

# TRANSRESPECT VERSUS TRANSPHOBIA WORLDWIDE

A Comparative Review of the Human-rights Situation  
of Gender-variant/Trans People



Carsten Balzer and Jan Simon Hutta  
with Tamara Adrián, Peter Hyndal and Susan Stryker

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TGEU  
Transgender Europe



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# **TRANSRESPECT VERSUS TRANSPHOBIA WORLDWIDE:**

**A Comparative Review of the  
Human-rights Situation  
of Gender-variant/Trans People**

# FOREWORD

by Charles Radcliffe, Chief of Global Issues,  
Office of the United Nations High Commissioner for  
Human Rights (OHCHR)

 It has taken a long time to open people's minds to the idea that not all of humankind can be neatly contained within two traditional, unbending gender categories. As this study shows, every day millions of transgender people in all regions experience rejection, stigmatization, harassment and physical violence because they do not conform with prevailing gender norms. Denied official identity documents that reflect their preferred gender, they are cut off from work, denied basic public services, and faced with deeply engrained discrimination in the health and education sectors. These abuses are systematic but under-reported. The response, at both a national and international level, has been, almost without exception, inadequate.

The legal obligations that States have to protect transgender persons from violence and discrimination are no different from those that States have towards all other persons. Transgender rights are not a separate or special sub-set of rights; they are human rights. Transgender people are no less entitled than anyone else to enjoy the right to life, freedom from arbitrary arrest and torture, freedom from discrimination and freedom of expression, association and assembly. These rights and many others are universal: enshrined in international law but withheld from many transgender people simply because of their gender identity or gender expression.

Thanks to the tireless efforts of trans activists and their allies in the LGBT community, awareness amongst Governments of the extent and gravity of human-rights violations against transgender people continues to increase. In recent years, a growing and increasingly diverse coalition of countries has begun to speak up on the issue at the United Nations. In 2011, the UN Human Rights Council passed a historic resolution: the first to explicitly call attention to violence and discrimination directed against individuals because of their sexual orientation and gender identity. In December 2011, the High Commissioner for Human Rights, at the Council's request, submitted a report documenting discriminatory laws and practices and acts of violence. In March 2012, the Council held a three-hour debate on the report's findings and recommendations, during which many States expressed concern at the human-rights situation of transgender persons and acknowledged the need for action. The debate included powerful testimony from human-rights activists, as well as strong statements of solidarity and support from UN Secretary-General Ban Ki-moon and High Commissioner Navi Pillay.

The challenge now is not just how to sustain this emerging dialogue at an inter-governmental level, but also how to translate increased awareness into action at a national level. Legal frameworks to protect the human

rights of transgender people need to be revised and improved, as the study highlights, to facilitate legal recognition of identity, prohibit discrimination on the basis of gender identity and ensure access to adequate health care and other services. The discrepancies of *de jure* versus *de facto* practices underline the need for systematic training, especially of police, correctional personnel, teachers, healthcare workers and the judiciary, to understand the rights and the situation of transgender people.

As in all issues of promoting rights of ostracized and marginalized people, the first step is to start putting the facts on the table. The Transrespect versus Transphobia Worldwide project is an important contribution to this end. The project's documentation of transphobic violence and mapping of the legal environment for transgender people are unique and provide a clearer picture of the scale of the problem and of the kinds of responses that can help to address it. The report represents an important tool to advocate for the human rights of transgender people. It is up to all of us, collectively and in our individual capacities, to use the material presented here to make the case for equal rights for everyone – transgender, gender variant and non-trans alike.



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# ACRONYMS

<b>CoE</b>	Council of Europe
<b>EU</b>	European Union
<b>FTM</b>	Female-to-male
<b>GID</b>	Gender identity disorder (diagnostic category)
<b>GRS/T</b>	Gender reassignment surgery/ treatment
<b>IDAHOT</b>	International Day Against Homo- phobia and Transphobia
<b>ILGA</b>	International Lesbian, Gay, Bisexual, Trans and Intersex Association
<b>LAC</b>	Latin America and the Caribbean
<b>LGB/T/I/Q/H</b>	Lesbian, gay, bisexual/trans/intersex/ queer/heterosexual
<b>MTF</b>	Male-to-female
<b>NGO</b>	Non-governmental organisation
<b>OAS</b>	Organization of American States
<b>PAHO</b>	Pan American Health Organization
<b>RedLacTrans</b>	<i>Red Latinoamericano y del Caribe de Personas Trans</i> (Latin-American and Caribbean Network of Trans Persons)
<b>STI</b>	Sexually transmitted infection
<b>TDOR</b>	International Transgender Day of Remembrance
<b>TGEU</b>	Transgender Europe
<b>TMM</b>	Trans Murder Monitoring
<b>TvT</b>	Transrespect versus Transphobia Worldwide
<b>UN</b>	United Nations
<b>WHO</b>	World Health Organization



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# PREFACE

by Susan Stryker



 In the recent past and present, gender systems have been shifting in unprecedented and accelerating ways on a global scale, and this development bears importantly on the question of contemporary human rights. Nepal and Pakistan, for example, have both recently allowed third-gender designations on state-issued identity documents, while Australia has introduced a 'decline to state' option for gender on its passports. At the same time, *transgenero/a* individuals in Latin America are being murdered at a shocking rate; post-operative transsexual women in the United States have had their marriages to men invalidated, and many European countries require sterilization surgery as a condition for the legal gender recognition of trans-identified individuals. The promotion

of transgender respect and the battle against transphobia are important undertakings within this rapidly evolving and sometimes contradictory context, with implications that extend far beyond the relatively small fraction of the world's population we now think of as being 'transgendered'. They encourage us to begin thinking of rights from a 'post-humanist' perspective, and to envision justice in ways that exceed the framework of rights and representation altogether.

One common understanding of 'gender' is as a static, descriptive, and perhaps polite synonym for biological sex – for the status of being male or female. Another understanding of 'gender' is that it has to do with the representation of this biological sex difference in

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language, culture, and society – that is, with the dynamic process of acculturating males as men and females as women, by slotting the two kinds of physical bodies into the two available social categories. Understood in this way, gender-based rights are akin to other rights that proclaim equality and freedom for all regardless of unchosen attributes of oneself, such as skin color, place of birth, culture of rearing, or the faith traditions of one's parents. One should not experience discrimination, in other words, simply because one was born with the ability to produce eggs and gestate a fetus rather than the ability to produce sperm and to impregnate a womb.

But to imagine gender only as a system for producing the social and economic inequality of women based

on the unchosen physical attributes of one's reproductive organs, coupled with the acculturation processes associated with a particular sex status, is to miss other salient features of the gender system that also have implications for human rights. Within modernity, gender is also a form of power that operates coercively on bodies that do not fit normative ideals of what a man or a woman should be in any given cultural context. These normalizing operations are not limited to the surgical ones performed on transgender people seeking to change their sex; everyone these days is operated on by a normalizing power that produces men and women, and that seeks to eliminate differences from gender norms.





This normalizing power linked to the creation of oppressive gender-based hierarchies operates in dramatic as well as mundane ways. One can discern it in such places as the surgical alteration of newborns with anomalous genitals that aims to produce a typical male or female appearance. It operates through the categories available to be checked off on birth, death, and marriage certificates; through cultural practices of gender-specific naming and through the legal processes for changing names or amending state-issued identification documents and government forms; it shows up in medical reports, military service records, and educational and training certificates and diplomas. It is horribly visible in the many forms of often-deadly violence directed at socially vulnerable individuals who look or act in ways that contradict gender stereotypes. We live in a world that monitors our lives and bodies from birth (if not before), that directs us into pre-existing gender channels, that creates a dense mesh of documentation of each of us as being gendered in particular ways, that inserts us into social relations based on gender categorization, and that seeks to ‘correct’ or eradicate that which does not conform to gender expectations and is consequently deemed socially harmful at worst, and useless at best. The gendering system is a crucial part of the machinery that renders our bodies fit for purposes of state, society, and capital formation.

‘Woman’ and ‘man’ are thus produced through innumerable micro-operations on all of our bodies to become the categories that citizenship flows through, that rights are founded upon, that social structure is built on, that kinship systems are organized around, and that perform particular kinds of labor. Gender informs every aspect of our existence. To not be recognizably gendered as a man or a woman is, in a very real sense, to lose one’s access to and claims upon human status. This is the challenge faced by transgender activism: it involves more than merely crafting special procedures for a tiny minority to change membership from one recognized gender category to another (daunting though that project is); it

also involves creating a new framework within which an unchosen inability to conform to gender norms or an unalterable desire for gender nonconformity can be perceived as valuable and good, even though they fall outside of and lead beyond accustomed notions of ‘the human’ itself.

For precisely this reason, ‘Transrespect versus Transphobia’ is a powerful way to frame the problems and opportunities documented in this report. Fear actually does seem to be at the root of much of the violence and discrimination directed at gender-variant people – fear of the monstrous, the excessive, and the uncategorizable that spills forth when the disruption of gender conventions creates the perception of a nonhuman where a person is expected to be. This fear perversely authorizes all manner of inhuman behavior – behavior aimed at violently maintaining the hierarchical relationship between human and other. People whose life-course, appearance, or behavior elicits the experience of gender-disruption in others thus are often forcibly relegated, by those who consider themselves human, to a conceptual space, shared by animals and the rest of nonhuman material being, that is deemed intrinsically inferior and incapable of bearing rights.

The cultivation of respect for transgender phenomena of all sorts addresses this visceral transphobia head-on. The higher goal is not simply to tolerate unconventional expressions of gender, which, in spite of an increasing number of jurisdictions where a transgender status is recognized as one protected class among others such as race, sex, or ability, often remain subject to prejudicial beliefs. Gender non-conformity is all too often considered unnatural, immoral, pathological, deluded, or politically backward. The higher goal of respecting transgender phenomena is part of a broader ethical – and I would argue environmental – imperative to recognize a positive value in diversity and variety, and to approach the nonhuman world as something that exists for its own purposes, and not merely for human use and abuse. Respect, after all, depends on a recognition of the worth of the other.



In our increasingly medicalized, technologized, and bureaucratized world, there are more and more ways that more and more people begin to experience discrepancies between their lived experiences or self-perceptions and traditional concepts of man and woman, or conventional social organizations of gender. These range from the biotechnological interventions of assisted reproduction, to the reorganization of family and kinship structures, to the effects of endocrine-disrupting hormones in the environment and food supply, to the proliferation of cosmetic surgeries and mood- and shape-altering pharmaceutical drugs. Sometimes those who come to seem gender-different within these new social and technological contexts are made to suffer, whether they think of themselves as transgender or not – they are caught up in a tangle of morés and machineries of state that have not kept pace with changes in the objective material conditions of sexed bodies and gendered lives. But there are also emergent possibilities for gender and embodiment to mean otherwise than they have in the past. Contemporary transgender civil and human-rights struggles advance a radical vision of justice at the very crux of this profound late-modern transformation in human affairs. And they do so not only in response to current conditions, but also as part of a long history of political, social, and cultural activism.

Since at least the middle of the nineteenth century in Europe, gender-variant and non-conforming people have argued that their differences are part of nature’s variety, and that a just society rooted in law and rationality should recognize and accommodate their innate difference. Since the later nineteenth century, there have been short-lived political movements and organizations in Europe and the United States aimed at bringing about legal and social reforms that would accomplish precisely that, such as the German homosexual emancipation movement, which addressed questions of gender inversion, or the ‘Cercle Hermaphrodites’ in New York, which provided a forum for self-styled androgynes “to unite for

defense against the world’s bitter persecution”. In the immediate post-World War II years in the U.S., a steady drumbeat of advocacy and social-change efforts began that has yet to let up, including the formation of a transvestites’ rights group called The Society for the Promotion of Equality in Dress in Los Angeles in the 1950s, picketing businesses that discriminated against transgender customers in Philadelphia in the early 1960s, and rioting against police oppression of transgender prostitutes in San Francisco in the later 1960s. The term “transgender” itself emerged in this politicized context, as a self-applied, community-based term meant to resist the pathologizing labels of ‘transvestite’ and ‘transsexual’, and to bring together in one imagined community all the many different ways of differing from gender norms.

The past 20 years have witnessed a remarkable transformation in the kind of attention that transgender phenomena have commanded. Prior to the early 1990s, a great deal of scholarly, academic, and scientific work had of course been conducted on various forms of gender variance. What changed – and what is so capably documented by this report – were the conditions of knowledge production itself. Rather than transgender people merely being the objects of medical, psychotherapeutic, and legal discourses controlled by others, or the subjects of autobiographical forms of representation that often did little more than reinforce narrative diagnostic categories from first-person perspectives, transgender people themselves gained new ways to speak of their own experiences, and to offer valuable points of view on other matters, including the phenomenon of gender variance, and on the hierarchies of legitimation that make some knowledge, and some speaking positions, more authoritative than others. What changed, in a nutshell, was that transgender people – much like gays and lesbians a generation earlier – gained the ability to be seen by many others as experts on themselves, largely as a result of decades of political activism undertaken on their own behalf.





This report, a particularly powerful example of this new kind of transgender knowledge production, draws on information gathered from government and media reports, internet research, and communication with various NGOs and members of civil society around the world. It would not be possible without the emergence of a truly global network of activists who are committed to increasing the life-chances of gender-variant, gender-nonconforming, and transgender-identified people. The support of many philanthropic foundations nourishes and sustains this work, but it would be impossible without the labor performed by trans activists themselves. One crucial insight drawn from this global exchange of knowledge is an increased awareness of the need to combat Anglophone and Eurocentric biases through the promulgation of a homogenizing concept of ‘transgender’, and to resist the way that concepts of gender, sex, sexuality, embodiment, and identity that originate in the global North and West can be imposed in a colonizing fashion on the global South and East. But another equally valuable insight is an increased awareness of the ways in which “transgender” can also function in locally specific ways, all around the world, to advance a liberatory politics of resistance to and transformation of coercive gender norms that have become codified in law, ingrained in social practice, and rooted in cultural imagination.

The past few years have witnessed some startling opportunities and breakthroughs for trans rights. The United Nations Office of the High Commissioner for Human Rights, for example, following guidelines promulgated in the Yogyakarta Principles, has acknowledged that gender identity and expression are universal and fundamental human rights. Transgender activists from Global Action for Trans\* Equality (GATE) are now at the table with a working group from the World Health Organization (WHO), negotiating the place of transgender health care in the International Classification of Diseases (ICD); at the same time, two of the last three presidents of the World Professional Association for Transgender

Health (WPATH, the leading professional organization for scientists, doctors, and medical and psychotherapeutic service providers working with transgender individuals) have been transgender themselves. In both cases, with WHO as well as with WPATH, the important point for transgender activism in these contexts is to decouple the recognition of citizenship and rights for gender-variant and gender-nonconforming people from the medicalization or pathologization of their bodies and minds – one should not have to have surgery, take hormones, be sterilized, or receive a psychiatric diagnosis in order for one’s society to recognize its obligations to one of its members any more than one should be expected to forgo access to high-quality and culturally-competent health care because one is different from most other citizens or residents. Perhaps the most welcome recent development of all was Argentina’s adoption in May 2012 of a new federal law that allows gender to be self-defined and state-recognized without any medicalization or pathologization whatsoever. This is the gold standard that other countries should aspire to.

As the following report makes clear, most of the world still has a long way to go to catch up with Argentina – but this report’s very existence, and the data it gathers and presents, is itself a testament to, and product of, the many welcome changes of recent years. It provides not only a record of these accomplishments, but also a solid informational resource and evidentiary foundation for the on-going, vitally necessary work of trans activists and their allies around the world to combat transphobia and promote trans-respect as part of the broader struggle to create a livable future for us all.





# TERMINOLOGY



Due to the great variety of concepts and self-definitions used by different communities around the world, we use the two widely established terms, ‘trans people’ and ‘gender-variant people’, often simultaneously. We are aware of the challenges in using these terms, as they originated in Western discourses where binary gender/sex concepts are assumed as the norm. We use them due to the lack of another globally valid umbrella term.

In the context of the TvT research project and this report, **trans people** and **gender-variant people** include those with a gender identity that is different from the gender they were assigned at birth, and those who wish to portray their gender in a way that differs from the gender they were assigned at birth. Among them are those people who feel they have to – or who prefer or choose to – present themselves in a way that conflicts with the social expectations of the gender role assigned to them at birth, whether they express this difference through language, clothing, accessories, cosmetics or body modification. These include, among many others, transsexual and transgender people, trans men and trans women, transvestites, cross-dressers, no-gender, liminal-gender, multi-gender and genderqueer people, as well as intersex people who relate to or identify as any of the above. Also included are those who identify with local, indigenous or subcultural terms and moreover subsume themselves (for instance in international activist contexts) under the terms ‘trans people’ or ‘gender-variant people’. And further included are those people in non-binary gender-systems who are raised in a different gender than male or female and who self-identify as trans people or gender-variant people in international contexts. In the regional chapters, a variety of indigenous, local and subcultural terms that are non-offensive and used by the communities themselves are listed.

‘**Transphobia**’ and ‘**Transrespect**’ are the guiding terms in this project: they open up a spectrum from violence, discrimination and negative attitudes towards gender-variant/trans people on the one hand to recognition, acknowledgement and respect on the other. It is necessary to investigate both of these poles in order to develop viable analyses and politics related to trans activism. To underline the significance and specific meanings of these terms in the context of this report, we spell them in capital letters throughout.

We use the term **Transphobia** to denote forms of violence, discrimination, hatred, disgust, aggressive behaviour and negative attitudes directed at individuals or groups who transgress or do not conform to social expectations and norms around gender. It includes institutionalised forms of discrimination, criminalisation, pathologisation and stigmatisation and manifests in various ways, ranging from physical violence, hate speech, insults and hostile media coverage to forms of oppression and social exclusion. Transphobia particularly affects gender-variant/trans people. It operates together with further forms of power and violence and entails contextualised engagements. Used in the social sciences to denominate a complex social phenomenon, it has acquired a much broader meaning than what is suggested by the term ‘phobia’, which is understood in psychology as an individual pathological response.

Relating to Transphobia, the terms ‘hate violence’ and ‘hate crime’ (or ‘bias crime’) also have a special significance in this report.

**Transphobic hate violence** denotes any incident that is motivated by prejudice, hostility or hatred towards persons or groups who transgress or do not conform to societal gender expectations and norms. It includes physical, verbal or other forms of expression. Gender-variant/trans people are particularly affected by hate violence. Transphobic hate violence can have a deep impact not only on individual victims, but also on the wider group or community with which they are associated. Thus, Transphobia affects social cohesion and stability with regard to not only gender-variant/trans people’s communities, but also the societies in which those communities are embedded. The term **transphobic hate crime** (or ‘bias crime’) is used where such violence is seen in the context of existing or demanded forms of law enforcement and criminal justice. The ‘hate crime’ concept can, for instance, form the legal basis for criminal sentences or for the increase of sentences due to the perpetrator’s intent to discriminate.

The term **Transrespect**, in the context of the TvT project, does not simply refer to the absence of any form of Transphobia; it is instead the expression of deep respect for and positive recognition of gender-variant/trans people. It includes the acknowledgment of the unique or particular ways in which these people enrich society. Thus, Transrespect acknowledges the cultural and social benefits of gender non-conformity, gender liminality or gender diversity. It can manifest in individual behaviour as well as in the reproduction, transformation and creation of sociocultural formations, including institutional, cultural, social or religious roles. Transrespect can benefit not only certain individuals or minorities, but society as a whole.



# 1. TRANSRESPECT VERSUS TRANSPHOBIA WORLDWIDE:

Activist and research collaborations beyond regional boundaries



▶ The Transrespect versus Transphobia Worldwide (TvT) research project is a comprehensive research project on the human-rights situation of gender-variant/trans people worldwide. The project is conducted (mostly) by gender-variant/trans people and works for their benefit. It is the first global research cooperation involving trans researchers and activists in dozens of countries in all six world regions: Africa, Asia, Central and South America, Europe, North America and Oceania. Conducting mappings and surveys on gender-variant/trans people's legal and social situation, documenting violence and collecting good practices, TvT seeks to develop useful data and advocacy tools for international institutions, human-rights organisations, the trans movement and the general public.

It moreover aims to foster activist collaborations and contribute to the strengthening and visibility of local, regional and transnational self-organising. A brief history of the TvT project and a description of its structure can be found in the Appendix. In the following, we highlight the global context of trans movements and politics that shaped the project from the start. We then present the key findings of this report and explain the main sub-projects and the methodology used.

A significant change can be observed in the perception and articulation of the concerns of gender-variant/trans people on a global scale. This change can be described as a paradigm shift in the perception and framing of the concerns of gender-variant/trans people.

▲ *Trans activists from Africa, Asia, Central- and South America, Europe and Oceania meeting at the Trans Pre Conference of the ILGA World conference in November 2008 in Vienna, Austria.*

The hitherto dominant medical-psychiatric perspective, which defines and stigmatises gender-variant/trans people as deviants from an apparently natural binary gender order, is being challenged by a new set of discourses and engagements. These engagements are centred on the social and legal situation of gender-variant/trans people, which is marked not least by severe human-rights violations. The new understanding conceives of gender-variant/trans people as equal members of society in the context of the universality of human rights.

A key indicator of this paradigm shift has been the reception of the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, drafted in

2007. The Yogyakarta Principles were cited soon after by United Nations (UN) bodies, national courts and national governments, as well as international bodies like the Organization of American States (OAS), the Council of Europe (CoE) and the European Union (EU), which have made them a guiding tool for defining their policies on the matter.<sup>1</sup> In Europe, the 2009 publication of the Issue Paper titled *Human Rights and Gender Identity*<sup>2</sup> by the then-Commissioner for Human Rights of the CoE, Thomas Hammarberg – perceived as a milestone document by activists from the European trans movement – had a major impact in improving of the situation of gender-variant/trans people in Europe (see Chapter 3.5). Since the mid-2000s, various statements by UN bodies have inserted







gender identity into human-rights discourse. This development resulted in the passing of the first ever resolution on Sexual Orientation and Gender Identity by the UN Human Rights Council on 17 June 2011. The resolution recognised the systematic human-rights violations to which LGBT people are subjected worldwide and mandated the High Commissioner for Human Rights to prepare a study on this subject. The High Commissioner's report, the first of its kind, was published in December 2011 and cited the research results of TGEU's TvT project to illustrate the gravity and extent of discrimination and violence faced by gender-variant/trans people on a global scale. These developments are also having an impact on the current reform of ICD 10, the 10th version of the International Classification of Diseases by the WHO, which still includes the diagnoses 'gender identity disorder' (GID) and 'disorders of sexual preference' in the 'Mental and Behavioural Disorders' subchapter, thus continuing to pathologise gender-variant/trans people worldwide.

