

ADVOCACY TO CHALLENGE IMPUNITY AND VIOLENCE AGAINST TRANSGENDER HUMAN RIGHTS DEFENDERS

–MARCELA ROMERO, COORDINATOR, LATIN AMERICAN NETWORK OF TRANSGENDER PEOPLE (REDLACTRANS), WITH THE INTERNATIONAL HIV/AIDS ALLIANCE¹

¹ The International HIV/AIDS Alliance supported the Latin American Network of Transgender People (REDLACTRANS) with summarising into English the network's information, interviewing Marcela Romero, and making sure the article followed the structure she suggested. Unless otherwise stated, quotations used in this article are from an interview conducted with Marcela Romero in February 2016.

INTRODUCTION

Transgender women in Latin America have an average life expectancy of 35 years.¹ The lives of transgender women in Latin America are marked by a dynamic of exclusion that is the consequence of family, social and institutional transphobia. This begins at a young age when they are often rejected by their families, and essentially excluded from the educational and health care systems. This lack of education and access to job opportunities pushes the vast majority of transgender women in the region into sex work.² Consequently, transgender women are the population with the highest prevalence of HIV/AIDS in Latin America, as the table below indicates.

Table 1. Prevalence of HIV in the general population, transgender sex workers, transgender people and men who have sex with men (MSM) in Latin America.³

Country	Adult Population (ages 15-49)	Transgender sex workers	Transgender people ¹	MSM
Argentina	0.14*	27.8	33.51	10.50
Brazil	0.55	-	33.07	10.50
Chile	0.33	-	-	20.26
Paraguay	0.40	26.20	27.00	19.10
Uruguay	0.71	20.00	18.85	9.70
Average - Southern Cone region	0.43	24.67	28.11	14.01
Bolivia	0.25	19.70	-	11.60
Colombia	0.45	20.10	-	12.90
Ecuador	0.41	31.90	-	11.10
Peru	0.35	20.80	21.00	12.40

¹ 'On the International Transgender Day of Remembrance, IACHR urges States to increase the life expectancy of trans persons in the Americas', Organization of American States Inter-American Commission on Human Rights, 20 November 2015, <http://bit.ly/27zBKaP>.

² 'The Night is Another Country', REDLACTRANS, 2012, page 40. For example, between 94 and 95 per cent of transgender women in Peru and Chile are engaged in sex work. See 'Human Rights Report on the Trans Community in Lima', Instituto Runa de Desarrollo y Estudios de Género and Hivos, 2010, page 5; 'Transphobia in Latin America and the Caribbean' Ulises Borgogno and Ignacio Gabriel, 2009, page 44.

³ From 'Global Fund Concept Note', REDLACTRANS. Data from the Global Aids Response Progress Reporting, UNAIDS, 2013 and estimates from Spectrum, AIDSinfo Online Database, <http://bit.ly/1srFCKv>. Countries where most data was missing were not included. Data with * next to it are estimates from 2012, as the country did not publish prevalence data for people aged 15 to 49 in 2013.

Venezuela	0.56	-	-	-
Average - Andean region	0.40	23.13	-	12.00
Costa Rica	0.23	-	-	10.90
El Salvador	0.53	-	25.89	10.40
Guatemala	0.59	-	23.80	8.90
Honduras	0.47	26.70	31.90	15.20
México	0.23	15.50	-	17.30
Nicaragua	0.70*	-	27.80	6.60
Panama	0.65	31.60	37.60	19.80
Average - Central America region	0.49	-	29.38	12.73

The Pan-American Health Organisation states that transgender people are 40 times more likely to be affected by sexually transmitted infections than the general population in Latin America. For example, prevalence rates of syphilis show similar patterns to those of HIV in transgender people, while three studies evaluated the prevalence of genital herpes in transgender people of El Salvador, Nicaragua and Peru at rates between 71 per cent and 81 per cent.⁴

TRANS-ACTION

REDLACTRANS - the Latin American Network of Transgender People - works to highlight the vulnerability and inequality of transgender women in Latin America, and encourages states to take immediate action to rectify this situation. It calls on states to help create a political and legal environment that favours the inclusion of transgender women in society. It is focused on advocating for transgender rights, as well as the development of the network and its focal points in 14 countries in the region: Argentina, Belize, Bolivia, Chile, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru and Uruguay. Over the past few years, the member organisations of REDLACTRANS have contributed to unquestionable historical achievements as a result of their political growth, despite a continuing context of flagrant discrimination. The network has the support of key stakeholders, including UNAIDS, the International HIV/AIDS Alliance, The Heartland Alliance and the Robert Carr Fund.

