

The strategy increased visibility of and support for the LGBT community among the general population, and proved crucial for persuading politicians whose support was not guaranteed despite important backing from the president.

One of these celebrities was an Argentinian transgender *vedette*,¹¹ Florencia de la V. FALGBT worked closely with Florencia as the public face (and first beneficiary) of activism to secure transgender people's rights to gender identity. FALGBT used strategic litigation to test her case, allowing Florencia to put a name to an issue. This helped the public to understand the implications of not allowing an individual's legal documents to match their gender identity. Once they could relate the need for legislation to a tangible (and attractive) face, it made it easier to push for a seemingly radical law in a conservative country.

When Florencia won her FLGBT-supported case, she became the first transgender woman to receive a new identity card and birth certificate without the need to consult doctors. Her new identity as Florencia Trinidad was a triumphant

8. INADI (2007), *Mapa de la discriminación en Argentina*, Buenos Aires: INADI.

9. FALGBT, *Objetivos*. [Online] Available at: www.falgbt.org/objetivos

10. INADI (2007), *Mapa de la discriminación en Argentina*, Buenos Aires: INADI.

11. *Vedette* is a Spanish term used in some Latin American countries to describe female singers and entertainers skilled in singing, dancing and acting. Although the Spanish term is derived from the French *vedette* (starlet), its meaning is equivalent to the French *meneuse de revue* (showgirl). Florencia is a famous transgender *vedette* who has crossed over into mainstream Argentine popular culture.

moment in the fight for a gender identity law.¹² The culmination of many years of strategic dialogue, it made it easier to take the next step: the drafting of a new law recognising gender identity as a right.

Triumph: the Argentina Gender Identity Law (2012)

The Argentina Gender Identity Law (2012) is unique because it recognises the right to gender identity. It states unequivocally that:

*all persons have the right (a) to the recognition of their gender identity; (b) to the free development of their person according to their gender identity; (c) to be treated according to their gender identity and, particularly, (d) to be identified in that way in the documents proving their identity in terms of the first name/s, image and sex recorded there.*¹³

What this means, practically, is that people can change their identity (within the female–male binary) to one that better reflects their own perception without approval by a third party. With the enactment of the new law, changing a person’s official documents has become a simple legal administrative procedure rather than a test of their mental health or biological status.

Simply put, the law allows transgender individuals to own a legal document that states their real name and reflects their real appearance.

This helps them to apply for jobs, attend schools, access housing and get a pension. It allows them to imagine a life with greater opportunity, because their documents match their lived identity.

In the case of transgender women who are also sex workers, having a document that reflects their identity can also help reduce police harassment and arbitrary arrest.¹⁴ Furthermore, because transgender women who change their identity are now legally considered to be women, if they are subjected to incarceration they are now sent to a women’s rather than men’s detention facility. The implications of this are highly significant.

Transgender women who serve time in men’s prison facilities are often raped, tortured and physically abused.¹⁵

The law represents an important step towards guaranteeing the right to dignity and freedom from violence for transgender people in Argentina.

Another crucial aspect of the law is that it stipulates that a person, “will be able to access total and partial surgical interventions and/or comprehensive hormonal treatments to adjust their bodies, including their genitalia, to their self-perceived gender identity.” The law makes it mandatory for all public health officials and health insurance plans to include these procedures in their compulsory medical plans.¹⁶

12. Soledad Vallejos (2010), *Un documento con su identidad*. [Online] Available at: www.pagina12.com.ar/diario/sociedad/3-158621-2010-12-14.html

13. Article 1, Argentina Gender Identity Law (2012), Buenos Aires.

14. Del Mauro, M. from El Frente Nacional por la Ley de Identidad de Género and Universidad de Córdoba (2013). Interview with Martin Del Mauro conducted via Skype on 10 December 2013. [Recording in possession of author]

15. See, for example, International HIV/AIDS Alliance and Redactrans (2012), *The night is another country: violence and impunity against transgender women human rights defenders*, Buenos Aires, Argentina.

16. Article 11, Argentina Gender Identity Law (2012), Buenos Aires.

The legislation also makes gender reassignment surgeries available for those who want them, but importantly does not make surgeries a precondition for the state to recognise gender identity. The law makes it clear that the health system should aid those who want to go through partial or complete gender reassignment without any additional compensation, but that they are under no obligation to do so.

A human rights win

The power of the law is that it recognises that personal identity is different from physical appearance.

This fundamental right for human beings to define themselves is at the core of the transgender movement globally. It is no coincidence that the law was developed in an inclusive manner that brought together a wide range of voices affected by the problems that legislation sought to solve. It is also no coincidence that the law manages to address interconnected violations that lead to deeply unequal access to health and other social services.

In Argentina, transgender activists have demonstrated that, at their best, civil society organisations fighting AIDS, even in an era of reduced funding, are able to think strategically, mobilise popular support, and insist that a human rights approach is non-negotiable.

Much needs to be done to ensure compliance with the law. But thanks to the various fronts on which ATTT and FALGBT have fought – public feeling, political lobbying, and community education and mobilisation among transgender people (in particular sex workers) – the road ahead is not as steep as in circumstances where these factors are missing.

In decades to come, the story of the Argentinian movement to protect and promote the human rights of transgender people is likely to serve as a model for how to continue to keep rights at the centre of the fight to end AIDS.



BIOGRAPHY

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Monica is a lawyer and human rights defender, and author of several publications on transitional justice, judicial independence, and gender-based violence. She works as a consultant for a variety of international non-governmental and legal associations, and is a university lecturer on alternative dispute resolution.



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