Simultaneously, in the 2000s, the rise of new regional and international gender-variant/trans people's movements, networks and organisations, as well as the emergence of a global gender-variant/trans people's movement, could be observed, as shown in the timetable.

International gender-variant/trans activists started to use international LGBT conferences (e.g. ILGA Conferences, Outgames Human Rights Conferences) to meet and exchange and organise specific trans pre-conferences (e.g. Geneva 2006, Vienna 2008, Sao Paulo 2010, Wellington 2011). At the same time, regional trans conferences such as TGEU's bi-annual European Transgender Councils (Vienna 2005, Berlin 2008, Malmö 2010, Dublin 2012) and the annual Philadelphia Trans Health Conference started to grow and attract participants beyond regional borders. TvT's intense cooperation with partner organisations and individual activists and researchers in all six world regions has been a direct result of these expanding networks, encounters and collaborations. The shift towards a human-rights paradigm of trans issues and the transnationalisation of trans activism have been mutu-

ally strengthening. The TvT project has benefitted greatly from these parallel and intertwined developments and would not be the same, or might not even exist, without them. This report presents findings from the Trans Murder Monitoring (TMM) and the Legal and Social Mapping, two TvT sub-projects.

### TRANS MURDER MONITORING

The TMM is a systematic collection, monitoring, and analysis of reported killings of gender-variant/trans people worldwide. Building on an increasing number of collaborations with local and regional activist monitoring projects, it periodically compiles and publishes the findings of the unfortunately ever-growing TMM archive, supporting in particular activist events like the TDoR.

As of September 2012, 831 reported killings have been documented in 55 countries between January 2008 and December 2011. The yearly numbers have risen constantly, which is in part due to an increase in international collaborations:

- 2008: 146 reported killings of gender-variant/trans people worldwide
- 2009: 214 reported killings
- 2010: 220 reported killings
- 2011: 251 reported killings

Roughly 80 per cent of the globally reported killings of gender-variant/trans people are from Central and South America, which can be attributed to reporting practices as well as various other reasons, including the wider sociopolitical context of violence and exclusion. We have documented four killings for each of Africa and Oceania, 71 for Asia, 53 for Europe, and 55 for North America. In Africa in particular, findings were difficult to analyse due to major limitations in reporting and monitoring.

The TMM findings highlight the significance of societal exclusion, as well as the intersection of Transphobia with racism and other power relations. For over a third of all victims, reports provided information regarding pro-



fession, occupation or source of income. Of all victims for whom such information was provided, sex workers formed by far the largest group (75 per cent), which indicates the increased risk of becoming a victim of aggression and murder for gender-variant/trans people who are excluded from other job opportunities. In North America, the vast majority of victims for whom information regarding race or ethnicity was available were people of colour. In Southern Europe, migrants represented a significant share of the victims, with the exception of Turkey, where almost half of the European killings were reported. The research findings suggest that even in those countries that are represented as trans-friendly (especially in Asia), murders of gender-variant/trans people and transphobic violence occur.

#### MAPPING THE LEGAL AND HEALTH-CARE SITUATION

The TvT Legal and Health Care Mapping gives an overview of existing laws, law proposals and actual legal and health-care practices relevant to gender-variant/trans people. At present, 72 countries are listed, further countries being added on a periodical basis. The Mapping comprises:

1. Legal gender recognition (legal change of name and gender)
2. Anti-discrimination, hate-crime, and asylum legislation
3. Criminalisation, prosecution, and state-sponsored discrimination
4. Trans-specific health care (hormones and hormone therapy, gender reassignment treatment and body modifications)

An important finding of the mapping concerns extensive restrictions in legal gender recognition. With the exceptions of Argentina and India, in all other 31 of the listed 72 countries where a legal change of gender is possible, a 'psychiatric diagnosis', i.e. the pathologisation of the applying gender-variant/trans person, is required. Furthermore, most legal measures require 'gender reassignment surgery' or 'sterilisation' for legal gender recognition, which clearly violates human rights. The mapping also indicates that 'gender identity' is rarely explicitly ac-

knowledged as a ground of discrimination and that trans-specific hate-crime legislation is extremely rare. Further findings are discussed in detail in the chapters on the legal and health-care situation.

A further key set of activities that has accompanied both the TMM and the Legal and Health Care Mapping has consisted in an **on-going contextualisation and evaluation** of research findings. This contextualisation and evaluation included the review of relevant social research, human-rights reports and activist publications; qualitative in-depth interviews with a total of 27 trans activists and informative talks with several dozen trans activists in all six world regions; and field visits in all six world regions, along with meetings and discussions with international activists in TvT workshops, international conferences and local community spaces. These encounters, workshops and meetings facilitated the on-going evaluation and revision of findings and data.

These research results have been used to produce advocacy material, including maps, tables and updates created specifically for key dates in LGBT and trans activism, such as the International Day Against Homophobia and Transphobia (IDAHOT) and the TDoR. The report itself forms part of the TvT Publication Series, previous issues of which have included translations into German, Italian, Polish, Portuguese and Spanish of the aforementioned Hammarberg paper.

The development of TvT and the research findings themselves have been shaped by international cooperation with activists and researchers throughout the process, as is explicated in the chapters to follow and the Appendix. Throughout this report, we have aimed to make the voices of other activists and researchers appear beside our own, inviting guest contributions, providing numerous interview passages and listing cross-references. We thus hope that TvT's inherent polyvocality makes itself present in these pages. As TvT is a work in progress, it will hopefully develop even further in the direction of a decentralised, non-hierarchical, and polyvocal collaboration in the future.



## Overview of transnational trans activisms and movements since the 2000s

- 2000s** internationalisation of Transgender Day of Remembrance (TDoR), started in 1999 in the USA
- 2004** RedLacTrans (Red Latinoamericano y del Caribe de Personas Trans, Latin-American and Caribbean Network of Trans Persons), formed by travestis and trans women, presently including 17 countries
- 2005** Transgender Europe (TGEU), presently including 62 member organisations in 33 countries
- 2006** Trans Secretariat of ILGA World (International Lesbian, Gay, Bisexual, Trans and Intersex Association)
- 2007** Pacific Sexual Diversity Network (PSDN), presently consisting of member organisations in 11 countries/islands
- 2007** Nairobi Trans Declaration signalling the emergence of transnational African trans activism
- 2007** start of the international Stop Trans Pathologization (STP 2012) campaign, which developed into the International Trans Depathologization Network
- 2008** Regional African 'Gender Identity Strategic Workshop' in Cape Town (South Africa)
- 2009** Asia Pacific Transgender Network (APTN), comprising members in 10 countries
- 2010** GATE (Global Action for Trans\* Equality)
- 2010** GATE 'Trans\* Action – Trans Rights' Conference and International Congress on Human Rights and Gender Identity in Barcelona (Spain)



▲ Trans activist from Botswana at an international trans manifestation in Barcelona (Spain), June 2010<sup>7</sup>



# 2. TRANS MURDER MONITORING:

## Analysing reports of murdered gender-variant/trans people in the context of societal Transphobia



▲ 'Justice for Gisberta': Manifestation in front of the Portuguese Embassy in Berlin on 8 June, 2006

### 2.1 INTRODUCTION

Gender-variant/trans people in many parts of the world have for a long time been victims of horrifying hate violence, including beatings, mutilation, rape and murder. Activists in national and international contexts have reacted to reports of murdered gender-variant/trans people by, for instance, launching the TDoR in 1999 or the international 'Justice for Gisberta' campaign in 2006. However, until 2009 there had been no systematic monitoring of hate violence or reports of murdered gender-variant/trans people on an international level.

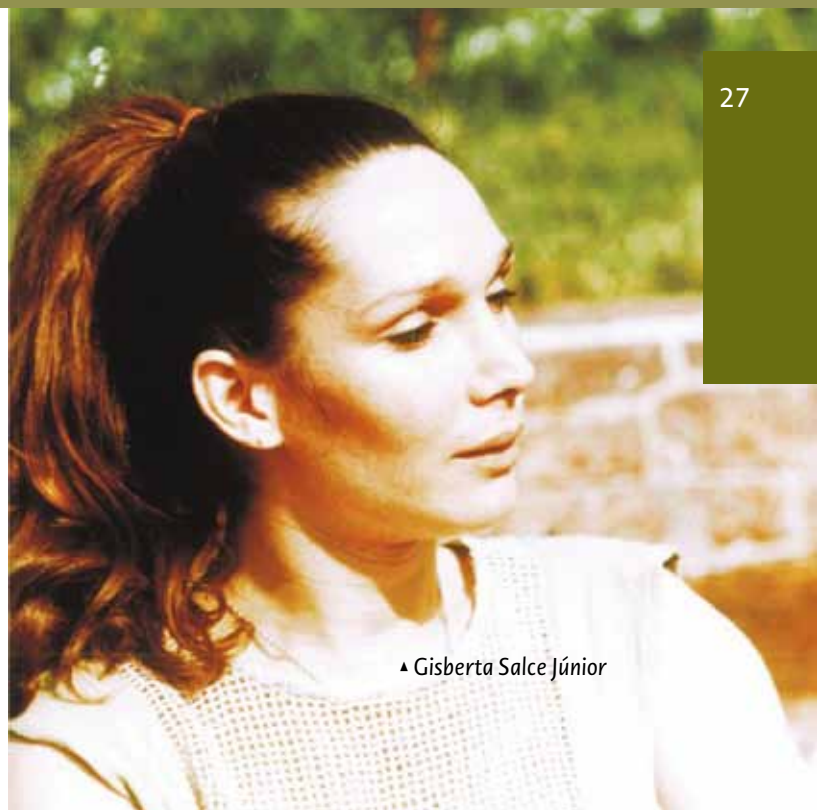
Until then, the only archive documenting reports of murdered gender-variant/trans people on a global scale was a US-based TDoR website. In 2008, this website showed 28 reported murders of gender-variant/trans people worldwide, among them 16 reported murders in the USA.<sup>3</sup> For the same year, however, the Brazilian LGBT organisation Grupo Gay da Bahia (GGB), which has been publishing data on reported murders of LGBT people in Brazil since 1980, documented 59 reported murders of gender-variant/trans people in that country alone.<sup>4</sup> This juxtaposition illustrates the situation that motivated the TMM project: a vague sense that the actual number of

'Justice for Gisberta' was TGEU's first international campaign, and it began shortly after the network was founded in November 2005. In February 2006, Gisberta Salce Júnior, a Brazilian trans person living in a situation of extreme social exclusion in the Portuguese city of Porto, was tortured for three days, raped and subsequently murdered in an abandoned construction site. The perpetrators were a group of twelve to fourteen boys aged 10 to 16 who were residents of a 'minor protection' institution of the Catholic Church. The victim had been in very poor physical health, being both HIV positive and tubercular. She had been living on the streets and working as a sex worker.

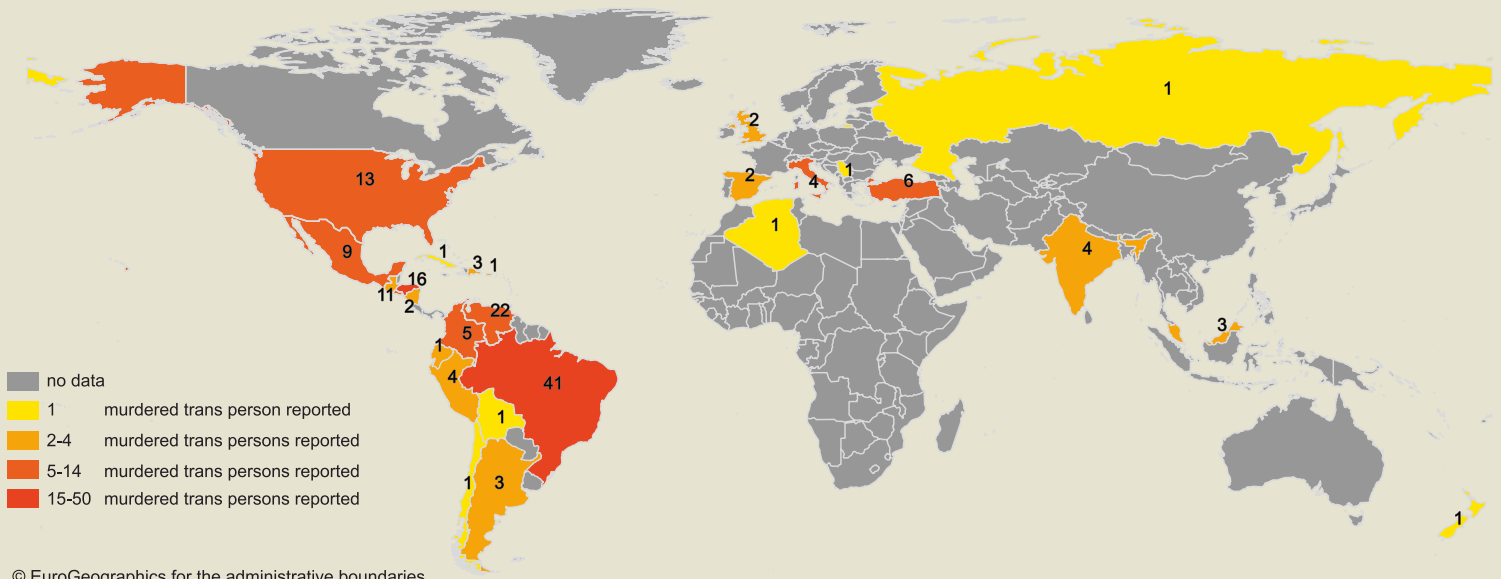
The crime was treated in the worst possible way in the Portuguese media and the criminal justice system and was practically ignored by politically responsible persons. The media tried to dehumanise Gisberta by refusing to publish her photo; by giving credence to church authorities, who insinuated that she had harassed the boys; by trying to omit the fact that she was transsexual; by ignoring the public positions taken by the LGBT movement; and so on. After Portuguese LGBT activists asked TGEU for support, TGEU launched the international 'Justice for Gisberta' campaign. The campaign consisted of informative events, public vigils, manifestations at Portuguese embassies and further activities in many European countries, as well as outside of Europe (e.g. in Australia and Brazil). Activists from TGEU together with local activists produced the 90-minute documentary *Gisberta – Liberdade* (*Gisberta – Freedom*) to inform people about the developments in Portugal and mobilise for the international campaign.

murders of gender-variant/trans people was much higher than believed, as well as an urgent need for accurate data.

In April 2009, TGEU started the TMM project, since which time it has systematically monitored, collected and analysed reports of killings of gender-variant/trans people worldwide. Designed as a first stage and pilot project of TGEU's TvT research project, the first preliminary results were published in July 2009 in *Liminalis – Journal for Sex/Gender Emancipation and Resistance*. These first results listed information on reported murders of gender-variant/trans people between January 2008 and July 2009, revealing 121 reported murders in 2008 and a

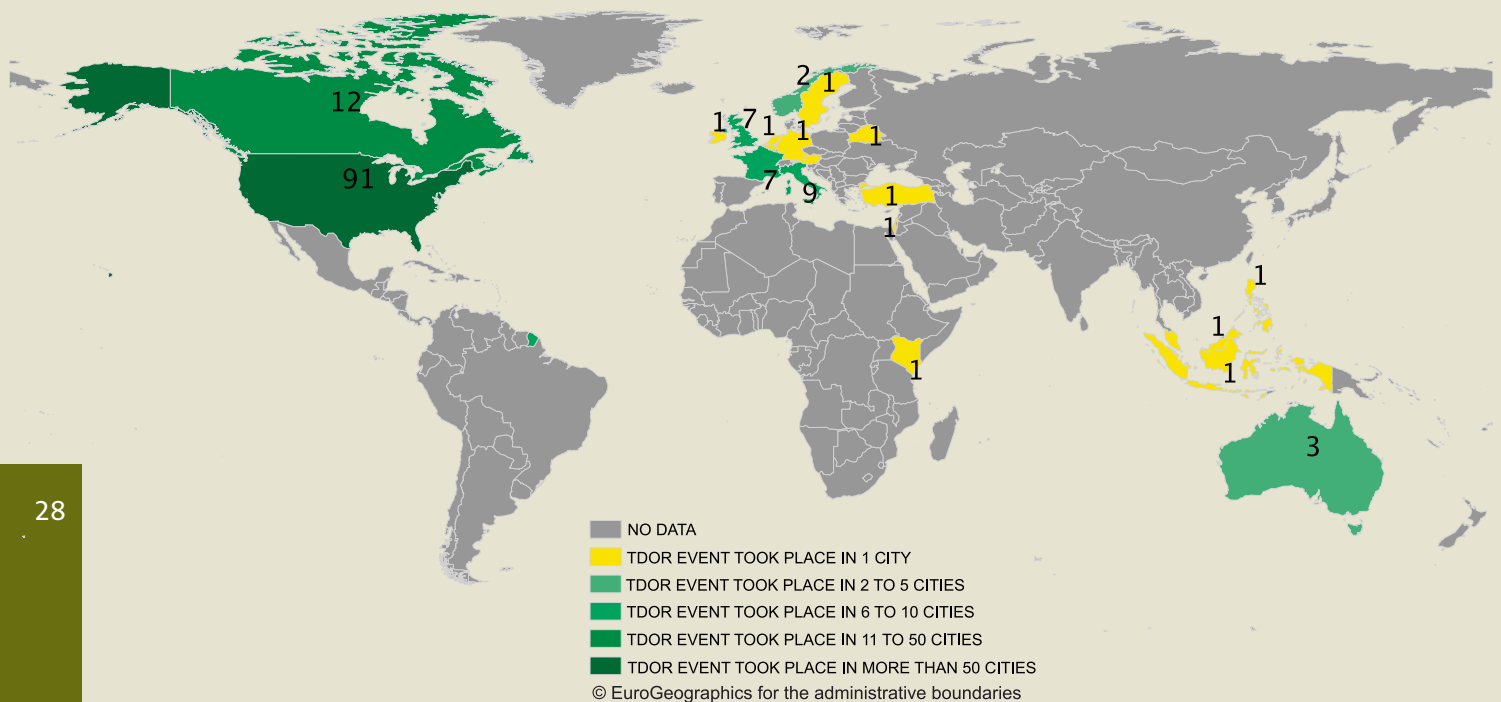


▲ Gisberta Salce Júnior



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162 reported cases of murdered trans persons from November 20th 2008 to November 12th 2009



© EuroGeographics for the administrative boundaries

IN NOVEMBER 2009 TDOR EVENTS TOOK PLACE IN 157 CITIES IN 21 COUNTRIES WORLDWIDE  
 Date of Information November 2009

Sources: [www.transgenderdor.org](http://www.transgenderdor.org), [www.tgeu.org/tdor2009english](http://www.tgeu.org/tdor2009english)

For the first time in 2009, TGEU's TMM project presented comprehensive data and advocacy tools to support trans activists in organizing TDoR events. The TMM TDoR 2009 update, which revealed 162 reported murders of gender-variant/trans people worldwide between 20 November 2008 and 12 November 2009, was sadly eclipsed by TMM's TDoR updates in the following years: 179 reported murders in 2010 and 221 reported murders in 2011.

◀ *Map showing the TMM results for TDoR 2009 (November 2008 – November 2009)*

Sources:

[www.transgenderdor.org](http://www.transgenderdor.org)  
[www.tgeu.org/tdor2009english](http://www.tgeu.org/tdor2009english)  
[www.transrespect-transphobia.org/en\\_US/tvt-project/tmm-results/tdor-2009.htm](http://www.transrespect-transphobia.org/en_US/tvt-project/tmm-results/tdor-2009.htm)

Every November since 1999, the TDoR is held to remember those gender-variant/trans people who have been killed due to prejudice or hatred. The TDoR raises public awareness of hate violence against gender-variant/trans people, provides a space for public mourning and honours the lives of those gender-variant/trans people who might otherwise be forgotten. Started in the USA as a reaction to the transphobic murder of Rita Heesters on 28 November 1998, the International TDoR is now held in many parts of the world. On 20 November 2009, for instance, the TDoR took place in over 150 cities in 21 countries in Africa, Asia, Europe, North America and Oceania.

◀ *Map showing worldwide TDoR events in November 2009*

### TRANS MURDER MONITORING:

Increase in monitored reports of murdered gender-variant/trans people between 2008 and 2011 (as of September 2012):

**2008:** 146

**2009:** 214

**2010:** 220

**2011:** 251

▶ further 83 in the first half of 2009. This evidence suggested that “every 3rd day the murder of a trans person is reported”.<sup>5</sup> Shocking as these results were, in the update for 2011 the numbers have almost doubled.

At the time of writing (September 2012), the archive counts 831 reported murders of gender-variant/trans people between January 2008 and December 2011 (see Appendix B). Since 2008, the number of reported murders has increased every year, which indicates that extreme hate violence against gender-variant/trans people is an ever more pressing issue for activism as well as national and international politics. The reported murders of gender-variant/trans people increased from 146 in 2008 to 214 in 2010 and 251 in 2011. This trend suggests that the number of reported murders of gender-variant/trans people will also increase in the coming years. What is more, with each update, figures for the previous years have increased as well.