So, how do you implement change in such a context?

⁴ 'Por la Salud de las Personas Trans. Elementos para el desarrollo de la atención integral de personas trans y sus comunidades en Latinoamérica y el Caribe', AIDSTAR-One, 2013, <http://bit.ly/1TYPDVf>.

MAKING THE INVISIBLE VISIBLE

An increase in acceptance and work towards equality must start with the recognition of gender identity. As Marcela Romero explains, developing the understanding that transgender people form a distinct population is the first step:

“The first step carried out by the network was to ensure that they (the state) no longer treated us as men who have sex with men.⁵ From there we began to exist as our own indicator, where the gender identity of transgender people is respected in order to start to generate changes and public policies for the visibility and inclusion of the trans population. That’s where we started from. It was important first and foremost that they know that we have our own needs, needs that are different to those of the gay population.”

In the majority of Latin American countries, the gender identity of transgender people is not recognised by law, and so they are condemned to an existence that does not coincide with their gender identity.

One of the key objectives of REDLACTRANS is to give visibility to the network and the transgender population in political spaces. It is difficult to get into these spaces, as transgender people are underestimated and seen as having a lower level of education, and there is transphobia. This is the case even in civil society: some civil society organisations are transphobic, and while transgender women may be included in lesbian, gay, bisexual, transgender and intersex (LGBTI) organisations, they do not always feel that their needs are met or they have sufficient space.

REDLACTRANS recognises that now, more than ever, there is a need to be present in all political and decision-making spaces, including in social movements and unions and to make the voice of transgender people heard by civil society, the government and agencies. Many transgender-led organisations have managed large programmes with significant funding, showing they can manage technical teams effectively. The network fights daily to shed light on the fact that there is a population that exists that is not included on the political agenda, a population that has the highest prevalence of HIV/AIDS.

The main achievement of the network to date is its instrumental role in the introduction of gender identity laws in Argentina. Argentina’s Gender Identity Law was approved by the Senate of Argentina on 8 May 2012. In the majority of Latin American countries, the gender identity of transgender people is not recognised by law, and so they are condemned to an existence that does not coincide with their gender identity. The Argentinian law seeks to reduce discrimination based on gender identity by guaranteeing the rights and dignity of transgender people. It includes mechanisms for allowing people to change the gender and name given in their identification documents. However, as Marcela makes clear, the work here is not over:⁶

“There is still a long way to go. In order to generate changes in society and the culture, advocacy work needs to carry on. A person without identity does not exist. With the passing of the law, we succeeded in getting our existence recognised. It was a first step. The second step is social, labour market and educational inclusion.”

5 Men who have sex with men (MSM) is an epidemiological term. Transgender women were often included in the data of this population.

6 ‘The Night is Another Country’, op. cit., page 31: Interview with Marcela Romero, August 2012.

A transgender activist based in Guatemala City, Guatemala, echoes this sentiment:⁷

“We are not asking for different opportunities, just equal ones. A Gender Identity Law is not going to sort our lives out. It will not mean that tomorrow I will be a university student or that I’m going to have a top job, but it will help to combat the stigma caused by the fact that my identification document says one thing and my appearance and gender identity says another.”

ENGRAINED IMPUNITY

Impunity is a constant challenge, as Marcela notes:

“The theme of impunity is present from the moment of reporting the crime until the time it comes to trial or tribunal.”

The rights violations experienced by transgender women in Latin America include extrajudicial executions, torture, cruel, inhuman and degrading treatment, and arbitrary detentions. Impunity manifests itself in a culture of silence that impedes the filing of complaints, a failure to adopt a differentiated approach when dealing with transgender cases, ineffectiveness in the justice system, the existence of discriminatory legislation and the absence of legislation on gender identity.⁸ In many cases reports fall through when a person returns to sex work, is subject to threats, or leaves the country.