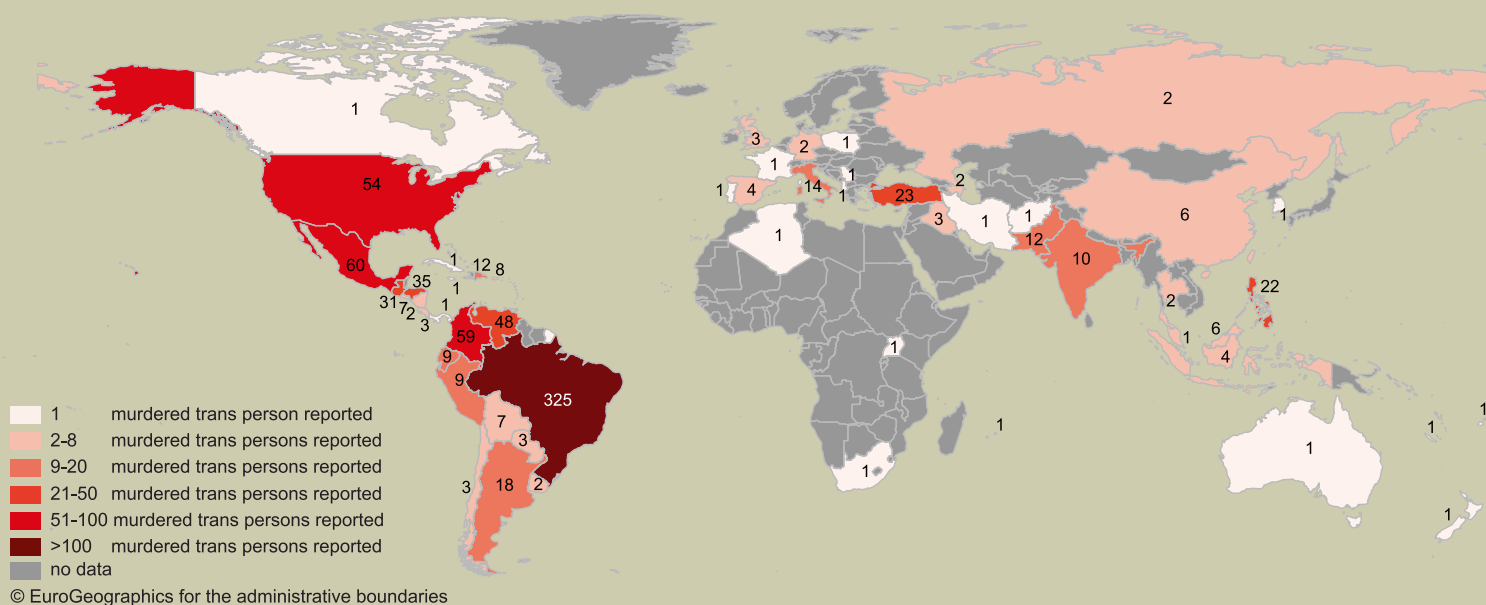
The reasons for this increase might be manifold. Every year, TGEU’s TvT research team has improved its monitoring methods, started new collaborations with organisations that contributed their data, and received information from activists from many parts of the world. In 2010, the TMM started collaborating with GGB from Brazil. Over time, a number of collaborations with other organisations were begun, including Observatorio Ciu-

dadano Trans (Cali, Colombia), Pembe Hayat (Turkey), Travestis México and STRAP (the Philippines). With this increasing collaboration, more and more reports became known in different world regions. The increase in the visibility of gender-variant/trans people and trans issues in public discourse may also have led to a better reporting of cases in some contexts. Still, the TMM archive is only partial and needs to deal with numerous challenges, such as the lack of reporting and monitoring in many countries.

At any rate, as mentioned earlier, the data suggest that there has been no decrease in the number of murders of gender-variant/trans people, and that violence against gender-variant/trans people continues to be widespread in many countries. Since the first report, updates have been published two to four times a year in English and Spanish, comprising detailed name lists, maps and statistics, as well as amendments to and corrections of previous publications. Special updates and press releases have been published for TDoR as well as IDAHOT events. Since March 2010, the TMM results have been published on the TvT website.<sup>6</sup>

In what follows, we present a detailed and contextualised analysis of the TMM findings in the six world regions. We then summarise these findings and point out some of the challenges in monitoring the murder of gender-variant/trans people.





worldwide 831 reported cases of murdered trans people between January 2008 and December 2011 (as of September 2012)

## 2.2 REPORTED MURDERS OF GENDervARIANT/TRANS PEOPLE IN THE WORLD REGIONS

For 2008 through 2011, we have found a particular distribution of reported murders of gender-variant/trans people in the six world regions, Africa, Asia, Central and South America, Europe, North America and Oceania. Of the total of 831 murders reported in 55 countries worldwide during these years, 644 cases were from 21 Central and South American countries, accounting for roughly 80 per cent of the globally reported murders of gender-variant/trans people. For the same period, we found four reports each for Africa and Oceania, 71 for Asia, 53 for Europe and 55 for North America (see Appendix B). This distribution, with reports from Central and South America figuring most prominently, confirms the first findings in the July 2009 report.

The reasons for this rather unexpected distribution are manifold and do not necessarily reflect the real situation or dangers faced by gender-variant/trans people in the respective regions. Neither can the findings be used as straightforward indicators of the degree of Trans-phobia in the various regions. These findings need to be considered in the context of differing reporting practices by both the media and activist organisations; of differences in whether gender-variant/trans people

are identified as such in reported killings; of the various different languages in which the killings are reported and whether the TMM has gained access to these reports; of specific situations of war and generalised atrocities in some countries and regions; and of the broader social situation of violence, poverty and exclusion in many countries.





1 murdered trans person reported  
 no data  
 © EuroGeographics for the administrative boundaries

**Africa: 4 reported cases of murdered trans people between January 2008 and December 2011** (as of September 2012)

### ▶ 2.3 TRANS MURDER MONITORING AND TRANSPHOBIA IN AFRICA

For the African continent, the TMM documented four reported killings of gender-variant/trans people in four countries from January 2008 to December 2011: While Africa has fewer documented killings of gender-variant/trans people than other world regions, the TMM findings are still significant for at least three reasons. First, the fact that there is limited public knowledge regarding the violence committed against gender-variant/trans people speaks to the difficulties involved in monitoring the murder of gender-variant/trans people. No such monitoring exists in a systematic way in Africa. Activists from several countries have reported that people who identify as trans or express their gender differently from social expectations are perceived as ‘homosexuals’, as is discussed later on. This fact suggests that murders of gender-variant/trans people are rarely reported as such by the media. Despite ample evidence of violence related to gender identity or expression, there tends to be no engagement with Transphobia as a distinct problem. This situation is compounded by the dozens of languages and various terms used in relevant texts. Apart from a lack of awareness of Transphobia, this incomplete reporting also needs to be seen in the context of the difficulties faced by

trans activists in terms of organising and gaining visibility and is thus itself indicative of discrimination and exclusion. Chapter 4.2 addresses the emergence of a regional African trans movement since the mid-2000s, which has begun to call critical attention to such difficulties.

Second, since we need to assume that the TMM findings for Africa represent only a diminutive fraction of actually occurring aggressions and murders, this situation highlights the need to develop much better forms of monitoring and documentation, especially when compared to the much more extensive knowledge gained in other world regions.

Third, while no generalisations can be made from the four reported murders of gender-variant/trans people, it is still instructive to consider who the victims were and under what circumstances the killings occurred and were reported. In what follows, we flesh out some of these details. We then discuss some reports of other forms of violence committed against gender-variant/trans people that enable a better understanding of the TMM findings and recurrent problems of Transphobia.



For the African continent, the TMM documented four reported killings of gender-variant/trans people in four countries from January 2008 to December 2011:

- Daisy (Desmond) Dube, killed on 2 July 2008 in Johannesburg, South Africa
- Ranhi Uhjir, killed in 2009, in Kampala, Uganda
- An anonymous person killed in August 2009 in Algiers, Algeria
- 'Shamir Mussan' (legal name), killed on 18 September 2011 in Port Louis, Mauritius

### ▶ 2.3.1 Circumstances of the killings

It is noticeable that all four killings occurred in capitals and major cities (Algiers, Johannesburg, Kampala, Port Louis). While this fact can be interpreted in various ways, it is safe to assume that killings of gender-variant/trans people in major cities have a better chance of being reported, both in the media and by activists, and that violence in smaller cities and rural areas goes unreported even more often.

A further issue worth pointing out is that the victims from Algiers and Kampala were both reportedly sex workers. The person from Algiers did sex work on the street at night, which is when the attack happened, according to the report from a local LGBT activist. Doing sex work, and especially doing sex work on the street, increases the risk of aggression. Regarding the victim from Kampala, it is also of note that the case was reportedly not followed up on by the police due to stigma, which we discuss further below.

Regarding the circumstances of the killings, some details are reported in all cases except the Ugandan one. The three reports giving details all mention that a group of men, or people whom the respective victims had not threatened and whom they had not necessarily known

personally, attacked the victim. Only in the Mauritian killing had a verbal argument between victim and perpetrators occurred hours earlier. There is no evidence that the killings were related to motives such as self-defence, robbery or jealousy. Instead, there are indications that they were related to the victims' living conditions – as in the case of the two sex workers – and gender expression.

That Transphobia was a motive is explicitly reported in the South African case. The victim, Daisy Dube, who identified as a drag queen, was shot to death, execution style, on 2 July 2008. A close friend who was out with Daisy that evening stated that the motive for the killing was Daisy Dube's gender identity, and that both had not been willing to subject themselves to ridicule. Daisy and three friends had told three men to stop calling them *isitabane*, a Sepedi term meaning 'hermaphrodite' that is usually used in a derogatory way to refer to LGBT people in the townships.



### ▶ 2.3.2 Struggles for the recognition of gender identity

In recent years, African trans activists have pointed to the lack of awareness regarding transgender identity and expression and the distinctive issues faced by gender-variant/trans people. Among these activists is Victor Mukasa, who represented the International Gay and Lesbian Human Rights Commission (IGLHRC) and Transgenders, Intersex and Transsexuals Uganda (TITs Uganda) some time ago. The following statement is taken from an interview conducted by Balzer in 2009:

*VICTOR MUKASA: Generally, all gender non-conforming people are 'automatically' branded homosexuals, as in most of our communities a man who looks like or has tendencies of a woman is the proper picture of a gay man. In the same way, a woman who looks like or has tendencies of a man is declared a lesbian automatically. So in our communities, many trans people have been kept blind to gender identity issues and have themselves many times referred to themselves as just homosexual.... Myself I only came out as trans five years ago. Even then, my friends thought I was just copying a 'new way of living' from the West. I always referred to myself as a 'lesbian', a 'butch lesbian'. All my activist life till then, I was a lesbian activist. I never, for a moment, realized how most of my suffering came from the fact that I am trans.... Even as a leader of two LGBT organisations in Uganda, I never initiated programs for gender non-conforming members, myself being one of them. That is still the case with many LGBTI organisations across the continent. Today this has changed. With more awareness of gender identity issues, many trans and/or gender non-conforming people are coming out. People have realized the need for an African Trans movement.<sup>7</sup>*

Victor played an important role in issuing the 'Nairobi Trans Declaration 2007', which was written by trans activists from Uganda, Kenya, Rwanda and Burundi to remind LGB activists of the existence of gender-variant/trans people in the movement. In a similar vein, Whitney Quanita Booysen, South African trans activist and member of the TvT Partner Organisation Gender Dynamix (GDX), which is based in Cape Town, stated in 2011 that

there is "no public recognition of trans people as having specific demands" in Africa, and that gender-variant/trans people also have no information whatsoever about themselves.<sup>8</sup>

In the South African context, the problem of a lack of recognition is aggravated when people live in townships and rural areas and have little access to resources and information.

*TEBOGO NKOANA, GDX Outreach Officer, comments: Our biggest challenge in our outreach is to find black transgender people in townships and rural areas. It is not that they are not there. It is just about a lack of knowledge, of terminology that would help people self identify. Some call themselves gay but the gay community often also rejects them, and is embarrassed by their visibility. People, who have some information about it as seen on TV, think it is a perversion from the West, and that makes for high levels of discrimination and stigma. It makes people even more scared to claim their identities.<sup>9</sup>*

### 2.3.3 So-called 'corrective rapes' of gender-variant/trans people

Male-identified gender-variant/trans people have been victims of forms of rape that are considered a 'corrective measure' by perpetrators in South Africa. In May 2011, a trans man was raped in Pretoria.<sup>10</sup> The victims' gender expression and performance also plays a significant role in the widespread 'corrective' rape of lesbian women in South Africa. Tshidi, a 31-year-old lesbian from Cape Town, reported after being beaten and raped by a group of men: "All the time, they were telling me this is what happens when a woman pretends to be a man".<sup>11</sup> In 2009, a Cape Town lesbian and gay support group said it was dealing with ten new cases every week, with numbers rising fast.

In the Johannesburg township of Kwa-Thema, three persons, Eudy Simelane, Girlie S'Gelane Nkosi and Noxolo Nogwaza, were brutally raped and killed between



◀ Ugandan trans activist Beyonce Tushabe giving an interview to the Ugandan press.

2009 and 2011. According to activists, the crimes were committed because of the victims' sexual orientation and gender expression.<sup>12</sup> They were identified as black masculine lesbians who wore men's clothes, played soccer and socialised with boys and men. While these cases have not been included in the TMM, they highlight that the number of killings in Africa would be much higher if killings related to the victim's non-normative gender expression were taken into account as well.

Gay men with feminine gender expression have also been raped and attacked, as 28-year-old Muntu Masombuka, from Kwa-Thema, reported: "They said if I am a woman, they will show me what men do to women".<sup>13</sup>

### 2.3.4 State involvement in transphobic violence

There have been reports of torture, beatings, extortion, rape and other forms of abuse of gender-variant/trans people supported or committed by state authorities, including the police and prison guards. Samuel Laetitia Opio is a trans activist from Kampala, Uganda. In 2006, she was verbally and physically abused by police on the street. She was then taken to the police station, where she was kept for several hours and was further beaten,

humiliated and robbed of her belongings. The police then extorted a large amount of money from her, threatening to keep her at the police station, call the press and have her picture published in a national newspaper.<sup>14</sup>

Sex workers are especially vulnerable to police violence. Ugandan trans woman and activist Beyonce Tushabe said in an interview with the TvT team: "Police – is a problem. Violation. When I'm arrested – I'm really tortured. Tortured." Asked why she was arrested, she replied: "It's because I'm trans. That's the problem. 'Why am I transgender?' – 'Why am I a sex worker?' So they arrested me."<sup>15</sup> Once, during the day, Beyonce was arrested and abused by the police as she was coming from a market, carrying food, and no connection to sex work was made. In prison, Beyonce's gender identity was denied, and she suffered assaults from other inmates and prison wards.

A trans woman from Lagos, Nigeria, who was jailed in 2006, reported: *[M]y ordeal has been more than dehumanizing. My hairs all shaved off with brutal force and with a blade which was as sharp as Lucifer's instruments were my greatest pain. I lost it all, all the fancy hairs and glamorous effects. To my utmost chagrin, I was distransgendered and compelled to looking masculine at all cost.*<sup>16</sup>





Where gender-variant/trans people become victims of violence, cases are often not followed up on by public authorities. As the Zambian organisation Trans Bantu Zambia reported, in March 2009 a trans woman was badly beaten and then abandoned by four men in Lusaka because they felt she had misled their friend into believing she was a 'biological' woman. Her adopted aunt, who was a high-level police officer, began pressing charges but was advised to stop so as not to cause unnecessary embarrassment to the victim. The case has never been reopened.<sup>17</sup> In Dar es Salaam, Tanzania, trans woman Aunty Victoria died on 17 May 2009 in Muhimbili National Hospital after attempting suicide. Before and after her death, she was treated with utter disrespect, as GDX reported:

*Hours before her death, naked and unconscious, a hospital worker took photographs of her body. The photos were uploaded to the internet, sent out via email list serves and widely circulated. Echoing this shocking disrespect, the morgue at Muhimbili was left unlocked and hundreds of people queued to look at her body. By the time Aunty Victoria was buried, her breasts and genitals were surgically removed to conform to the Muslim belief that her body should be the one she was born with, so that Allah would recognise her in death.*<sup>18</sup>

These reports suggest that although there are only a small number of reported killings of gender-variant/trans people in Africa, transphobic violence – which is frequently extreme and condoned or even carried out by state institutions – is still rampant in many regions. Moreover, the scarcity of reports is directly related to the lack of recognition of gender-variant/trans people in both public discourse and lesbian and gay movements.



- 1 murdered trans person reported
- 2-8 murdered trans persons reported
- 9-20 murdered trans persons reported
- no data

© EuroGeographics for the administrative boundaries

Asia: 71 reported cases of murdered trans people between January 2008 and December 2011 (as of September 2012)

TMM in Asia: Increase in monitored reports of murdered gender-variant/trans people between 2008 and 2011 (as of March 2012):	
<b>2008:</b>	16
<b>2009:</b>	14
<b>2010:</b>	21
<b>2011:</b>	20

Reports have been found in 13 countries:			
Afghanistan:	1	Malaysia:	6
Azerbaijan:	2	Pakistan:	12
China:	6	Philippines:	22
India:	10	Singapore:	1
Indonesia:	4	South Korea:	1
Iran:	1	Thailand:	2
Iraq:	3		

## 2.4 TRANS MURDER MONITORING AND TRANSPHOBIA IN ASIA

In Asia, the TMM research team found 71 reports of murdered gender-variant/trans people in 13 countries between January 2008 and December 2011. Since 2008, the numbers have been increasing steadily.

Due to populations of around 170 million in Pakistan, 1.3 billion in China and 1.2 billion in India, the Philippines and Malaysia have the highest per-capita rates of reported murders. In the following, we first describe some of the major challenges in the monitoring of and general findings in Asia. We then address the situation in the Philippines in more depth, using this country as an example of the vicious circle in which gender-variant/trans people in many countries are caught.







### 2.4.1 Challenges of Trans Murder Monitoring in Asia: The examples of India, Iraq, Malaysia and Pakistan

The reported results do not present the full picture. Indeed, they demonstrate the challenges of monitoring murders of gender-variant/trans people in Asia. In Asia, there is no systematic monitoring of murdered gender-variant/trans people by either state institutions or movements or NGOs, except in the Philippines, where the LGBT Hate Crime Watch<sup>19</sup> and the trans organisation STRAP do monitor these murders. There is a huge cultural diversity, which manifests not only in hundreds of languages, but also in dozens of terms for gender-variant/trans people, listed in Chapter 3.3 on the legal and health-care situation in Asia. The English-language *Times of India*, for instance, often refers to murdered *hijras* as ‘eunuchs’. The same holds true for English-language newspapers in Pakistan.

Thus, the figures for Pakistan (12 killings) and India (10 killings) must be interpreted with extreme caution. As there is no systematic monitoring by NGOs or state institutions in these countries, and as the TMM research team only has access to those cases published in English-language newspapers, which describe the victims in local terms or as ‘eunuchs’ or ‘cross-dressers’, it is extremely likely that many cases of murdered gender-variant/trans people have been missed by the TMM. The reports we found for India and Pakistan, however, are spread throughout the countries, with two concentrations in India (Bangalore and New Delhi) and four in Pakistan (Adalatgarha, Hyderabad, Karachi and Sheikhpura). In India, three of the ten victims were well-known leaders of the trans and *hijra* communities. Most of the cases in India also involved high degrees of violence: one victim was raped and thrown out of a moving car, two were stoned, two were strangled and three were found with their throats cut. The findings for Pakistan show a similar picture: two victims had been tortured before they were burned, one was strangled, one was stabbed and then run over by a car and one was found with a cut throat. The high degree

of violence in these murders may be read as indicating hate violence. In other cases in Pakistan, there are even more clear indicators of possible transphobic hate violence: three victims had been molested before they were killed; one was shot with her partner in her own apartment after they had decided to marry; and one was shot together with two other people while entering a private party by a group of people who were described as ‘militants’.

In Malaysia, the TvT research team found six reports of murdered gender-variant/trans people between 2008 and 2011. However, Mitch Yusof, a trans activist from Malaysia, explained in an interview:

*Recently we had noticed, that there are a lot of deaths within the trans community. Maybe once a month. And they would say it's murder, because most of them are street [sex] workers.... So we are also doing a whole internal investigation on whether it's hate crime or violence.*<sup>20</sup>

An article on the 2009 TDoR in Malaysia described the context and the challenges of reporting murders of gender-variant/trans people in Malaysia:

*In Malaysia, battered transgenders and friends of those who died are often too afraid to speak out because of death threats and police mockery, while Islamic fundamentalists still demonize and portray transgenders falsely as deviants. Many of the murder victims are often insultingly mis-gendered and referred to with the wrong pronouns when their deaths are reported in the newspapers. And many deaths go unreported because of media bias.*<sup>21</sup>

Reported murders of gender-variant/trans people in Malaysia also show high degrees of violence: for instance, one victim was thrown off a building and then run over by a car.

Already in the very first TMM report, we discussed the difficulties in monitoring killings in Iraq, due to the fact that murdered gender-variant/trans people there are either reported as murdered gay people or subsumed under general numbers for LGBT people. This misreporting is of great importance, as there were over 600 estimated mur-





ders of LGBT people in Iraq between 2005 and 2009.<sup>22</sup> Of the three murders of gender-variant/trans people in Iraq that were reported to us, all indicate brutality and dehumanisation. They all happened in Basra in January 2008 at a police station, where the victims were, after being arrested and humiliated, executed by police officers. On the internet exists a video showing one of the executed gender-variant/trans persons at a police station. In this video, she is first seen very frightened in female clothing amidst police officers making fun of her, and later her long hair is shaved, while a voice announces that she and anyone like her will be executed.<sup>23</sup>

#### 2.4.2 High degrees of violence in TMM cases for Asian countries

For many Asian countries, we have either too few cases or too little information regarding the cases to conduct a deeper analysis. However, as in the countries mentioned above, in many countries we found reports of a high degree of violence and/or hate or other possible indicators of transphobic hate violence. In Indonesia, for instance, one victim was found mutilated and dismembered, and another was shot in a red-light district while standing with two other trans women who survived. In Thailand, one of the victims had been raped before she was beaten to death with a broken piece of concrete. The perpetrator later declared that he was angry at his wife and wanted to do something extreme. For Afghanistan, we have found only one report, which stated that the victim was dismembered after she had been dancing at a wedding. Her remains were sent to her family. These examples demonstrate the lack of detailed information on the few reports we have been able to find and indicate possible hate violence in some reported cases in almost all mentioned countries.

Thus, because the main method used by the TMM project is based on web research and analysis of articles and blogs published on the World Wide Web, TMM is

quite difficult in Asia. The number of reported murders in India, Iraq, Malaysia and Pakistan demonstrate the challenges in monitoring murders of gender-variant/trans people and the absence of systematic data gathering, and thus also the need for better research and monitoring structures.

#### 2.4.3 TMM findings and Transphobia in the Philippines

Over the last four years, the highest increase in the number of reported murders in Asian countries occurred in the Philippines, where The Philippine LGBT Hate Crime Watch and STRAP record murders of gender-variant/trans people. In 2008, there were five reported murders, in 2009 one, in 2010 nine and in 2011 seven. It has been possible to monitor these murders because of the very good cooperation between TGEU's research team and STRAP; The Philippine LGBT Hate Crime Watch's professional monitoring; and the high visibility and organisational status of the gender-variant/trans people's movement in the Philippines, which has contributed to the increase in concern towards Transphobia in Philippine society. Since these aspects are relevant to understanding the TMM findings more generally, we focus on the situation in the Philippines here.

Most of the reported murdered gender-variant/trans people in the Philippines were stabbed (11). One was described as a teenager. In the descriptions we found and received, there are indications of possible transphobic hate violence, such as "perpetrators being disturbed after finding out that the person was trans and stabbing her to death", "victim's body found naked", and a disturbingly high degree of violence: four victims were tortured before they were killed, two were raped before they were killed and two were kidnapped and executed by an Islamist extremist group. Furthermore, one of the victims was killed inside police headquarters. The data also show that five of the 22 victims were murdered in the capital, Manila, and



that two were killed in each of Baguio City, General Santos City, Jolo Town, Puerto Princesa and Sumisip Town. The other victims were all murdered in different cities and provinces (Aklan, Buguey, Ilocos Sur, Malasiqui, Obanda, Occidental Mindoro and Santa Barbara). The gender-variant/trans people and activists whom we interviewed in the Philippines spoke of their widespread experiences of Transphobia. Santy, a member of STRAP, gives an example of how societal Transphobia intertwines with violence and results in society 'blaming the victim' for what he, she or s\_he has suffered; hence, instead of protecting the victim, this dynamic creates another layer of victimisation:

*So during my first year in college, I basically looked like a woman already.... I dressed like a woman. So when I was walking back home, a guy raped me. I was literally raped. I got scared of course, but after he raped me I thought I am going to die or something. And I went to the police station; they just laughed at me. What they told me is: "What are you complaining for? You enjoyed it?" .... They just laughed at me!<sup>24</sup>*

This vicious circle results in the silence of victims of transphobic hate violence. Santy explains: "I know some people who were raped, but you know, they just shut up about it, because you would just be embarrassed; no one will listen."<sup>25</sup>

This vicious circle of experiencing Transphobia when trying to report it affects not only gender-variant/trans people and their communities in a silencing and frightening way; it also sanctions transphobic rape by exempting perpetrators from punishment.

An article by trans researcher Sam Winter confirms the widespread Transphobia in the Philippines:

*Transprejudice is evident even in more transfriendly societies such as Thailand and the Philippines, where trans women once enjoyed social status (often as spirit mediums or healers). In both countries nowadays family members commonly frown upon gender identity variance in their children. In a recent study 21% of Thai trans women (Phuying kham phet) and 40% of Filipina trans women (transpinay) reported paternal rejection when transitioning.<sup>26</sup>*

Santy confirms this assessment by telling her own story:

*But the first reaction of parents, when they find out that their son or daughter is a trans or gay: "Oh, the devil possessed you", something like that. So it is always associated with religion: "It's a sin", "Sodom and Gomorrah".... I grew up in a very strict Catholic family. I used to be in the cage of the chicken. My father caught me putting on make-up. He got mad at me and put me into the cage of the chicken.<sup>27</sup>*

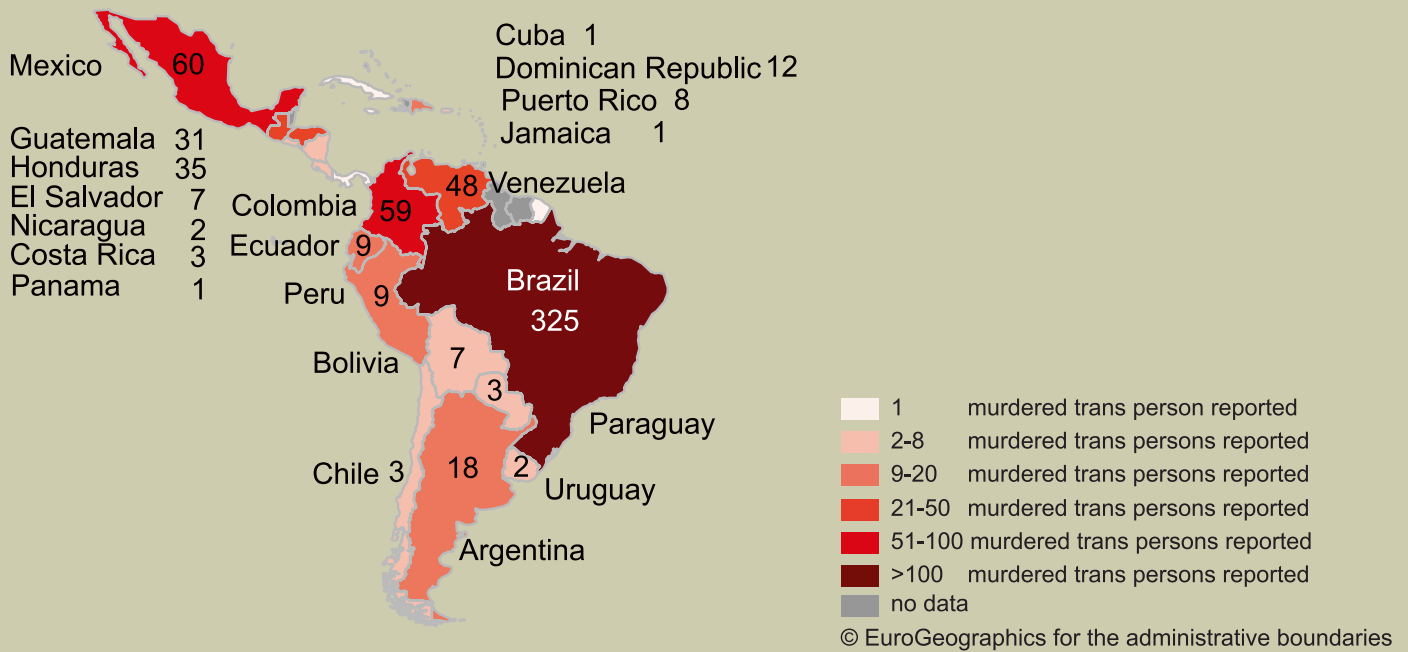
Citing his study on gender-variant/trans people, Winter states that "30% of Filipina trans women feel that society generally rejects trans people".<sup>28</sup>

Santy explains further forms of discrimination when, for instance, applying for a job. Employment discrimination in the Philippines has led Filipina trans women (transpinays) to engage in sex work or leave the country.<sup>29</sup> During the presentation of TvT research results in Berlin in October 2011, Naomi Fontanos, former chair of STRAP, shared that many gender-variant/trans people in East and South East Asia are forced into diaspora.<sup>30</sup> Many gender-variant/trans people from the Philippines migrate to Japan, a trend that started in the 1980s, as Santy explained.<sup>31</sup> Ai, a trans woman from the Philippines who lived in Tokyo until 2012, confirmed that many Filipina trans women choose Japan because of better job and living opportunities.<sup>32</sup>

The case of the Philippines shows that Transphobia and transphobic hate violence are present in countries perceived as transfriendly and in Asian countries where gender-variant/trans people used to have positive social status, especially in pre-colonial times.<sup>33</sup> As in many other countries in Asia and worldwide, many gender-variant/trans people in the Philippines experience a vicious circle of being rejected by their own family, being discriminated against in the job market, and being forced into sex work – all of which combine to heighten the experience of Transphobia and discrimination. For many, the only way out of this vicious circle is to leave the country.

The examples of the lack of data in Iraq and other countries and the degree of Transphobia and number of hate crimes in the Philippines demonstrate that the TMM findings for Asia show only the tip of the iceberg. More support for regional and local research and monitoring is needed in order to acquire a more comprehensive understanding of the situation in many countries.





Central and South America: 644 reported cases of murdered trans people between January 2008 and December 2011 (as of September 2012)

COUNTRY	2008	2009	2010	2011	TOTAL
Argentina	2	3	3	10	18
Bolivia	-	1	5	1	7
Brazil	57	68	99	101	325
Chile	1	1	-	1	3
Colombia	13	13	15	18	59
Costa Rica	3	-	-	-	3
Cuba	-	1	-	-	1
Dominican Republic	-	4	4	4	12
Ecuador	1	2	5	1	9
El Salvador	1	5	-	1	7
Guatemala	1	12	14	4	31

COUNTRY	2008	2009	2010	2011	TOTAL
Honduras	4	15	8	8	35
Jamaica	-	-	1	-	1
Mexico	4	9	14	33	60
Nicaragua	-	2	-	-	2
Panama	-	-	-	1	1
Paraguay	2	-	1	-	3
Peru	1	4	2	2	9
Puerto Rico	-	2	5	1	8
Uruguay	-	1	-	1	2
Venezuela	4	22	5	17	48
<b>TOTAL</b>	<b>94</b>	<b>165</b>	<b>181</b>	<b>204</b>	<b>644</b>

▲ TMM findings in 21 Central and South American countries: the number of documented killings increased every year since 2008. The sharpest increases were documented in Brazil and Mexico.



## 2.5 TRANS MURDER MONITORING AND TRANSPHOBIA IN CENTRAL AND SOUTH AMERICA

For Central and South America, the TMM registered 644 reported killings of gender-variant/trans people in 21 countries between 2008 and 2011. This number amounts to 79 per cent of all cases documented worldwide. With 325 reported murders, Brazil is by far the country with the highest number of documented killings in the world in absolute numbers. In three Central and South American countries, almost 50 to 60 reported killings were documented: Colombia (59), Mexico (60), and Venezuela (48). Outside Central and South America, in only one country, the USA, is the figure in the same range (54). However, if registered cases are treated on a per-capita basis, the figures in smaller Central American countries such as Guatemala, Honduras and Puerto Rico are at least as worrying.

As the table shows, the number of documented killings increased every year since 2008, from 94 cases in 2008 to 204 in 2011. The sharpest increases were documented in Brazil and Mexico.

These numbers are ever more worrying, as they represent only a small fraction of violence committed against gender-variant/trans people. At the same time, they cannot be interpreted to suggest that the violence occurring in Central and South America is exponentially worse than in other world regions like Africa, Asia and Oceania, where fewer killings have been reported. In most Spanish- and Portuguese-speaking Central and South American countries, killings of gender-variant/trans people are frequently reported as murders of *travestis* (Portuguese/Spanish) in the media, which facilitates their documentation, while in other regions such identification is often lacking. Moreover, in many Central and South American countries, some gender-variant/trans people have a high visibility, and there are various forms of self-organising, activism and local monitoring of killings.

In the following, we further elaborate on these issues as well as the significance of considering relative population sizes. We then point out some insights that can be gained from the TMM data and contextualise them by demonstrating that killings and other forms of violence against gender-variant/trans people are related to the legacy of the military dictatorships, violence-based regimes of control exercised by state and non-state actors and wider social issues of poverty and exclusion.

### 2.5.1 Monitoring in Central and South America

The increase in the TMM figures between 2008 and 2011 can partly be explained by an intensified monitoring of killings of gender-variant/trans people in Central and South America, as well as by the TvT research team's intensified cooperation with local activists and NGOs. Many monitoring, documentation and denunciation efforts have emerged from a variety of networks, groups and political spaces created and inhabited by gender-variant/trans people.

The various groups and networks, some of which are TvT partner organisations, have contributed to making visible and denouncing transphobic violence. For instance, in 1999, members of the Brazilian organisation ASTRAL (Associação de Travestis e Liberados) demonstrated in front of Rio de Janeiro's city council, stating: "The *travestis* of Rio de Janeiro and Brazil affirm: The police kill more than AIDS!"<sup>34</sup> In 2010, RedLacTrans issued the 'RedLacTrans Declaration on Hate Crimes in Honduras', accusing the government "of covering up crimes against humanity and of not guaranteeing trans people's full exercise of human rights within Honduras".<sup>35</sup>

Activists have also set up monitoring projects such as the documentation conducted by the aforementioned Brazilian GGB since 1980. In Brazil, several state governments over the last ten years have also set up monitoring projects in collaboration with LGBT organisations. In



AMONG THE MANY GROUPS AND NETWORKS CURRENTLY ACTIVE IN CENTRAL AND SOUTH AMERICA ARE THE FOLLOWING:

<b>ARGENTINA</b>	ATTTA (Asociación de Travestis Transexuales y Transgéneros) and ALITT (Asociación de Lucha por la Identidad de Travestis y Transexuales)
<b>BOLIVIA</b>	TransRedBolivia
<b>BRAZIL</b>	ANTRA (Articulação Nacional das Travestis e Transexuais)
<b>CHILE</b>	OTD (Organización de Transexuales por la Dignidad de la Diversidad)
<b>COLOMBIA</b>	Observatorio Ciudadano Trans
<b>COSTA RICA</b>	Mundo Trans
<b>DOMINICAN REPUBLIC</b>	TRANSSA (Trans Sempre Amigas)
<b>ECUADOR</b>	Proyecto TRVNSGEN3RO and Asociación Trans El Oro
<b>GUATEMALA</b>	Reinas de la Noche and RedTrans
<b>MEXICO</b>	TV Mex – Travestis México
<b>NICARAGUA</b>	Red Nicaraguareense de Activistas Trans
<b>PARAGUAY</b>	PANAMBI (Asociación de Travestis, Transexuales y Transgéneros del Paraguay)
<b>PERU</b>	Instituto Runa
<b>URUGUAY</b>	ATRU (Asociación Trans del Uruguay)

There is also RedLacTrans (Red Latinoamericana y del Caribe de Personas Trans), a *travesti* and transwomen’s network across 17 Central and South American countries.



2012, Brazil's federal government launched the first *Report on Homophobic Violence in Brazil*, which was written in close cooperation with LGBT activists and includes data on reported murders and violence against gender-variant/trans people.<sup>36</sup>

The Centro de Apoyo a las Identidades Trans A.C (Centre for the Support of Trans Identities) is a Mexican non-profit organisation that emerged from the group TVMEX and has been documenting killings of gender-variant/trans people all over Central and South America since 2011.<sup>37</sup> On a regional scale, the Inter-American Commission of Human Rights (IACHR), an organ of the OAS, is also worth mentioning. Resulting from the work of the organisation's LGBTI Coalition, which was also key in passing OAS resolutions on gender identity and gender expression, in November 2011 the IACHR created a Unit on the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons. The Unit documents and reports on killings of, and violence, discrimination and human-rights violations against, LGBTI persons.<sup>38</sup>

In Santiago de Cali, Colombia, there is a local monitoring project called Observatorio Ciudadano Trans (Observatory Trans Citizen), which has documented 13 killings of gender-variant/trans people in Santiago de Cali alone and 13 further killings in other cities and regions between March 2008 and March 2011. A human-rights organisation based in the Colombian city of Medellín has documented seven killings of gender-variant/trans people in the city between January 2010 and November 2011.

The Colombian example suggests that local monitoring can significantly change the visibility of killings of gender-variant/trans people and plays an important role in informing monitoring on a greater scale. Moreover, it is conspicuous that the three countries with the highest absolute numbers – Brazil, Colombia and Mexico – all feature trans, LGBT or human-rights projects that document the killings of gender-variant/trans people.

### 2.5.2 Considering population size and en-bloc reporting

As the TMM figures record absolute numbers of reported killings of gender-variant/trans people, they cannot on their own be taken as indicators of the degrees of transphobic violence in different countries. Brazil, the country with the largest figure by far, also has – with estimates of around 200-million inhabitants – by far the largest population in the region, and one of the largest in the world. Columbia, Mexico and Venezuela, the other three countries in the region with very high numbers, also have relatively large populations.

When seen in relation to population size, the figures of reported killings of gender-variant/trans people in smaller Central American countries like Guatemala, Honduras and Puerto Rico turn out to be equally or even more worrying. For instance, while Brazil, for the period of 2008 to 2011, has a rate of around 1.7 reported gender-variant/trans killings per million inhabitants, for Guatemala the rate is 2.1, for Puerto Rico 2.2 and for Honduras 4.3 – meaning that more than twice as many reported killings of gender-variant/trans people per capita have been registered in Honduras than in Brazil!

An additional specificity of the TMM data that needs to be taken into account is that for Guatemala and Venezuela, reports were published that mentioned killings of gender-variant/trans people en bloc, i.e. without providing any details regarding the exact dates, victims, perpetrators, locations or circumstances of the killings. For Guatemala, nine killings were reported for 2009, and 13 killings for 1 January to 18 March 2010. For Venezuela, 18 killings were reported en bloc for 2009.

Bearing in mind that the TMM figures are dependent on reporting practices and need to be considered in relation to issues such as vastly differing population sizes, we now discuss some of the insights that can be gained from the actual cases of reported killings that have been documented.







# TRAVESTI e RESISTÊNCIA



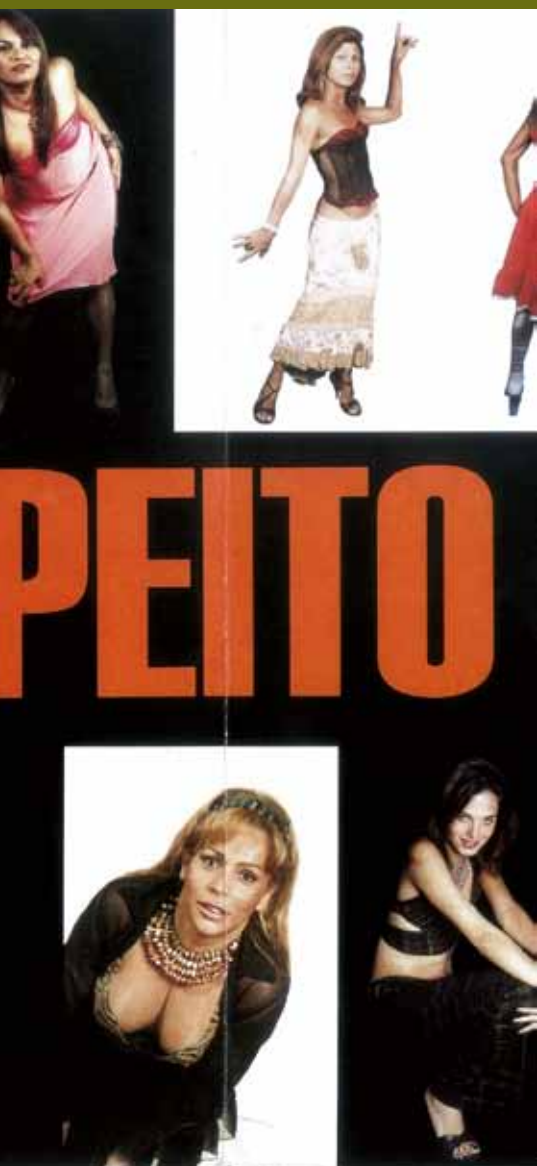
## ▶▶ 2.5.3 Gender-variant/trans street sex workers at risk

On 15 April 2011, the Brazilian *travesti* Inete was stabbed around 30 times and died on the street in the city of Campina Grande in the state of Paraíba. A CCTV camera recorded how four men chased and attacked Inete. Just weeks earlier, CCTV footage of the murder of the *travesti* Priscila, who was killed on 2 March 2011 in the Brazilian city of Belo Horizonte, had created international outrage. Through political campaigns that spread rapidly on the internet and other media, and backed up by data from the TMM and other monitoring projects, the high number of killings of gender-variant/trans people in Central and South American countries has received some public attention in recent years. However, the circumstances of these killings have hardly been debated.

The fact that Inete, Priscila and a great number of other victims were sex workers who earned their living on the streets at night was rarely mentioned.

As in other world regions, sex workers form the single largest group of the victims documented by the TMM for Central and South America. In 258 of the 643 TMM cases documented in this region, the victim's profession, occupation or source of income was reported. Of these, 201 victims, or 78 per cent, were sex workers. Especially when they work on the streets, many gender-variant/trans sex workers are exposed to insults, physical abuse, rape and even murder. RedLacTrans issued its aforementioned Declaration on Hate Crimes in Honduras after both the vice-president and president of the Honduras trans organisation Colectivo Unidad Color Rosa, Neraldys and Imperia Gamaniel Parson, were fatally shot on





◀ Poster of the 'Travesti and Respect' campaign directed at schools, health services, trans communities and clients of gender-variant/trans sex workers. The campaign was organised by the Brazilian trans movement in collaboration with the National STD/AIDS Program and launched by the Brazilian National Congress in 2001

the street while doing sex work in May and August 2010, respectively.

In Lima, Peru, gender-variant/trans sex workers reported sexual violence, robbery and beatings committed by clients, neighbours and gangs, as well as municipal watchmen units (*Serenazgo*) and the police. Of 107 individuals who participated in a study in the fall of 2006, 65 per cent reported experiencing physical and/or verbal violence in that same year. In many cases, aggressors used forms of torture including beatings on silicone implants, sexual violence or symbolic punishments like cutting off the person's hair, in addition to robbing them of their belongings.<sup>39</sup>

A study of the situation of gender-variant/trans people in Argentina conducted from February to June 2006 in four regions and five Argentinian cities with 257

respondents found that 84.2 per cent of the respondents earned their living by doing sex work, and that 77.5 per cent of those would quit doing sex work if they could.<sup>40</sup> The study also states that 73 per cent of the respondents had not completed the obligatory school education: 39 per cent of the respondents stated that they had not carried on with school and higher education because of fear of discrimination, while a further 30 per cent had stopped attending because of lack of money.<sup>41</sup> The findings also show that more than 90 per cent of the respondents had experienced some form of violence: 64.5 per cent had experienced physical aggression, and 41.5 per cent had experienced sexual abuse. Of the 90 per cent who had experienced violence, 74.2 per cent had experienced it on the street.<sup>42</sup> In summary, the study shows that for Argentinian gender-variant/trans people, experiences of violence





are a common rather than exceptional experience, and that gender-variant/trans sex workers suffer the most.

In Venezuela, lawyer and trans activist Tamara Adrián commented on the killings of gender-variant/trans people, pointing out that there are no public policies for them: “As a rule, these are people who engage in prostitution because they have no alternative, as no one will give them a job. This invites exploitation, as these are the most vulnerable groups in society.”<sup>43</sup> This statement also points to a vicious circle, as *travestis* in Central and South America are often generally perceived as prostitutes, a profession that is typically regarded prejudicially, as a consequence of which they are socially marginalised. In an intensive ethnographic field study carried out in 2000 and 2001 among the trans population of Rio de Janeiro, Balzer showed the dynamics and contexts of one such vicious circle, which was related to the last military dictatorship in Brazil (1964-1985), with its extremely transphobic propaganda and prosecution of gender-variant/trans people by military authorities.<sup>44</sup> We return to this historical context below and focus here on the dynamics of this vicious circle.