Activists allege that in the majority of cases, violence and threats come from state actors, the very agencies charged with the responsibility of protecting the population and seeking justice. REDLACTRANS has learned about the importance of evidence: where gender diversity does not exist, data is not disaggregated by gender, and so it is vital to gather reports of human rights violations against transgender people in the region. In 2012, REDLACTRANS and the International HIV/AIDS Alliance published a report, ‘The Night is Another Country’, which, in the absence of quantitative data due to the invisibility of the transgender population, provides powerful testimonies from the community. A transgender activist from San Pedro Sula, Honduras, reported that she has gone back to doing sex work, combining it with her human rights work, and that it is putting her at greater risk than ever of being subjected to violence by police officers, who have allegedly tried to kill her on several occasions:⁹

“I am a certified public accountant. For over seven years, I worked on HIV prevention programmes as a health technician both for the state and international organisations. I have been a human rights activist for over 20 years. In the 1990s I witnessed the murder of a colleague by police officers. Their lawyers threatened to kill me if I identified them. I testified against them. Following the 2009 political crisis I was left jobless and had to go back to doing sex work on the streets. One night in October 2011 I was coming out of a bar when a car without plates stopped next to me. Four individuals got out and shot me four times in the head and body without saying a word. One of the bullets is still lodged in my neck. No one asked me any questions in the hospital and there was no police investigation. It wasn’t the only time. I had already been shot three times while out doing sex work. Altogether I have been shot nine times. There are witnesses but they are also afraid to make a statement. I myself have witnessed many other police attacks but I’m also afraid to report them.”

7 Interview from ‘The Night is Another Country’, *ibid*.

8 ‘*Ibid*’.

9 *Ibid*.

In response to the wholly inadequate response of Latin American states and their agents to the violence perpetrated against transgender women, REDLACTRANS organise regional workshops and meetings about action to take when reporting crimes, such as hate crimes, human rights violations, institutional violence and gender based violence, as well as carrying out training within the inter-American human rights system. Marcela draws attention to what needs to change:

“We need to ensure that the murders of trans people do not go unnoticed as the government treats them as crimes of passion, or drug related crimes when in actuality they are institutional crimes or cases of gender-based violence. No-one is arrested and cases are closed too quickly. It’s considered by the authorities as just another death.”

For this reason, sensitisation training of judges, government law enforcement officials and the police plays an important role. This is not always an initiative that is welcomed by the judicial authorities, so often training cannot be carried out without strong prior advocacy for it to take place. In order to continue our work, REDLACTRANS, funded by the Global Fund to Fight AIDS, Tuberculosis and Malaria, is starting a project for access to justice and services of the transgender population in 2016.

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REDLACTRANS has produced various human rights reports, with the most recent one documenting cases in Costa Rica, El Salvador, Guatemala, Honduras and Panama. The Panamanian report was presented on 19 October 2016 to representatives of the Panamanian Association of Transgender Persons, and REDLACTRANS participated in a public hearing of the Inter-American Commission on Human Rights on the ‘Human rights situation of transgender people in Panama’. There they provided information on situations of violence and discrimination against transgender women in the country. For the first time in the history of REDLACTRANS, representatives of a nationally based transgender organisation had the opportunity to sit in front of representatives of the national government and Commissioners of the Inter-American Commission on Human Rights. In the presentation, government officials admitted that the police fined transgender women regularly simply because of their transgender status. Following this, the First Lady of Panama met with REDLACTRANS to express support for changes in the police.

LOOKING FORWARD

REDLACTRANS keenly feels the need for an emblematic case on the theme of gender identity to come to light in the Inter-American Supreme Court. It is clear that the authorities are happy to sign papers and pay lip service to the protection of human rights, but they do not put this into practice and do not comply with universal rights. Good financing would be required to employ a good legal team and sustain a successful case, which could last three years.

For the protection of defenders of transgender rights, REDLACTRANS feels it is essential to work together with country governments on workshops and working groups to promote sexual and gender diversity. Transgender organisations, civil society and the government must work together to be able to prevent the abuse of authority by the police, and to ensure fair treatment of all people, regardless of their gender identity.

(FOOTNOTES)

1 'Central American Survey on Surveillance of Sexual behaviour and STI and HIV', El Salvador 2012; Guatemala 2013; Honduras, 2012; Nicaragua 2010. The rate of Panama is from the national epidemiology study of 2013. The rates for Panama and Peru were presented in a workshop on population size estimates in El Salvador 2014. The data from Argentina, Brazil and Uruguay come from 'Worldwide burden of HIV in transgender women: a systematic review and meta-analysis', S D Baral, T Poteat, S Stromdahl, A L Wirtz, T E Guadamuz and C Beyrer, The Lancet Infectious Diseases, vol. 13, no. 3, 2013, pp. 214-22.