Having moved towards achieving broader social acceptance shortly before the dictatorship, by the turn of the century gender-variant/trans people in Brazil had become associated in public opinion with prostitution, AIDS, drug abuse and crime. Many of Balzer’s informants explained how they grew up in extremely transphobic environments, left school or their families, lived on the street, where they met peers who earned their living by doing sex work, and thus found places to stay and ways of making a living. Others explained how they were refused when applying for a job and thus had to do sex work. Only a few had the chance to leave or avoid doing sex work and finding another occupation as a result of being supported by family members, friends or lovers/spouses.<sup>45</sup> One of Balzer’s informants, an activist and former sex worker in Rio de Janeiro, explained: “What would be important in the case of *travestis* is discrimination in companies, in the

gateways to work for *travestis*. Discrimination does exist. People think: ‘*Travestis? Travestis – sex!*’ *Travestis* are sex, sex, sex”.<sup>46</sup> Unfortunately, this narrow stereotypic image is perpetuated by scientific studies such as Don Kulick’s oft-cited 1998 book, *Travesti: Sex, Gender, and Culture among Brazilian Transgendered Prostitutes*, and some health professionals.<sup>47</sup> Apart from the many hardships typically associated with sex work, gender-variant/trans sex workers in Brazil face risks that are directly connected to it. The common practice among *travesti* sex workers to modify their bodies through the injection of industrial silicone to better attract their clients can be seen as a result of the dynamics of demand and supply in the sex market. This practice, however, leads to serious health problems and sometimes death. The aforementioned trans activist from Rio de Janeiro, who survived the injection of silicone, explained: “That’s the story of silicone injection: many have already died from injecting silicone”.<sup>48</sup> During TMM research for Central and South America, the TvT team regularly found reports of gender-variant/trans people who had died due to the injection of industrial silicone.

A more prominent lethal risk faced by those doing trans sex work are extremely brutal and cruel forms of transphobic violence. During Balzer’s research in Brazil, six gender-variant/trans people were murdered in one week close to Copacabana’s famous Avenida Atlântica, Rio de Janeiro’s best-known sex-work area. At that time, only the bravest and/or most desperate gender-variant/trans people continued to do sex work there at night.<sup>49</sup> More recent research in Brazil, as well as the TMM findings ten years later, shows that that the risk of becoming a victim of cruel and brutal violence and of murder still persists, even if some geographic and discursive dynamics have shifted.<sup>50</sup> In his films *The Butterflies (Borboletas da Vida, 2004)* and *Living Day by Day (Basta um Dia, 2006)*, Brazilian activist director Vagner de Almeida has documented the acute violence gender-variant/trans people experience in the state of Rio de Janeiro. Many are afraid to leaving their house and need to do sex work, being exposed to insults, violent at-



tacks and rape, and sometimes murder. Interviewees of Hutta and Balzer mentioned various homo- or transphobic attacks and murders near their homes.<sup>51</sup>

The studies from Argentina and Peru, mentioned above, confirm the risk of becoming the victim of cruel and brutal violence, and even murder, in other South American countries.

#### 2.5.4 Cruelty and indications of Transphobia

Many of the victims registered in the TMM were subjected to forms of cruelty before being killed. Apart from shooting and stabbing, the most frequent forms of murder involved beating, stoning and strangling. Several victims' bodies were found mutilated, decapitated, burned and tortured. In Santiago, Dominican Republic, Jeva Padilla's body was found in April 2009, wrapped in a plastic bag, showing 40 gunshot wounds, burns and facial and genital mutilation. Only two days later, the body of 'Ramón' Martíne was found wrapped in a pink plastic bag with burn marks and severe knife wounds. In the Argentinian city of Orán, the body of Mariana Aricuri was found on a hill in January 2011 with 30 machete wounds, mostly to the face. The hands were missing, as they had been eaten by swine kept by locals, and by dogs. In 2010 in the Bolivian province of Gran Chaco, the body of a victim who had been tortured was found. A broomstick had been inserted into her rectum before she was strangled to death. In May 2009 in Uruaçu, Brazil, 19-year-old Ketlin was found dismembered and beaten to death with a hatchet, her breasts cut off.

In the killings reported or commented on by activists, transphobia was often mentioned as a motive. This was the case, for instance, with Johana Pinzón, the owner of a hairdresser's salon and a member of the trans association Asociación Trans El Oro in Machala, Ecuador. In October 2010, Johana Pinzón and her friend Debora were found dead in Debora's apartment. A spokesperson for

Asociación Trans El Oro called the killing a hate crime. In March 2011, 21-year-old travesti and sex worker Jessica was stabbed on the street in the city of Bogotá, Colombia, by a man who "hated the [sex] workers of the Santa Fe district", as her colleagues stated. In May 2010, the body of Mônica de Jesús Carvalho was found shot dead in a garbage container in the Brazilian city of Stella Maris. According to friends of the victim, Mônica, who was a sex worker, had received death threats through an online social network from a man who had killed another gender-variant/trans person. According to several reports, the perpetrator claimed that he had murdered Mônica because she had made sexual advances towards him. In July 2009, Bianca was murdered in the Brazilian city of João Pessoa by three adolescents who stated that they had killed her because she wanted to have oral sex with them. Also in Brazil, in the city of Campinas, the man who clubbed 25-year-old Camille Gerin to death in July 2010 reported to the police that Camille had made sexual advances towards him. In Brazil, the police explicitly investigated 'homophobia' or 'prejudice against LGBT people' as possible motives in some of the killings.

In some reported cases, aggression was directed against groups of gender-variant/trans people. On 6 July 2011, numerous shots were fired from a passing car at a group of trans women in Chihuahua, Mexico, leaving one of them, Thalia, dead. In the early morning of 17 September 2011, two men on a motorbike fired numerous shots at a group of trans women who were sex workers in the Venezuelan city of San Cristóbal. They killed 'Jorge Alexis' Ortiz Hernández and injured the 18-year-old 'Jhon Jairo' Rodriguez and the 19-year-old 'Yeritson' Camacho. Public authorities considered 'homophobia' to be a possible motive. In December 2010, in the Brazilian city of Curitiba, two men fired shots at a group of travestis in a restaurant, killing Mirela and Eduarda Lermes Resende and injuring three others. In other cases, perpetrators stated, or the police assumed, that they killed the victims after realizing they were gender-variant/trans persons. For instance, in



a killing in March 2009 in Sinaloa, Mexico, the police suspected that Virgen Castro Carrillo, who was a sex worker, was murdered by a client when he noticed that she was a gender-variant/trans person. In September 2009, in the Brazilian city of Jundiá, Samara da Silva's body was found tortured. The suspect told the police he thought the victim was a woman and killed her when he realised she was a gender-variant/trans person.

*The Report on Homophobic Violence in Brazil for 2011* also mentions “the brutality of transphobia” manifested in the reported killings of gender-variant/trans people.<sup>52</sup> Moreover, almost half of all reported LGBT murder victims were gender-variant/trans people.<sup>53</sup> These manifestations of violence need to be seen in particular in the context of the mentioned risks many gender-variant/trans sex workers face on a daily basis. Furthermore, some authors have pointed to the fact that Afrobrazilians are overrepresented among the victims of violence against LGBT people, and that forms of marginalisation, including poverty and homelessness, intersect in many cases of violence and discrimination. Many of these findings hold true across all world regions.<sup>54</sup>

### **2.5.5 Failures and violence on the part of state institutions**

Jessica from Bogotá, who, as mentioned above, was stabbed in March 2011, was brought to hospital by her colleagues. She was not provided immediate treatment there, however, and her colleagues blame her death in the hospital on this fact. On 28 November 2011, 26-year-old *travesti* Yúliper Madera was shot in the throat by a group of men in the Dominican Republic. Yúliper Madera bled for two hours until the police arrived and took her to a hospital. Due to lack of blood, surgery was not performed. Friends offered to donate blood, but the hospital staff refused to accept these offers – because they were gay and gender-variant/trans, as TRANSSA activists stated.

According to reports from witnesses and activists, several victims suffered multiple aggressions in succession. Not only were they severely attacked, they were subsequently also denied crucial treatment in hospital and by public authorities. In Eunapolis, Brazil, Simone (Carleone) Santos Rodrigues was killed on 9 September 2011. Although locals called the police at 5:40 pm after seeing two men entering the victim's apartment and leaving again with blood on their hands, the police only arrived around 9 pm. In the Brazilian municipality of Belford Roxo, family members of Shayara Soares Santana Pereira, a gender-variant/trans sex worker who was clubbed to death on 16 July 2011, started a public campaign because they found that the police were not investigating the crime seriously. In the case of the killing of Luana de Oliveira Moreira on 2 November 2011 in Rio Verde, Brazil, a colleague identified the perpetrator, yet the police only took his testimony and did not immediately arrest the perpetrator.

These reports are backed up by the IACHR, which notes that “problems exist in the investigation of those crimes, which involve, in part, failures to open lines of investigation into whether the crime was committed by reason of the victim's gender identity or sexual orientation”.<sup>55</sup> Mexican trans activist Rocío Suárez argues that the “institutionalized discrimination” encountered by gender-variant/trans people in various domains of society “means that the victims of crimes have less possibilities to receive protection and support from public authorities”.<sup>56</sup>

Indeed, public institutions in many parts of Central and South America, as elsewhere, not only fail to provide services to gender-variant/trans people, they are often also among the principal aggressors, abusing their position of authority. The police in particular have been reported as committing acts of violence, especially against gender-variant/trans sex workers, but also against gender-variant/trans people more generally. Due to the high rate of unresolved crimes, the TMM is not able to pro-



vide any systematic data on the perpetrators. However, in various cases either the aggressors were identified as members of the police or the weapons used were those used by police.

The two murderers of Imperia Gamaniel Parson, who was shot in August 2010, and who had been president of the Honduras trans organisation Colectivo Unidad Color Rosa, appeared to be policemen, according to the organisation's new director. In Belém, Brazil, 22-year-old Mica (Michel Felipe) Teles dos Santos was killed on 7 December 2010. Mica had been with ten friends, one of whom had made a joke as a police car passed. One of the police officers had said: "Keep on laughing and you will see what is going to happen!" Around twenty minutes later, two men drew near on a motorbike. One of them pointed at Mica and said: "Yes, it's you!" He fired two shots at Mica, who died in hospital. According to friends and relatives, Mica had repeatedly been ridiculed by two policemen and subjected to humiliating intimate body searches on the square where the crime happened as well as in front of her own house.

Also in Brazil, in the city of Campinas, Bianca Oliveira, a sex worker, was shot in her own apartment by a 24-year-old military police officer on February 2 2008. In May 2008, in the Brazilian city of São Bernardo do Campo, a victim was shot more than 15 times with at least two different guns, one of which was of a type used exclusively by the police. In the Colombian city of Barranquilla, 22-year-old 'Erick de Jesus' Mendoza Cruz and 30-year-old 'Willis Argemiro' Alarcón Badillo were shot to death by a retired policeman on 29 March 2008. In Lima, Peru, gender-variant/trans sex workers reported extensive violence and humiliation at the hands of both the police and municipal watchman units with limited jurisdiction (known as *Serenazgo*).<sup>57</sup>

Gender-variant/trans people's vulnerability is increased by the fact that many of them do not use official documents, which do not give their chosen name and gender. Police officers have used lacking identification as

grounds for arrest, even though arrests for this reason are not sanctioned by law.<sup>58</sup> Research in Brazil published in 2003 and 2007 found that both police and private security represented significant groups among the perpetrators of physical violence against gender-variant/trans people.<sup>59</sup> This research suggests that the problem of police violence, which *travestis* complained about in 1999 ("The police kill more than AIDS!"), persists. The studies with gender-variant/trans people in Argentina and Peru cited earlier point in a similar direction. In Peru, three-quarters of all aggressors who committed violence against gender-variant/trans people were members of the police or municipal watchmen units (*Serenazgo*).<sup>60</sup> 83.3 per cent of the Argentinian respondents reported abuse by the police: 82.7 per cent had been arrested illegally, 57.9 per cent had been beaten by police officers, 50 per cent had experienced sexual abuse and 17.3 per cent reported that they had been tortured.<sup>61</sup>

### 2.5.6 Social, political and historical contexts of violence

The killings of gender-variant/trans people in Central and South America need to be understood in relation to the specific social, political and historical contexts in which they occur. In the following, we highlight some of the most prominent issues here, which include the coup d'état in Honduras in 2009 and authoritarian forms of power associated with death squads, as well as decades of military dictatorships in the twentieth century, which form a common experience in many Central and South American countries.

In Honduras, after the democratically elected president, Manuel Zelaya Rosales, was ousted by means of a civilian-military coup d'état in June 2009, the homicide rate increased to 82 homicides for every 100,000 people, the highest in all countries in the region. At the same time, violence against LGBTI people also increased, including death threats and killings of LGBTI human-rights



defenders.<sup>62</sup> Moreover, the 2002 Law on the Police and Social Coexistence was “constantly used to arbitrarily detain many people, particularly sex workers, holding them in unofficial detention centers without any judicial oversight, and under highly subjective interpretations of undefined concepts such as ‘social coexistence’ and ‘morals’.”<sup>63</sup>

The extreme TMM figures for Brazil can be traced back to manifold causes, as explained earlier. One of them, widespread societal Transphobia, is related to Brazil’s last dictatorship. In the early 1960s, gender-variant/trans people – then known as *travestis* – performed in mainstream theatres and acquired acceptance by a wider public.<sup>64</sup> After the 1964 coup d’état, which resulted in twenty years of military dictatorship, gender-variant/trans people became a target of military repression, as they were seen to pose a threat to ‘Brazilian family morals’. Military censorship prohibited any *travesti* show on television and in the theatre. Many of Balzer’s informants reported that they had been arrested and prosecuted by military police or had left their families to live on the street. Reports from this time confirm these stories with horrifying details: in 1972, 25 gender-variant/trans people were arrested at a beach in Rio de Janeiro; in the mid-1970s, a systematic hunt for gender-variant/trans sex workers was begun, which led to the arrest of 2,000 gender-variant/trans people; and in 1981, a military operation led to the arrest of 1,500 gender-variant/trans people in one week. Other reports confirm widespread Transphobia, which also arose within Brazilian families and involved forced hospitalisation and abusive ‘treatments’ such as electroconvulsive therapy. Gender-variant/trans people who could afford to do so left the country, which resulted in a mass exodus and a tradition of Brazilian gender-variant/trans people’s migration to France, Italy, Portugal and Spain.

Today, similar forms of migration exist, as was confirmed by the 2006 murder of Gisberta in Portugal. She and others who left South American countries marked by

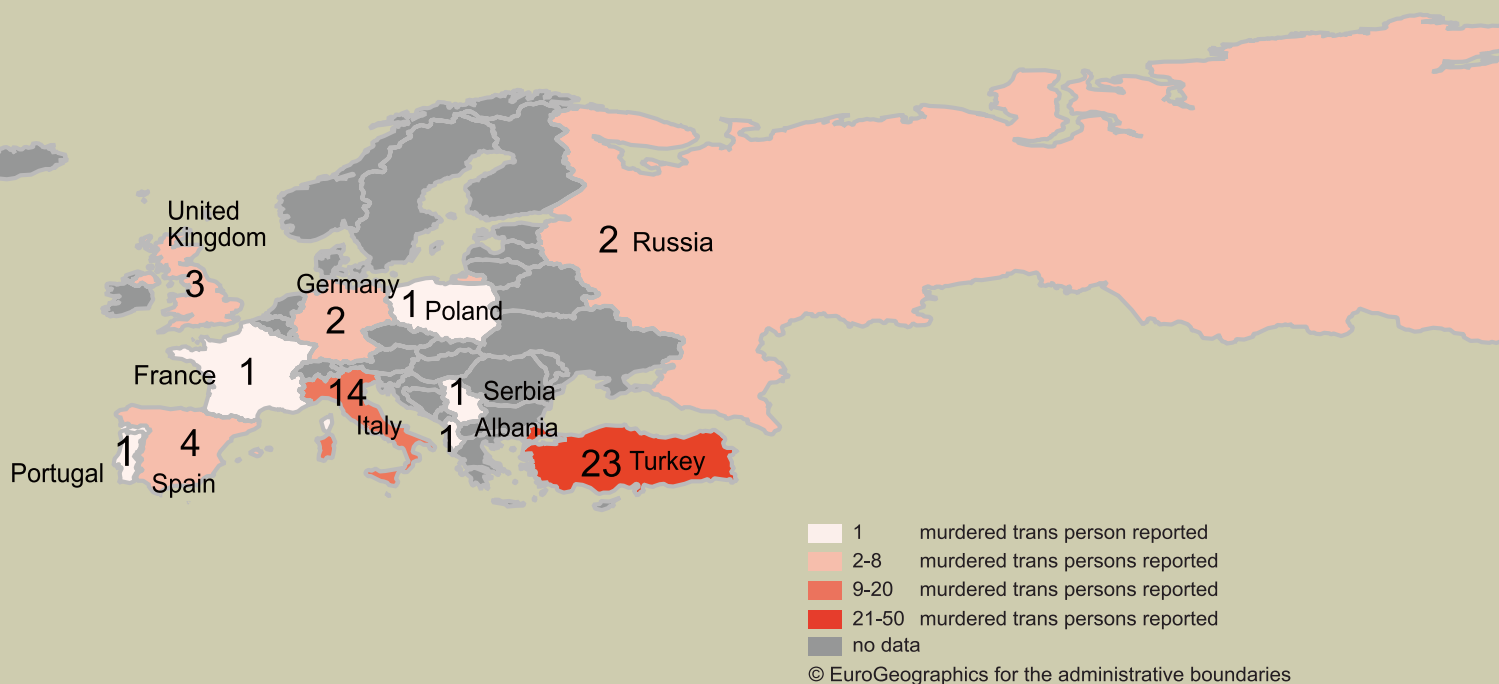
Transphobia and violence became victims of intersecting forms of discrimination and violence, including lethal violence, in Europe, as is discussed in the following section. Those who stayed in Brazil had to self-organise as sex workers in marginalised subcultures. Thus the increase in trans sex work is arguably directly linked to the repression of the dictatorship. After the end of the dictatorship in the mid-1980s, when the formerly positive term *travesti* had become associated with prostitution and crime, the situation for gender-variant/trans people became even worse. Military police continued to hunt down gender-variant/trans people, now with the support of so-called death squads and vigilante groups. ‘Disgusted’ citizens were not prosecuted when they ran a car into a group of gender-variant/trans sex workers at night or when they hunted gender-variant/trans people down with iron rods and planks. In the late 1980s and the early 1990s, the number of murders of gender-variant/trans people increased enormously.<sup>65</sup> As the GGB data for the last two decades and the TMM data for the last four years show, reported murders of gender-variant/trans people in Brazil increased further. The significance of the military dictatorship’s actions against gender-variant/trans people, the associated change in gender-variant/trans people’s public image, their being forced into sex work, and their persecution should not be underestimated when trying to understand the high degree of societal Transphobia and the extreme TMM figures in Brazil. Because military dictatorships were widespread in Central and South America in the twentieth century, it is worth researching their effects on trans communities in other Central and South American countries.

The on-going activities of ‘death squads’ and vigilante groups indicate another, partly related set of issues of great relevance to a contextualisation of the murder of gender-variant/trans people in Central and South America. The activities of such groups, which are often paid by merchants or state actors to ‘clean’ areas of ‘unwanted’ people, including the homeless, sex workers and

gender-variant/trans people, by hunting them down and killing them, have for instance been reported in Brazil, Guyana and Peru.<sup>66</sup> This issue is related to our earlier critique of state violence. Hutta has discussed how the existence and activity of such ‘extermination groups’ in Brazil is linked to authoritarian and gendered forms of power, which intensified during the last military dictatorship and can be traced further back to the colonial and imperial eras and their slave economies.<sup>67</sup>

The reported killings of gender-variant/trans people could be contextualised in various other ways, although it is not possible to do so in this report. We would like to mention the Mexican context, however, where violent conflict has increased in recent years. On the one hand, widespread torture, arbitrary detentions and killings committed by state actors have been reported.<sup>68</sup> On the other hand, some of the killings of gender-variant/trans people have been accompanied by statements of revenge by drug cartels. In other cases, victims’ bodies have been found dismembered or with evidence of torture and indications that the killing was committed by a drug cartel as a warning.





Europe: 53 reported cases of murdered trans people between January 2008 and December 2011 (as of September 2012)

TMM in Europe: Monitored reports of murdered gender-variant/trans people between 2008 and 2011 (as of September 2012):	
2008:	13
2009:	19
2010:	9
2011:	12

Reports have been found in 11 countries:			
Albania:	1	Russia:	2
France:	1	Serbia:	1
Germany:	2	Spain:	4
Italy:	14	Turkey:	23
Poland:	1	United Kingdom:	3
Portugal:	1		



## 2.6 TRANS MURDER MONITORING AND TRANSPHOBIA IN EUROPE

In Europe, the TMM research team found 53 reports of murdered gender-variant/trans people in 11 different countries between January 2008 and December 2011.

As in other regions, the TMM data for Europe must be seen in the context of the significant challenges in monitoring reports of murdered gender-variant/trans people. Especially in Central and Eastern Europe, due to the lack of well-organised trans networks and monitoring systems and language barriers, the TMM data do not necessarily give an accurate account of the actual situation.

The analysis of the data shows that most reports of murdered gender-variant/trans people have been found in Turkey and Southern Europe.

### **2.6.1 Murders of gender-variant/trans people and societal Transphobia in Turkey**

The data from Turkey are the most worrying, for two reasons. First, most of the reported murders in Europe occurred in Turkey (23); and second, the data show an increased number of reported murders in recent years (2008: 4, 2009: 7, 2010: 6, 2011: 6). Most of these murders were reported in Turkey's three major cities, Istanbul (6), Izmir (6) and Ankara (4), followed by the cities of Bursa (2), Antalya (1), Diyarbakir (1), Eskisehir (1), Gaziantep (1) and Gebze (1).

The majority of these killings show indications of transphobic hate violence. One victim was killed by her brother, who confessed to the police that he killed her because she "was engaged in transvestism", and that he "cleansed his honour". Another murderer confessed to the police: "I thought that she was a woman, but she was a trans person. After learning this, I killed her". Other murders involved a high degree of violence, including 'head cut off', 'legs and head cut off', 'stabbed 43 times',

'stabbed 17 times', 'stabbed 12 times from her throat to her stomach', 'shot eight times with a shotgun' and 'being abused several times before being killed'. There are also killings that show other indicators of hate violence directed against gender-variant/trans people and/or their need to do sex work. One gender-variant/trans person, who was portrayed in a book on sex workers, was murdered in her apartment together with her adopted son. One was a sex worker, murdered by two men who did not want to have sex workers in their area. One had received death threats before. Two were found naked or half-naked.

The violence and the described circumstances may be read as indicators of possible trans- or whorephobic hate violence – the term 'whorephobia' denoting hostility towards and violence and discrimination against sex workers. In the five instances in which the victims' profession was mentioned in the reports, it was always 'sex worker'. Additionally, one of the victims was killed near a place where sex workers work at night, which suggests that gender-variant/trans sex workers in Turkey – as in other places in the world – are at high risk of becoming victims of murder. Kemal Ördök, defender of trans- and sex-workers' rights in Turkey, confirms these findings. In an interview, s\_he stated:

*Since a huge majority of trans\* women in Turkey do sex work, as a result of existing discrimination in employment, education and violence from their peers and families, and since sex work is not formally regulated to protect the rights of sex workers but rather to prosecute them, trans\* women are continuously targeted by the law-enforcement bodies, together with gangs and their clients. The majority of physical attacks and killings are directed at trans\* sex workers, as they are pushed into insecure environments at the margins of society, where the police and/or judicial authorities legitimise the violence they face through their actions.<sup>69</sup>*





▲ Manifestation against transphobic hate violence, in Ankara (Turkey), November 2010



Contextualising this situation, s\_he points to societal Transphobia in Turkey:

*As a result of this negative picture, which includes existing transphobia in all sections of society and the intentional lack of legal and policy-based protection, there have been more than 50 transphobic hate crimes in 2011 and around 15 in 2012 (between January and May). Trans\* people are left alone in this continuous cycle of killings, lynching attempts, harassment and verbal abuse, together with institutional discrimination and violence mainly committed by police officers.<sup>70</sup>*

Eylül Çevgen, a gender-variant/trans sex worker from Eskişehir, reports how she tried to file a charge against a man who raped her, only to find that the police did not recognise it as a crime. She concludes: “All of what

I experienced continued like this. Most of my trans sex worker friends face the same incidents and as long as this system continues as such, we will be facing them continuously.”<sup>71</sup>

In an article in Today’s Zaman newspaper on 30 November 2010 titled ‘Hate Crimes Increasingly Target Transgender Persons’, journalist Lale Kemal draws attention to what Kemal called the legitimisation of violence through judicial authorities:

*The killings of several transsexuals and transvestites, along with recent violence by police in Ankara against transgendered persons, are worrying developments. Courts have applied the principle of ‘unjust provocation’ in favor of perpetrators of crimes against transsexuals and transvestites.<sup>72</sup>*

A 2010 research report by an attorney for the LGBT Rights Platform in Turkey summarised its findings as follows:

*Judicial authorities feed discrimination by often making decisions that confirm social prejudices against LGBT individuals and that reproduce the legitimate basis for the current inequality. On the basis forged by judicial authorities in parallel to social perceptions, hate crimes perpetrated because of sexual orientation and gender identity have become invisible, and the motivation of the perpetrators are not evaluated as a factor in consideration of the punishment.*<sup>73</sup>

The same report cites the following statement from a Supreme Court decision involving prostitution as an example of judicial prejudice against gender-variant/trans people: “It is a known phenomenon that sexual relations with travesti people cause sexually transmitted diseases like AIDS, syphilis or gonorrhoea.”<sup>74</sup> In addition to the hate violence, which has an impact on the entire trans community of Turkey, the hesitant prosecution of the perpetrators by the police and courts poses a major challenge.

According to Kemal Ördök, however, recent prosecution trends indicate relatively proper sentences for perpetrators, although decreased sentences are sometimes handed down for the “good manner of the perpetrators during the prosecution processes”.<sup>75</sup> These problems are not specific to Turkey, but occur in other places in Europe, too, as we show in the next chapter.

### 2.6.2 Trans Murder Monitoring and Transphobia in Germany, Italy, Portugal and Spain

A 2009 study on *Transphobic Hate Crime in the European Union* showed that in some EU countries a majority of the gender-variant/trans respondents have no confidence in the police at all: on top was Greece, with 85 per cent of respondents expressing this lack of confidence followed by Hungary (68 per cent), Italy (54 per cent) and

France (51 per cent).<sup>76</sup> The authors of the study argued that hate crimes in general, but particularly those committed against culturally stigmatised groups such as gender-variant/trans people, are underreported by victims and witnesses for “many reasons including lack of faith that the crime would be dealt with appropriately by the criminal justice system or lack of trust that the police would take the allegations seriously”.<sup>77</sup> Clearly, this trend has an impact on the reporting of transphobic hate crimes and incidents as well. Light sentences and/or the lack of evaluation of the perpetrators’ motives are found in many European countries, so much so that in Germany, for instance, 46 per cent of the respondents in the study mentioned above stated that they have no confidence in the police.<sup>78</sup>

For Germany, the TvT research team found two reports of killings of gender-variant/trans people in 2008. These murders serve as examples of transphobic killings, the failure of state institutions to take proper measures due to societal Transphobia, and intersections of discrimination. In May 2008, a 30-year-old gender-variant/trans person was killed in her own apartment in Essen by a 16-year-old male, who later confessed to having killed the gender-variant/trans person with whom he flirted after realizing that she was “not a woman”. This kind of transphobic murder was reported in many parts of the world, and in Europe more specifically, including in Poland and Turkey. In June 2008, Silvana Berisha, a 31-year-old gender-variant/trans person, a migrant from Serbia and a sex worker, was killed in her own apartment in Hamburg by a 20-year-old man, who stabbed her 39 times and subsequently smashed her head in with a video recorder as she lay motionless on the floor. In court, the perpetrator declared that he had acted in self-defence. Although the trial judge referred to the killing as “an absolute desire to exterminate”, he saw no motive and sentenced the perpetrator to seven years for manslaughter.

In the cases of both of these murders, both the murders themselves and the court cases were reported





inappropriately in the German media, which referred to the victims with male names and pronouns and described them as “transvestites” and “man in female clothing”, terminology that obscured the transphobic motives in both cases. We return to this important issue in the next section.

In the beginning of this chapter, we mentioned TGEU’s first international campaign, ‘Justice for Gisberta’ in 2006, which was the reaction of the European trans movement to the completely inappropriate response of the Portuguese authorities and media to one of the most horrific incidents of transphobic hate violence ever reported in Europe. Two years later, another brutal murder in Portugal was reported. Luna, like Gisberta a Brazilian migrant who had to earn her living by doing sex work, was found beaten to death in a garbage dumpster in Lisbon. The situation of Luna and Gisberta leads us directly to a very important question regarding reported murders of gender-variant/trans people in Southern Europe. Both Luna and Gisberta were migrants from South America who had to earn their living by doing sex work. Both tried to escape the violence and lack of opportunities in their home country of Brazil, only to encounter violence and lack of opportunities in Portugal. The TMM data suggest that this situation is characteristic for Southern Europe. Of the four reported murders of gender-variant/trans people in Spain, two were of migrants: one from Colombia, who was described as a sex worker, the other one from Morocco. Of the 14 reported murders in Italy, four were of migrants from Brazil and one of a migrant from Argentina. Unfortunately, there are little data on these murders in Italy. However, the little information that is available reveals a high degree of violence (‘severely beaten and run over by car’, ‘beaten, gang-raped, and stabbed to death’, ‘stabbed several times and shot in the head’, ‘beaten and strangled’).

### 2.6.3 Further TMM and Transphobia findings in Europe

In February 2011, a transphobic murder occurred in Poland that was similar to the one in Germany in May 2008 and the one in Turkey in July 2011. A gender-variant/trans person was stabbed to death after a man who was dating her realised that she was a gender-variant/trans person.<sup>79</sup>

Whereas the vast majority of reported murders in Europe indicate possible or probable transphobic hate violence, they cannot definitely be classified as transphobic murders. Apart from the lack of information and the inappropriate and obfuscating reporting by the media, hesitant prosecution of the perpetrators and especially lack of evaluation of the perpetrators’ motives by the police and courts often pose a challenge for the TMM, which relies on media reports and court decisions. The German court decision in the murder of Silvia Berisha, mentioned in the previous section, is illustrative of these challenges. The above-mentioned study on transphobic hate crime in the EU also confirms these challenges:

*We identify the common factors involved in failing to prosecute transphobic hate crime, suggesting that primarily, trans women are often understood by the Criminal Justice system as men by proxy:*

- a. attacks on trans women by men are implicitly regarded as ‘male-on-male’ attacks rather than male-on-female attacks.*
- b. trans women’s vulnerability as women and as trans women is overlooked.*
- c. In many cases trans women are often presumed by the police as the cause of the incident rather than the victim.<sup>80</sup>*

The study, which was conducted in 13 languages in all EU member states, also draws attention to widespread societal Transphobia in EU countries. Of the 2,669 gender-variant/trans people who responded to the study, “79% of respondents had experienced some form of



harassment in public ranging from transphobic comments to physical or sexual abuse". The study results also suggest "that trans people are three times more likely to experience a transphobic hate incident or hate crime than lesbians and gay men [are to experience] homophobic hate incidents or crimes".<sup>81</sup>

Further TvT data from research and TvT expert questionnaires show various examples of transphobic hate violence and incidents other than murder, as well as transphobic media coverage in many European countries. In Germany, for instance, several reports of physical transphobic attacks have been reported for the years between 2008 and 2011, the most brutal being a series of attacks against gender-variant/trans sex workers from Eastern Europe in Berlin in the summer of 2010, which culminated in the hospitalisation of several gender-variant/trans people after various attacks by young men. An extremely transphobic televised feature, which called for a kind of vigilante justice against gender-variant/trans sex workers, preceded the attacks. The extremely transphobic and humiliating media coverage of a pregnant trans man by a German newspaper in July 2008 resulted in an official complaint by the German Press Council. In November 2009, a gender-variant/trans person received a death threat at the campus of the University of Göttingen.

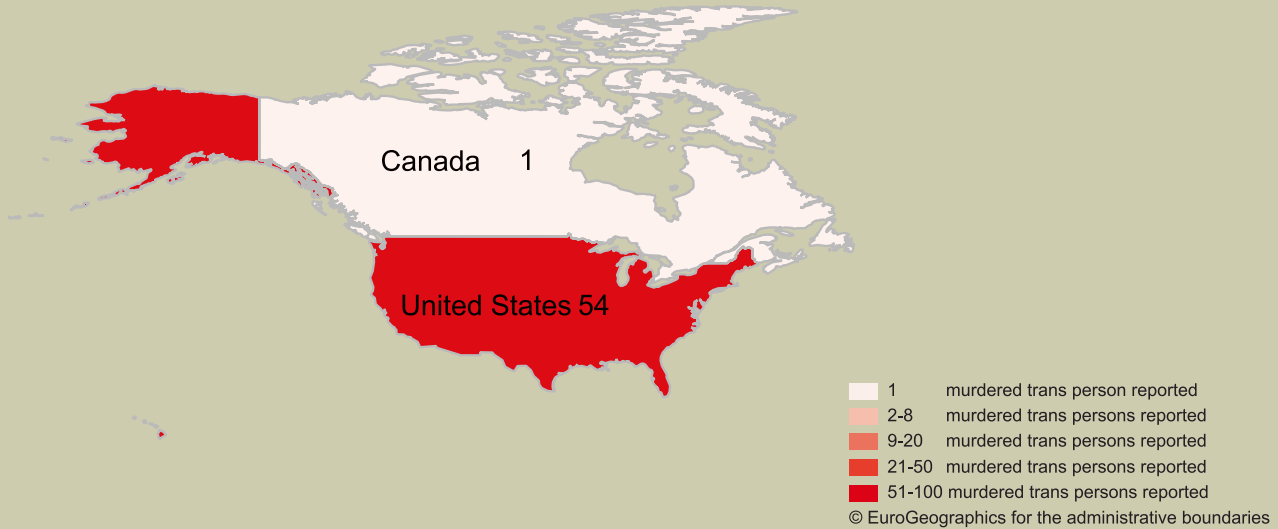
Extremely transphobic media coverage and advertisements in Ireland were reported repeatedly in 2009, 2010 and 2012. In 2010, a trans woman was physically attacked and abused and forced to show her genitals in public in the centre of Warsaw. The survivor was asked by the Polish trans organisation Trans-Fuzja to report the hate crime to the police, but she refused to do so, because of her lack of confidence in the police. In 2009, a gender-variant/trans person was physically attacked in Belgrade, Serbia, after leaving a queer festival. In 2010, gender-variant/trans people from Turkey who had participated in the 3rd European Transgender Council in Malmö, Sweden, were attacked at night and treated in a transphobic and racist way at a Malmö police station when filing a complaint. In 2008 and 2009, various cases of transphobic

violence were reported in Spain. The violence included stoning, burning, stabbing, assaults with sharp weapons and gunshots, leading to the hospitalisation of the survivors. One of the physical attacks occurred during a sexual encounter, after the perpetrator realised that the victim was a gender-variant/trans person. In 2008, a case was reported in which an Ecuadorean trans woman was detained, assaulted and humiliated by policemen at a police station in Madrid. In 2009, a migrant trans woman denounced transphobic insults by policemen, derogatory treatment and lack of health care for herself and other inmates at a migrant-detention centre.

This brief selection of transphobic hate violence and transphobic media coverage that have been reported to and researched by the TvT team in recent years confirms the main findings of the TMM data for Europe, which suggest that gender-variant/trans murder victims are often also migrants – as in Germany, Italy, Portugal and Spain – or sex workers – as in Albania, France, Germany, Italy, Portugal, Spain, Turkey and the UK – and often both. Thus, the intersection of multiple forms of discrimination, namely Transphobia, racism and whorephobia, must be considered in further research.

The call by the former Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg, in his Issue Paper *Human Rights and Gender Identity* to "[i]nvolve and consult transgender persons and their organisations when developing and implementing policy and legal measures which concern them", is crucial in this context.<sup>82</sup> Policies that seek to improve the human-rights situation of gender-variant/trans people in European countries must also involve gender-variant/trans sex workers, migrants and people of colour as these policies are being designed. The voices of gender-variant/trans migrants, people of colour and sex workers must be heard. A good example of including those who are affected by the policies being proposed is the already-cited compilation, *Sex Workers Rights Are Human Rights!*, edited by Pembe Hayat.<sup>83</sup>





North America: 55 reported cases of murdered trans people between January 2008 and December 2011 (as of September 2012)

For North America, the TMM registered 55 reported killings of gender-variant/trans people between 2008 and 2011.

One killing was reported for Canada in 2008.

54 cases were reported for the USA (excluding Puerto Rico):

2008:	18
2009:	13
2010:	9
2011:	14

## 2.7 TRANS MURDER MONITORING AND TRANSPHOBIA IN NORTH AMERICA

As the list shows, the numbers of reported killings of gender-variant/trans people in the USA are high for the period documented, with 13 to 17 cases reported every year except 2010.

Thanks to various activist groups and initiatives, killings and violence against gender-variant/trans people have received some public attention in the USA. Since the inception of the TDoR in the USA in 1999, murdered gender-variant/trans people have been memorialised and honoured every November, as described earlier. A list published on the International TDoR website presents the names and details of killed gender-variant/trans people since 1970.<sup>84</sup> For 1970 to 2011, 323 killed individuals are listed for the USA (excluding Puerto Rico) and 13 for Canada. While over the last decade TDoR has become an international event, up to the mid-2000s, reported murders of gender-variant/trans people committed in the USA had the strongest presence in international activism. Still in 2008, over half of the reports of murders of gender-variant/trans people worldwide were from the USA.

In that country, deadly violence against gender-variant/trans people has also gained considerable public visibility, in particular in the wake of Kimberly Peirce's 1999 film *Boys Don't Cry*, about Brandon Teena, who was raped and murdered in 1993. More recently, the attack on CeCe McDonald in June 2011 in Minneapolis, and her ensuing prosecution, politicised many in the USA and brought attention to violence against trans women of color.<sup>85</sup> Since 1997, surveys on violence against gender-variant/trans people have also been conducted in the USA. Due to the extensive literature and activism around murders of and violence against gender-variant/trans people, we limit the present section to some key findings and references to existing reports.

The Gender Public Advocacy Coalition (GenderPAC), which was active from 1995 to 2009, published the First National Survey of Transgender Violence in 1997; and in 2006 it published *50 Under 30*, a report on the murder of gender non-conforming individuals aged 30 and under, which in 2008 was re-named '*70 Under 30*'.<sup>86</sup> The National Coalition of Anti-Violence Programs (NCAVP), which was founded in 1995 and is a program of the New York City Anti-Violence Project, founded in 1980, regularly publishes press releases and detailed reports on violence against and within lesbian, gay, bisexual, transgender, queer and HIV-affected (LGBTQH) communities.<sup>87</sup> Organisations such as the San Francisco-based Transgender Law Center, the New York City-based Sylvia Rivera Law Project (SRLP) and the National Center for Transgender Equality and the National Gay and Lesbian Task Force have reported, campaigned and done research on issues concerning violence and discrimination faced by gender-variant/trans people.

As the organisations mentioned above and others have argued, gender-variant/trans sex workers, migrants and people of color, have been disproportionately affected by violence, discrimination and exclusion. In the following discussion of TMM findings, we focus on the intersections of multiple forms of violence, marginalisation and criminalisation, as they are of great relevance to the reported killings.

### 2.7.1 Multiple forms of marginalisation and criminalisation

The Canadian victim registered in 2008 was an Aboriginal person (First Nations). People from her community suspected that her gender identity played a role in her death. In five of the 53 cases in the USA, reports informing the TMM explicitly mention the victim's racial/ethnic identity. In addition, photographs published in the media suggest that the vast majority of victims were actually people of color. In 31 of all 53 registered cases, photographs were published. Almost all (28) of these images show persons who likely identified as African-American, Latino or another non-white identity. In numerous further cases, the victims' names are non-Anglo.

This finding, suggesting that gender-variant/trans people of color are disproportionately affected by extreme forms of transphobic violence, is confirmed by NCAVP reports. In its report for 2011, the organisation comments on 30 "hate violence murders" against LGBT persons they registered, noting that "Out of these murders, 87% of victims were people of color and 40% were transgender women".<sup>88</sup> In a similar vein, GenderPAC notes in its 2006 report *50 under 30* that "Youth of color account for 91% of victims for which race is known, with Black and Latino victims accounting for the vast majority (85%)".<sup>89</sup>

The intersection of racist and transphobic violence is compounded by poverty, barriers to education, homelessness and limited access to employment. As a result of multiple forms of marginalisation, some gender-variant/





trans people of color do sex work, which exposes them to further risks and forms of violence.<sup>90</sup>

The TMM findings indicate the high probability that gender-variant/trans sex workers are to experience extreme violence. While in most (39) cases the TMM had no information regarding the victim's employment situation, of the 14 killed gender-variant/trans persons for whom such information is mentioned, the vast majority (11) were reportedly sex workers. The TMM findings thus show a similar trend for the USA as for other world regions in this respect. Furthermore, most (at least 9) of the victims who were reported to be sex workers were people of color, which highlights the simultaneity of Transphobia, racism and limited access to employment.

These multiple and intersecting forms of marginalisation also need to be considered in the context of repressive policies, laws and state practices that especially increase the vulnerability of gender-variant/trans migrants, sex workers and people of color. Because sex work is criminalised throughout the USA (with partial exceptions in Nevada), gender-variant/trans sex workers are fundamentally limited in their access to police and criminal justice, by which they are threatened with or subjected to violence. Moreover, gender-variant/trans sex workers, migrants and people of color are faced with frequent controls, accusations and abuse by the police, have strong reasons to distrust or avoid the police and other public institutions and are incarcerated with disproportionate frequency.<sup>91</sup> Since the late 1990s, immigration legislation has also become increasingly restrictive, making poor migrants in particular more vulnerable to deportation.<sup>92</sup>

Gehi states that "For transgender immigrants, detention centers in the United States are too often a death sentence".<sup>93</sup> On 20 July 2007, Victoria Arellano, an undocumented Mexican trans woman, died in the custody of a detention facility in South Los Angeles. The detention facility had denied her her AIDS medication, even though officials had been put on notice. They only called an

ambulance after more than 70 other detainees had staged protests and signed a petition demanding medical care for Victoria Arellano. But it was too late.<sup>94</sup>

### 2.7.2 Further characteristics and indications of Transphobia

When the reported killings of gender-variant/trans people in North America are compared to those in other world regions, it is noticeable that many (28) of the victims were shot to death. This issue raises questions regarding access to and the use of firearms in the USA.

As in other regions, there were indications of transphobic motives in some of the registered killings. According to prosecutors, Dana A. 'Chanel' Larkin, who was a sex worker, was shot dead on 7 May 2010 in Milwaukee, Wisconsin, after telling an interested client that she was not a woman. Some of the killings occurred in an extremely brutal manner, as in the case of Angie Zapata, a beautician and person of color of Greeley, Colorado, who on 17 July 2008 was beaten on the head in her own apartment with a fire extinguisher over and over again until "it stopped making a noise", as the perpetrator stated. On 12 February 2008, 15-year-old Leticia (Larry) King was fatally shot in the head by 14-year-old Brandon McInerney at school, just after telling another student that she was changing her name from Larry to Leticia. The prosecution described McInerney as a "violent white supremacist who hated gays and plotted the murder".<sup>95</sup>

As in other regions, reports of Transphobia and murders of gender-variant/trans people have increased rather than decreased in North America over the last two decades. While manifold explanations are possible, including intensified reporting and monitoring, the situation remains deeply worrying.







**Oceania: 4 reported cases of murdered trans people between January 2008 and December 2011 (as of September 2012)**

For the region of Oceania, the TMM research team found four reports of murdered gender-variant/trans people in four countries between January 2008 and December 2011. These are:

- Lil' Romeo, killed on 24 August 2008 in Brown Plains, Australia
- Pascale, killed on 31 December 2008 in Noumea, the capital of New Caledonia
- An unknown gender-variant/trans person killed in 2008 in Fiji
- Diksy Jones, killed on 6 May 2009 in Upper Hut, New Zealand



## 2.8 TRANS MURDER MONITORING AND TRANSPHOBIA IN OCEANIA

The small number of TMM reports and lack of data in Oceania relate not only to general problems in monitoring murders of gender-variant/trans people, as in other world regions, but also to the small population in the region – approximately 35 million people, including the 22 million inhabitants of Australia – and to the widely varying situations for gender-variant/trans people across the different islands. To contextualise the TMM findings for Oceania, we thus discuss some of these differences, drawing also on interviews we conducted with activists in the region and data from the TvT expert questionnaires.

### 2.8.1 Tonga and Fiji:

#### Transrespect versus Transphobia

In Tonga, despite a very visible, active and vivid community of gender-variant/trans people who call themselves *leitis*, reports of transphobic violence are unknown. This may partly have to do with Tongan culture. *Leiti* activist Joleen Mataele explained in an interview:





*Because of our culture and taboo, there is a lot of silence. Nobody would be able to report any abuse or anything that's done to a leiti because, you know, that family would think that they have rumours about it.*<sup>96</sup>

However, the level of Transrespect that some leitis experience in daily life, and especially the support which the Tongan Leiti Association (TLA) receives, is extraordinary when compared to other places in the world. TLA co-founder Joleen Mataele, who is a well-respected member of the Catholic Church of Tonga, recalls:

*The Tongan culture and major religions in Tonga do not have a history of hostility towards leiti people. ... From 1992 to today, we [the members of TLA] have been able to do a lot of condom promotion publicly without any hassle from the public, undergo gender-sensitivity and life-skills training on STI and HIV prevention.*<sup>97</sup>

This significant support is also indicated by the TLA's famous patron, Princess Salote Lupepau'u Salamasina Porea Vahine Ari'i 'Oe Hau Tuita, who is the member of the Royal Family of Tonga. The TLA also organises the annual 'Miss Galaxy' contest, a pageant that is attended by gender-variant/trans people from all over Oceania and beyond and supported by AIR New Zealand, and which has been studied in Western scientific journals.<sup>98</sup> The famous 'Miss Galaxy' contest also reveals the connection between TLA and other Tongan institutions and organisations. Joleen informs:

*It has grown from being a means of entertainment to an instrument that TLA, the Ministry of Health, Tongan Family Health and other organisations use to promote critical issues such as HIV and AIDS awareness, you know, the prevention of STIs.*<sup>99</sup>

However, the TLA's high level support from and cooperation with members of the Royal Family and Tongan institutions does not mean that individual discrimination against leitis cannot occur. In another interview, Joleen reported on a case of discrimination against a leiti by

individuals from Tongan society, mostly due to a lack of knowledge.<sup>100</sup>

In contrast to the situation in Tonga, the situation for gender-variant/trans people in Fiji is affected by levels of Transphobia that are well known around the world. Transphobia in Fiji begins to affect gender-variant/trans people in childhood and forces many gender-variant/trans people to leave school and home early. Selina from the Fiji Transgender Empowerment Network explains:

*While growing up, people in my family, in school, people have tried to mold me into something I am not.... I was forced to go wood the fields, to go play rugby. It all didn't work out. And then sometimes I got beaten up. I faced a lot of discrimination. And then I just decided one day that I just couldn't take it anymore and I left home.... We all face rejection from home, from school. We tend to all end up in the street.*<sup>101</sup>

For many gender-variant/trans people in Fiji, this rejection, which continues when applying for a job, results in their either suppressing their identity or earning their living by doing sex work, which is what Selina did:

*That was how I was supporting myself. It paid for my rent, it paid for food on the table and the basic needs a month. So yeah, the story is the same with the younger transgenders now. Like most of us, they have jobs. But they cannot dress up as women and go to work. They might put on eye pencil and things like that. But then they might dress up on special occasions or when they go out to the night club. Because they cannot dress up like that and go to work, because they will definitely lose their jobs. So that's why most of us chose to become sex workers, because we can dress up 24/7 and live 24/7 as women, because it's our comfort zone.*<sup>102</sup>

While becoming a sex worker is a way out of extreme poverty and enables a female gender expression, it increases the risk of becoming a victim of transphobic violence. Selina explains a kind of cooperation between the police and villagers in transphobic hate violence:

*Take for instance, when I used to work the streets, the policemen, when they come to the street, they see me and my*

*transgender friends standing on the street working, sometimes they put us in the vehicle, take us to an isolated area, drop us there and expect us to walk back. They come past villages and then the police will stop at the villages and tell them that there are some men in dresses coming down. So the villagers will be there waiting. ... The villagers will definitely run after them. They get beaten up. But some villagers might be nice. They are all different. Some will be nice and some aren't.*<sup>103</sup>

Khartini Slamah, a trans activist from the Asia Pacific Network of Sex Workers, confirms this kind of police behaviour by reporting that gender-variant/trans sex workers in Fiji have been thrown into the sea by military police. She also reports that military police officers in Fiji have stolen the belongings of gender-variant/trans people.<sup>104</sup>

Selina also reported the transphobic murder to us that has been registered for 2008. Her house, she stated, used to be a safe haven for gender-variant/trans people. However, it was stoned when she was travelling, and a good friend of hers “went out and then she was sort of walking home from the main road and then she got bashed up and she died”.<sup>105</sup> In the TvT expert questionnaire for Fiji, other incidents of transphobic hate violence have been reported for the last four years, including hate killings by drunken partygoers, but with no detailed information.

### **2.8.2 TMM findings in the Solomon Islands, New Zealand, New Caledonia and Australia**

The TvT expert questionnaire for the Solomon Islands reported an incident of transphobic hate violence against two gender-variant/trans persons in June 2007 in Honiaria, the capital of the Solomon Islands. The two gender-variant/trans persons were walking home from a party. Four men, who knew that they were gender-variant/trans people, followed them, raped one of them and afterwards beat them both up. This incident was never reported to the police because the perpetrators threatened

them both by saying that they knew who they were and would kill them if they went to the police. Transphobic hate violence also occurs in New Zealand, where there is anti-discrimination protection. While New Zealand does not have hate-crime legislation, under section 9(1)(h) of the Sentencing Act 2002, hostility against someone because of their gender identity is an aggravating factor that the court must take into account when sentencing or otherwise dealing with an offender. The court took this consideration into account when the 6 May 2009 transphobic murder of Diksy Jones, a 64-year-old cabinet maker, in her own apartment went to trial. On the International TDoR in 2011, the Human Rights Commission of New Zealand stated in an article on its website:

*In December 2010 two men were convicted of manslaughter for killing Diksy Jones, and jailed for 9.5 and 10 years respectively. Justice Robert Dobson in the High Court in Wellington said he gave the younger man the longer sentence because his part in the ‘brutal and tragic’ attack constituted a hate crime. This was based on comments the man had made to police that he followed Diksy home ‘to beat up a transvestite’, that he ‘believed in Adam and Eve, not Adam and Steve’, and thought Diksy did not deserve to live.*<sup>106</sup>

Unfortunately, such clear statements and sentences are very rare internationally, as the majority of transphobic murders go unreported, do not go to court at all or are not perceived as hate crimes or biased violence by the police or judges. Sometimes only direct contact with members of local communities or with close friends of the victim, as in the murder in Fiji or the rapes in the Solomon Islands, reveals the existence of transphobic murders and violence. Even in the cases that are reported or do go to court, it is sometimes very difficult to tell if there is more than one motive and if a transphobic motive is involved.

In Noumea, New Caledonia, the murder of Pascale, a Tahitian gender-variant/trans person, on New Year’s Eve 2008, was classified as an ‘honour crime’. A New Caledonian



▶▶ newspaper reported that Pascale, a sex worker, had a relationship with one of her former clients, who killed her at a party she had with her “transvestite friends” (“*fête entre amis travestis*”). When her partner saw her kissing another person, who was described as a ‘man’, he stabbed her to death and injured the other person severely. The deadly attack was described as extremely brutal and full of horror. The perpetrator was sentenced to 15 years’ imprisonment for a particularly brutal ‘honour crime’ instead of a ‘passion crime’, as declared by the judge. During the court session, the perpetrator was described as having suppressed his homosexuality, and his lawyer was indignant that he was being presented as a “slayer of a transvestite” (“*un égorgueur de travesti*”). Such an ‘honour crime’ in the context of suppressed homosexuality, shame and a party of gender-variant/trans people, which is committed with a high degree of brutality and horror, may include a transphobic motive. But that is very difficult to determine, as the reports of the crime and the court session give no further information on that point, but instead themselves contain transphobic elements, such as using a male name and male pronouns for the female victim and constantly referring to her as a (male) ‘transvestite’, even though she is described in the beginning as identifying as a transsexual who used the female name ‘Pascale’.

Very rarely, the TvT team found clear information suggesting that it is highly likely that no transphobic motive was involved. The drag king performer ‘Lil’ Romeo’, who worked in an adult store in Brisbane, Australia, was murdered during a robbery in the shop at night. Lil’ Romeo was stabbed to death when trying to overpower the robber. The murderer, Tara Gilbert, was sentenced to 15 years’ imprisonment.<sup>107</sup> This is one of the few killings where it is likely that the gender identity/gender expression of the victim did not play a role.

The TMM results for Oceania show a differentiated picture: on the one hand, a comparatively low number of murders due to the general problems in reporting the murder of gender-variant/trans people as well as regional specificities (low population sizes, extremely varying situations); and, on the other hand, the existence of brutal transphobic violence and hate crimes in countries like Fiji and the Solomon Islands and a brutal murder where someone’s gender identity was a factor in a rather transfriendly country like New Zealand. Overall, the findings for Oceania show that the murder of gender-variant/trans people and transphobic violence are a problem in every world region, and that this problem must therefore be recognised as a global one.



## 2.9 TRANS MURDER MONITORING: INSIGHTS AND CHALLENGES

In this chapter, we have pointed out some of the insights that can be gained from the TMM and how they can be contextualised in relation to social and political issues that have been raised in trans activism and other forms of research. Due to the focus of the TMM, we have concentrated on societal Transphobia, which does not mean that forms of Transrespect do not exist as well; they do, as we have shown using the example of Tonga. However, the research findings show that even in some of the countries of the Global South and East that are sometimes portrayed as transfriendly, and where forms of Transrespect used to exist as part of pre-colonial cultures, there are reports of murdered gender-variant/trans people connected to widespread societal Transphobia. Given the contingencies involved in gaining knowledge in different countries, as well as the varying social, historical and political contexts, we hesitate to use the TMM findings for generic comparisons between countries and regions. Here, it seems more appropriate to reconsider some of the connections between documented killings, Transphobia and further issues that have been revealed across the different world regions.

In North America, Europe and to some extent Central and South America, intersections of discrimination play a significant role and especially affect migrants, people of colour and other marginalised groups. In Asia, the research findings suggest that even in those countries that are represented as transfriendly (e.g. the Philippines), murders of gender-variant/trans people and transphobic violence exist. In Africa, findings are difficult to analyse due to major challenges in monitoring, in particular the fact that lesbian and gay identities form the overriding discourses, making it hard to identify murders of gender-variant/trans people. Here, Transphobia intersects with homophobia, as can be seen in the example of murders related to the so-called 'corrective rapes' of lesbian

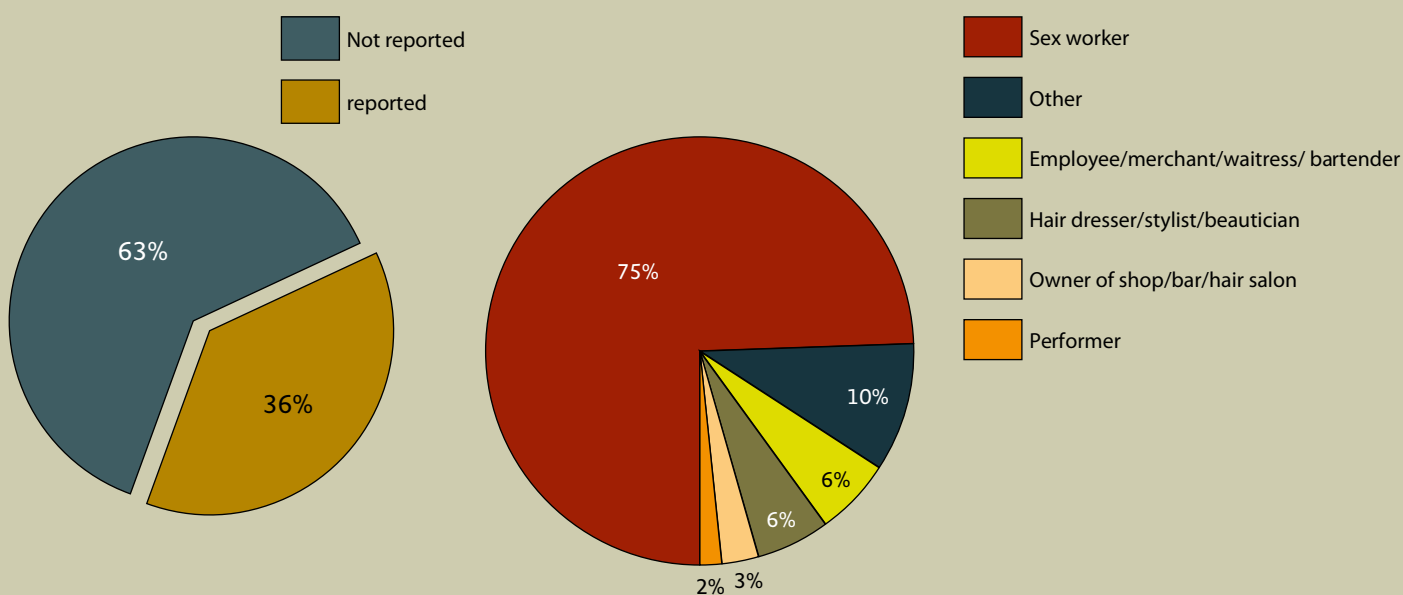
women and trans men. In Central and South America, the high number of reports of murdered gender-variant/trans people and the extreme degree of violence directed against them can be seen in relation to the historical and current political and social context. The high numbers of reported murders are also due to various NGOs, activists and some government bodies that do professional monitoring, as well as to the more extensive media reporting of murdered gender-variant/trans people than in other world regions. In Oceania, we find forms of Transrespect in places such as Tonga, and extreme forms of Transphobia in places such as Fiji, as well as a transphobic murder in a place like New Zealand, which is perceived as rather transfriendly. Again, these findings need to be seen in the context of accessible knowledge.

A common finding for all world regions is that, in many countries, societal Transphobia leads to, and manifests in, gender-variant/trans people leaving their families and school and being excluded from the job market, thus rendering sex work one of the few ways, and sometimes the only way, to earn a living. This situation entails manifold risks, including the risk of becoming a victim of murder and transphobic violence.

Another common finding relates to the failure of and violence committed by state institutions, the lack of confidence in state institutions and the entwinement of Transphobia with societal inequality. We have addressed this finding, by way of example, in relation to several countries in Central and South America, as well as the Philippines, Uganda, Fiji, the USA, Turkey, Germany and other member states of the EU.

Moreover, we have highlighted how the TMM is dependent in particular on the visibility of gender-variant/trans people, reporting in newspapers and on websites and local and regional monitoring systems. An important insight from the TMM findings concerns precisely this connection between monitoring and knowledge regarding the murder of gender-variant/trans people. In Central and South America, the three countries with the highest





▲ The graphic shows the figures of sex workers among the gender-variant/trans people who have been reported as murdered between January 2008 and December 2011. For more than a third of all victims, reports provided information regarding profession, occupation or source of income. Of all victims for whom such information is provided, sex workers form by far the largest group (75 per cent, see also Appendix B).

▶▶ absolute numbers, Brazil, Colombia and Mexico, all feature trans, LGBT or human-rights projects that document the killings of gender-variant/trans people. Likewise, in the Philippines, the country with the highest number of reported murders in Asia, there is a professional monitoring project, the Philippine LGBT Hate Crime Watch.

Apart from the fact that many murdered trans women and gender-variant people are often reported as murdered gay people or murdered males and thus escape the notice of the TMM, there are further major challenges in the classification of many of the reported murders as transphobic murders: the inappropriate or even transphobic reporting of murdered gender-variant/trans people, associating such crimes rashly with issues such as substance abuse, 'crimes of passion', legitimate defence, etc.; the failure of police and judicial authorities to investigate and prosecute transphobic violence; and a lack of awareness or volition regarding the actual motives in cases involving violence against gender-variant/trans people. As a consequence, not only does societal Transphobia directly relate to or abet violence against and murders of gender-variant/trans people in many countries, it also serves to conceal the very existence

of transphobic violence and murder. Such violence and murder can also impact heavily on local gender-variant/trans communities. Where transphobic hate violence is not recognised as such and its reporting and follow-up are themselves transphobic, the consequences are not only distrust of criminal-justice institutions, but also potentially intensified feelings of insecurity and societal exclusion within gender-variant/trans communities.







# 3. THE LEGAL AND HEALTH-CARE SITUATION of gender-variant/trans people worldwide



▲ Stop Trans Pathologization-Manifestation, June 2010, Barcelona

## 3.1 INTRODUCTION

The TvT Legal and Health Care Mapping offers a quick overview of existing laws, while at the same time providing details regarding actual practices. At present, 72 countries are listed in the following regions, as can be seen in the tables on the leaflet attached to this publication.

Africa:	9 countries
Asia:	13 countries
Central and South America:	18 countries
Europe:	25 countries
Oceania:	10 countries

Azerbaijan, Kazakhstan and Russia are listed under Asia as well as Europe. For India and Australia, separate sets of tables showing the situation in individual states are provided on the TvT website. Further countries are being added on a periodical basis.

The mapping was conducted in close cooperation with activists and experts from all six world regions. It is based on a comprehensive 30-page expert questionnaire that was reviewed by more than 15 international researchers and activists and distributed to over 70 activists and experts, who provided detailed information, including comments and explanations on the specific situation in

## Definitions

**Legal gender recognition:** A process whereby a gender-variant/trans person's preferred gender is legally recognised. A gender-variant/trans person's legal gender may be different than the one assigned to the person at birth.

**Difference between 'criminalisation' and 'prosecution':** While 'criminalization' refers to formally existing laws and other legal measures, 'prosecution' refers to the actual enforcement of prohibitions and regulations by police, courts and prosecutors, with or without formal legal basis. We make this distinction because there are countries where there are legal measures that specifically target gender-variant/trans people, e.g. laws that criminalise 'so-called cross-dressing', which are no longer enforced. In contrast, there are also cases where prosecution occurs without a legal basis or based on laws not created to target gender-variant/trans people.

**Criminalisation/prosecution of 'so-called cross-dressing':**

We use the term 'so-called cross-dressing' because from the perspective of e.g. a trans woman, dressing as a female might not be cross-dressing at all, but rather dressing according to her felt/lived/expressed gender identity. The term 'cross-dressing' can thus also be seen as expressing a (possibly heteronormative) outsider's perspective that sees her as 'a man wearing female clothing', i.e. 'a man who is cross-dressing'. Such an outsider's perspective is expressed in the wording of some laws.

their respective countries. The focus was on collaboration with trans activists who were able to draw on their expertise regarding current political processes and actual legal and social practices, rather than with scholars or lawyers as such. While this approach posed some challenges, such as the ability to identify legal texts in some cases, it allowed us to assess key problems and advances in gender-variant/trans people's legal and health-care situation. In the Global South and East, TGEU's TvT team cooperated with several gender-variant/trans people's organisations (see Appendix A), which were subcontracted to coordinate the research in their regions. Thus, a beneficial side

effect of the research was the fostering of regional and interregional exchange around the legal and health-care situation of gender-variant/trans people.

Apart from the attached leaflet, the Legal and Health Care Mapping is presented on the TvT website in the form of interactive tables that are being updated on a periodical basis and contain some further information. A key characteristic of the TvT mapping is its attempt to map not only existing laws, but also actual legal practices and proposals for legislation, thereby seeking to increase its relevance to activists and human-rights actors. The TvT Legal and Health Care Mapping consist of four different





categories: 1) legal gender recognition (legal change of name and gender), 2) anti-discrimination, hate-crime and asylum legislation, 3) criminalisation, prosecution and state-sponsored discrimination and 4) trans-specific health care (hormones and hormone therapy, gender reassignment treatment and body modifications).

### 3.1.1 Legal gender recognition: Change of name and change of gender

This section provides detailed information on legal measures meant to guarantee a legal change of name and a legal change of gender for gender-variant/trans people. It lists requirements such as ‘psychiatric diagnosis’, ‘gender reassignment surgery’ or ‘sterilisation’. Unfortunately, the mapping shows that, with the exceptions of Argentina and India, in all of the other 31 of the listed 72 countries in which a legal change of gender is possible, a ‘psychiatric diagnosis’, i.e. the pathologisation of the applying gender-variant/trans person, is required for a legal change of gender. Furthermore, most legal measures list ‘gender reassignment surgery’ or ‘sterilisation’ as requirements for legal gender recognition, which clearly violates human rights. In a similar vein, using further data from research by the CoE Richard Köhler explains in the interview below that most European countries with gender-recognition legislation require gender reassignment surgery or sterilisation, and all require the psychiatric diagnosis of ‘GID’.

While in India there is no separate legislation, government orders and alterations in legal guidelines enable gender-variant/trans people to obtain legal gender recognition as ‘Male’, ‘Female’ or ‘Other’ in passports, voter-identity cards and the census. However, in practice there are various problems, as shown in the following chapter on Asia. The Argentinian Gender Identity Law, which was issued in 2012, is a best-practice example regarding legal gender recognition for gender-variant/trans people, as the legislation is explicitly based on human rights and freedom

of identity, and not on the medical and pathologising discourses that influence existing gender-recognition legislation in Europe. As Susan Stryker writes in the Preface, the Argentinian law is “the gold standard that other countries should aspire to”. TGEU therefore invited an Argentinian trans activist to its 4th European Transgender Council in Dublin in September 2012 to present the Argentinian Gender Identity Law as a best-practice example to the more than 200 trans activists from 37 European countries.<sup>108</sup>

The tables also show the actual legal situation, meaning how the legal change of name and gender are enacted in practice in the mapped countries. In some countries with existing legal measures, gender-variant/trans people’s applications are delayed for months and years – e.g. in Denmark and South Africa (see the interview with South African trans activist Liesl Theron in the following chapter – while in some countries without existing legal measures, gender-variant/trans people find other ways of legally changing their name, – e.g. in Serbia. The TvT mapping moreover lists existing proposals regarding the legal change of name and gender in detail. This mapping may serve as both an evaluation of the existing legal measures and situation and an indicator of existing trans activism.

The absence of such legislation in many countries poses manifold challenges and difficulties for gender-variant/trans people, as Law Professor Tamara Adrián explains in Chapter 3.4 in the context of Central and South America.

### 3.1.2 Anti-discrimination, hate-crime and asylum legislation

The TvT tables provide detailed information regarding the inclusion of trans identity/gender identity in countries’ anti-discrimination and hate-crime laws and in their constitutions. They also indicate whether gender-variant/trans people are included in countries’ asylum

guidelines. The mapping indicates that ‘gender identity’ is rarely explicitly acknowledged as a ground of discrimination, this being the case for instance in Croatia, Ecuador, Hungary, Italy, Serbia and Sweden, as well as in parts of Australia. It also highlights the legal situation, meaning the actual practices regarding these legal measures and guidelines, as well as proposals that challenge existing measures. These proposals very often demand the explicit inclusion of ‘gender identity’ into existing legal measures. Such proposals exist for instance in Argentina, Australia, Brazil, Chile, Japan, Mongolia, Namibia, Norway, The Philippines, Poland, Puerto Rico, Switzerland and Venezuela.

Trans-specific hate-crime legislation is even rarer than an explicit acknowledgment of ‘gender identity’ as a ground of discrimination. It can be found only in Croatia, Georgia, Hungary,<sup>109</sup> New Zealand and parts of Australia and the UK (Scotland). Scotland’s hate-crime legislation can be seen as a best-practice example regarding the inclusion of gender-variant/trans people, as its specific inclusion of ‘transgender identity’ is defined in a comprehensive way. The Scottish law is also highlighted in TGEU and ILGA Europe’s *Human Rights and Gender Identity – Best Practice Catalogue*.<sup>110</sup> Proposals for trans-specific hate-crime legislation exist in many countries, including Brazil, Chile, Ecuador, El Salvador, Hungary, Italy, Japan, Kosovo, Kyrgyzstan, Mongolia, Puerto Rico, Russia, Samoa, Spain, Sweden, Switzerland and Venezuela.

### 3.1.3 Criminalisation, prosecution and state-sponsored discrimination

The TvT tables show detailed information on the legal measures that criminalise gender-variant/trans people and trans-related issues, such as ‘so-called cross-dressing’ and ‘gender reassignment surgery’ (see the explanations above). In some countries in the Global South and East, these laws were introduced by colonial powers and missionaries, for instance in Nigeria, Samoa and Tonga. However, in some countries these laws are no

longer enforced. For instance, in some countries where ‘so-called cross-dressing’ is illegal, gender-variant/trans people are extremely visible and acknowledged within their cultures and societies rather than being prosecuted. This is the case in Tonga and Samoa, as the interview with Tongan activist Joleen Mataele in Chapter 4.6 reveals. In Italy, a law from the fascist era criminalising ‘so-called cross-dressing’ is sometimes used to prosecute gender-variant/trans people, mostly gender-variant/trans sex workers. In the French capital of Paris, a law dating back to 1799 criminalises ‘so-called cross-dressing’, but it is no longer enforced.

There are, however, other countries where there is no criminalisation, yet gender-variant/trans people are prosecuted with laws designed for other purposes, such as anti-prostitution, loitering or nuisance laws. This phenomenon is reported for several countries in Africa, Asia and Central and South America, and also in one European country, namely Turkey. Furthermore, in some countries, such as Namibia and Singapore, trans women are perceived as gay men and prosecuted with anti-homosexuality laws. The TvT tables are designed to clearly show these important differences between legal criminalisation and actual prosecution of gender-variant/trans people. They thus aim to provide a comprehensive understanding of the legal situation beyond the existence of legal measures as such.

Reports on state-sponsored discrimination against the holding of trans events have reached the TvT team from Colombia, Ecuador, Kazakhstan, Nicaragua, Poland, Puerto Rico and Venezuela. In Nigeria, an anti-cross-dressing law impedes the founding of trans organisations.



**Gender reassignment surgery (GRS):** This is a medical term for what some gender-variant/trans people call gender-confirmation surgery: surgery used to bring the primary and secondary sex characteristics of a gender-variant/trans person's body into alignment with his, her or hir self-perception.

**Hormone therapy:** Hormone therapy here refers to a medically supervised and regulated process of taking hormones (oestrogen or testosterone) to change a person's physical appearance so as to approximate their gender identity.

**Psychiatric diagnosis:** Here we refer to psychiatric diagnoses that in many countries are based on particular classification systems, such as the category of so-called 'gender identity disorder' (GID) in the current versions of the WHO's International Classification of Diseases (ICD-10) and the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR) of the American Psychiatric Association.

### 3.1.4 Trans-specific health care: Hormone therapy and hormones, and gender reassignment treatment and body modifications

The TvT research addresses not only the legal situation of gender-variant/trans people, but also important aspects of gender-variant/trans people's social situation. The TvT tables give a first insight into gender-variant/trans people's health-care situation, focusing on trans-specific hormone therapy and hormones, as well as gender reassignment treatments and body modifications. The TvT tables show many aspects of medically supervised hormone therapy and gender reassignment treatments, including requirements like 'psychiatric diagnosis' and the availability of funding. With the exceptions of Cuba, Japan and Suriname, in all countries in which medically supervised hormone therapy is provided, a necessary precondition for the therapy is the psychiatric diagnosis 'GID'. Furthermore, funding of medically supervised hormone therapy is not provided in various countries such as Australia, Japan, Kosovo, Kyrgyzstan, Puerto Rico, Russia, Serbia and Singapore.

The tables moreover list the existence of alternative practices, such as acquiring hormones on the black market without medical supervision or applying industrial silicone without medical supervision. These 'alternatives' exist in countries where trans-specific health-care is not provided, in cases where gender-variant/trans people do

not meet the requirements for medically supervised treatment or when funding for hormone therapy is not provided and it is easier to access hormones in pharmacies without prescription. These 'alternative' practices can lead to serious health problems and even death. These consequences are especially prevalent in Central and South America, where gender-variant/trans people frequently use injections of industrial silicone and/or oil, as discussed in the TMM chapter and Chapter 3.4, by Tamara Adrián.

In many countries, the lack of trans-specific health care often leads gender-variant/trans people to travel to neighbouring countries and even to other continents to gain access to gender reassignment surgery. Such practices are reported in Africa, Asia, Central and South America and Europe, and especially in the Pacific Islands in which trans-specific health care is not provided at all. Because there is often is no legal gender recognition in the gender-variant/trans people's countries of origin, this travel often results in manifold problems.

The following sections address each of the six world regions in turn, highlighting some of the regional specificities as well as differences within each of the regions. Interviews with activists and guest contributions serve to elaborate the legal, social and political issues at stake in some detail.





## 3.2 THE LEGAL AND HEALTH-CARE SITUATION IN AFRICA

### 3.2.1 Introduction

The African continent comprises 56 countries, counts a population of over one billion, and shows great economic, political and cultural differences. Apart from terms like 'transgender', 'transvestite', 'transsexual', 'FTM', 'MTF', and 'LGBTI', various other terms are used within African communities to refer to gender-variant/trans people. These include 'kuchu' in Uganda, a positive designation of gender-variant/trans people that also generally refers to lesbian, gay and bisexual people; 'matrix' in Zambia, used proudly by gender-variant/trans people to refer to one another and describe their non-conformity with conventional gender; and 'meme', used by some MTF people in Namibia, meaning 'woman'.<sup>111</sup> While there are numerous other terms, many have been used in derogatory ways.

The TvT Legal and Health Care Mapping comprises nine African countries (as of August 2012): Angola, Botswana, Egypt, Kenya, Namibia, Nigeria, South Africa, Uganda and Zambia. Many legal and political issues have only recently been taken on by African gender-variant/trans activists and movements, which have started to become visible and organise over the last five years, as discussed below. On-going challenges include laws that were originally introduced by European colonisers and still criminalise 'so-called cross-dressing' (reported in Nigeria) or homosexuality (Namibia), and that are used against gender-variant/trans people. Gender-variant/trans people are also being prosecuted through anti-nuisance, anti-prostitution and other laws (Botswana, Egypt, Nigeria, Uganda and Zambia). In some states, such laws are also used to hinder the founding of trans organisations (reported in Nigeria). Trans-specific health care, including access to hormones and especially surgery and surgical after-care, is very limited, available only at high cost through the private sector or through travel to countries like South Africa.

Since the 'Nairobi Trans Declaration 2007', trans activists have become increasingly visible within LGBTI communities. This Declaration was issued at the Changing Faces – Changing Spaces LGBTI Conference in Nairobi, Kenya. It was written by trans activists from Uganda, Kenya, Rwanda and Burundi to remind LGB activists of the existence of gender-variant/trans people in the movement. Trans activists described this as an energising moment for gender-variant/trans people and an inspiration for organisations. TITs Uganda, for instance, was born out of this event. Moreover, trans activists, especially in East and Southern Africa, exchanged experiences and began collaborations that led to the emergence of an African trans movement. This collaboration has manifested in projects like the GDx & SIPD Exchange Programme that brought together trans and intersex activists from, Botswana, Kenya, Namibia, South Africa, Uganda and Zambia in November 2010 and the GDx and IGLHRC Gender Identity Strategic Workshop in 2008, which additionally involved the Francophone countries of Burundi and Rwanda and was significant in empowering trans activists and organisations.<sup>112</sup> Subsequently, the Support Initiative for People with Atypical Sex Development (SIPD) from Uganda and GDx approached Transgender and Intersex Africa (TIA), a South African organisation focused on black transgender and intersex issues, to formulate Transitioning Africa (TA).





### 3.2.2 “Currently, the movement is at the brim of a new era.”

#### Interview with Liesl Theron on the legal and health-care situation of gender-variant/trans people in Africa

Liesl, you have coordinated the TuT Legal and Social Mapping in Africa. South Africa, your native country, is one of the few countries with legal measures enabling gender-variant/trans people’s Legal Change of Gender. How do you evaluate this legislation, how does it translate into practice, and what changes are needed?

It is most importantly notable when asking about ‘translation into practice’ when speaking about legislation that although Act 49 was amended in South Africa in 2003, our country’s Department of Home Affairs is still not implementing this progressive act. Gender Dynamix is continuously in partnership with various legal experts to advocate and pressure the Department of Home Affairs. According to Act 49, trans people will be able to change their sex description without genital surgery – making us one of the first countries in the world (in theory) where this recognition is granted, including for birth certificates.

Your organisation, Gender Dynamix, is based in South Africa, the continent’s largest economy, and which features a pro-human-rights, post-Apartheid constitution. What commonalities and differences in terms of gender-variant/trans people’s possibilities to organise and mobilise politically do you see in relation to other African countries and regions?

Commonalities include the fact that many countries are experiencing a push towards conservatism. South African’s liberal constitution, anti-discrimination clause and the example of Act 49 should not be taken for granted. In many areas of our country, people are facing discrimination and isolation, yet other people have positive experiences. Like with many other African countries, the most likely method of communication is through mobile phones and social media, especially Facebook. That being said, it cannot be taken for granted that people have free access to internet.



# INTERVIEW

◀ Liesl Theron is co-founder of Gender DynamiX (GDX), which informally started its work in July 2005. The organisation was formally recognised in 2007 by South Africa's Department of Social Development. It is the first transgender, transsexual and gender nonconforming organisation in Africa.

In terms of differences, it is of note that while not all people experience our liberal constitution as a tool in their daily lives that would allow them to access their rights or exercise their full citizenship, at least organising about trans issues is legal in South Africa.

**Transphobic violence and discrimination are challenges gender-variant/trans people on the continent have to face. Hardly any of the countries addressed in TuT research have hate-crime or anti-discrimination legislation. Is there any activism towards achieving such legislation and the inclusion of gender identity and/or gender expression?**

The organised LGBTI sector in South Africa is currently quite actively in the process of lobbying for hate-crime legislation. Our collective approach in South Africa is to include both Sexual Orientation and Gender Identity.

**In the view of activists from the region, what would be effective means to counter transphobic violence and discrimination?** Sensitisation focusing on religious leaders/groups, community leaders and all platforms of service providers.

**According to TuT research, South Africa is one of the few African countries where medically supervised hormone therapy and GRT/GRS are potentially available through public health services. To what extent do people travel to other countries to obtain health care? What, in your view, are some of the most pressing issues as concerns gender-variant/trans people's health care?**

As far as I understand from realities in Botswana, people there are able to access psychology or therapy-related services and hormones initially via professionals who are from South Africa. This might have changed now, as an effect of activists who persistently inform their care providers. It seems that trans persons still access surgery



**Skipper Mogapi, a trans man from Botswana and founder and director of Rainbow Identity comments on access to hormones, GRS and change of name and gender in Botswana:**

GRS is possible only with private hospitals for transgender people. The private doctor will require the psychiatric diagnosis. State hospitals do not provide GRS for transgender persons, but only for intersex. In regards to hormones, the state can only provide replacement hormones, which means if you were born male they will only give you testosterone, not oestrogen. Hormones are

accessible at private hospitals at a cost, and medical insurance does not cover this.

In Botswana, one can change one's name without GRS but the legal gender cannot be changed. For one to change one's legal gender on one's identity card, one has to apply to the courts and produce documents that show that one has undergone transition. The courts will then assess the application and, if it passes, will grant an order to the Ministry of Labour and Home Affairs.



in South Africa. According to anecdotal information that GDX received in 2011, trans people in Kenya and Zambia are able to receive medical care, including surgery, in their own countries – yet the medical practitioners/doctors who are currently resident in Kenya and Zambia are originally from other countries, such as Egypt, or from outside the continent. Since this is a very new development, we do not know yet its impact – when will the visiting doctors leave those countries, how will medical care for the trans persons continue unless there are local doctors who are learning from this? Yet this tendency might open a window of opportunity for trans people. We are also aware of trans persons who contacted the Gender Team at the Groote Schuur Hospital in Cape Town from other countries on the continent. GDX was also contacted per e-mail by a psychologist as well as by a trans person from Namibia for more info.

Regarding South Africans, amongst the people who can afford travel and surgeries in other countries, there is a tendency that trans female people's first choice of country is Thailand. Trans male persons from South Africa choose to go to Serbia – GDX knows of three people who went there in the last two years.

**Since the 'Nairobi Trans Declaration' from 31 December 2007, first steps towards an African trans movement can be observed. Could you briefly explain the current state of things regarding the transnational trans movement in Africa?**

The 'Nairobi Trans Declaration' hugely impacted or steered the direction of the Eastern African trans movement. At that stage, there was a 'mini-movement' in South Africa and separately to that now the emergence of the Eastern African trans movement. It was in February 2008,

when the Coalition of African Lesbians (CAL) held a weeklong workshop called 'CAL Institute', that the trans movement was propelled and stretched beyond South Africa, Uganda and Kenya. At the CAL Institute, a number of the 'previously lesbian' leaders came out as trans, sending shockwaves through the African lesbian community/movement. Three or four of their strongest leaders came out at once as trans, publicly... It was a turning point.

In 2012, Transitioning Africa (TA) was formed as an initiative of SIPD from Uganda and GDX and TIA from South Africa. The first year of projects and activities in 2012 proved to be quite successful. We had a call for applications, participants coming from Uganda, Kenya, South Africa and Zimbabwe. There are two types of activities, the first taking the form of a Leadership and Movement Building Camp. Next to that, applications were received for trans organisations' own organisational capacity building – in the form of Organisational Development. The two trans organisations that receive that support from TA are Trans Bantu in Zambia and S.H.E., a feminist social health and empowerment collective of African transgender and intersex women based in South Africa.

Currently, the movement is on the brim of a new era. A number of organisations emerged and strong activists came forward. People are in the process of articulating themselves and challenging many notions. The trans movement's growth is at a healthy stage where there are a number of struggles, as activists negotiate their leadership roles as well as deliberate about ideologies. Among the current on-going negotiations are: trans feminism, the problem of patriarchy 'from within', gender imbalances within the trans movement, positioning alongside versus separately from LGB.



### ▶ 3.3 THE LEGAL AND HEALTH-CARE SITUATION IN ASIA

#### 3.3.1 Introduction

In Asia, the TvT Legal and Health Care Mapping comprised Kazakhstan, Kyrgyzstan and Uzbekistan in Central Asia; Hong Kong, Japan, Mongolia and South Korea in East Asia; the Philippines, Singapore and Thailand in Southeast Asia; and Azerbaijan, India and Russia.

In regard to the Central Asian countries, there are reports of state-sponsored discrimination of trans events (Kazakhstan) and organisations (Uzbekistan), making it difficult for trans movements and activists to gain public presence. Legal change of name and gender is possible only with pathologisation. In Uzbekistan, moreover, there is a sterilisation requirement for change of gender. In Kazakhstan, the actual procedures are unclear despite existing gender-recognition legislation, making change of documents complicated. In none of the three Central Asian countries are publicly funded hormone therapy or full GRS/GRT available, as is also the case in Azerbaijan and Russia.

For India, nine states were mapped individually due to significant differences, especially in regard to access to hormones and GRS/GRT.<sup>113</sup> There is also an enormous variety of gender identities, known locally as *aravani*, *hijra*, *jokta*, *kinnar*, *kothi* and many others, with some people also identifying as trans men, trans women or transgender people. According to some estimates, the *hijra* community alone, the most visible and known gender-variant identity in India, is composed of around one million people, the Indian subcontinent counting a population of over 1.2 billion people. During the colonial period, the British introduced various pieces of legislation that have affected gender-variant/trans people, including anti-castration laws that criminalise the body-modifying rituals of *hijras* and *aravani* and anti-homosexuality laws. Furthermore, in India – as in many other parts of the world – gender-variant/trans people can be harassed and

prosecuted under laws intended for other purposes, including public-nuisance acts.

Regarding gender recognition, the Indian government has started to introduce the possibility for people to choose ‘Other’ as a gender marker on their identity cards, voter-identity cards, and the census. However, as Agniva Lahiri from the organisation People Like Us (PLUS) notes in a TvT interview:

*These are all on paper and particularly focusing on the MTF transgender population. Although the options were created, the officials are not aware of how to deal with the issue, as the definition of ‘transgender’ is not clear to the government. Passport authorities issue other/third-gender passports, but the immigration authority is not aware of this fact and continuously harasses people like us. Legal issues can be complex for people who change sex, as well as for those who are gender-variant.*<sup>114</sup>

According to several reports, *aravani* activists in the southern state of Tamil Nadu have gained some pioneering achievements related to the creation of an Aravani Welfare Board by the government that issues ration cards acknowledging *aravani* identity and provides access to free GRS in select government hospitals.<sup>115</sup>

Overall, criminalisation, prosecution and state-sponsored discrimination have turned out to be problems in the majority of the Asian countries mapped. That no such issues have been reported in Azerbaijan, Japan, Kyrgyzstan, Russia and South Korea does not necessarily mean that problems do not exist in these countries. Access to trans-specific health care is highly limited throughout the countries mapped in the region, and where it is available, it is only available through the private sector or in certain cities or regions (as in India). As concerns gender recognition, legal change of gender is either not provided for at all (Mongolia, Philippines and Thailand), or bound to pathologisation, including the requirement of GRS/sterilisation (Azerbaijan, Hong Kong, Japan, South Korea and Uzbekistan).

In what follows, we zoom in on East and South-east Asia, including an interview with the Filipina trans



▶▶ activist Naomi Fontanos. East and Southeast Asia is a politically, culturally and economically heterogeneous region. The same holds true for the many gender-variant/trans communities and their social situations in the different countries of the region. In many countries, there are traditional terms such as *kathoey*, *pak nyah* or *waria*, or newly introduced local terms such as *kwaa-sing-bit*, *transpinay* or *toms*, which are used by local communities instead of or along with Western terms such as ‘trans persons’, ‘trans women’, ‘trans men’, ‘transsexuals’ and ‘transgender (people)’. Among the many terms found in the region are the following: in Thailand, *kathoey*, *ladyboys*, *poo ying kham phet*, *sao phra phet song* and *tomboys/toms*; in Malaysia, *abang*, *mak nyah*, *pak nyah* and *pengkid*; in Hong Kong, *bin-sing-jan* and *kwaa-sing-bit*; in the Philippines, *transpinay*; in Japan, *sei doit-susei shogai*; and in Indonesia *waria*.

**Satya from the Sampoorna Group in India comments on the question of Western versus local terms:**

Actually, these labels that we are using currently are just that: they are labels, because our experience of self is of being gendered along a spectrum of gender. And because the current system of understanding the paradigm of gender cannot accommodate this.... English is a very binary language, and it understands gender in a certain way. And other cultures have all kinds of names for gender.<sup>116</sup>

# INTERVIEW

▼ Naomi Fontanos was the Chairwoman of the Society of Transsexual Women of the Philippines (STRAP), the pioneer support group and human-rights advocacy organisation of *transpinays* (transgender/transsexual Filipinas), from 2009 to 2012. She was the coordinator of the TuT Project in the Philippines from 2010 to 2012.



### 3.3.2 “The legal situation of transgender people in East and Southeast Asia is starkly different and quite uneven.”

#### Interview with Naomi Fontanos

*Naomi, you have coordinated the TuT Legal and Social Mapping research in East and Southeast Asia, more specifically in Hong Kong, Japan, the Philippines, Singapore, South Korea and Thailand. Can you please give a brief overview of the differing legal situations of gender-variant/trans people in these countries with regard to legal gender recognition, including any requirements? Which countries do provide legal measures for them to change their legal name or gender, and what problems do those who want to change their legal name or gender face in practice?*

The legal situation of transgender people in East and Southeast Asia is starkly different and quite uneven. Hong Kong, Japan and South Korea all have legal provisions allowing their citizens to change their name through the civil registry. The process can be costly and time-consuming, however, as it is based on general family law rather than trans-specific legislation. In South Korea, there has at least been a court decision approving legal change of name after legal change of gender. If a person in







Hong Kong, Japan or South Korea seeks a gender change, he or she is required to have GRS and sterilisation. While this situation is better than nothing, it also needs to be reassessed. In these three countries, the law governing legal sex change of transcitizens requires, among other things, a 'GID' diagnosis. All across Southeast Asia, save for Singapore, no such law exists, and transcitizens have to advocate for gender-recognition legislation. The legal systems of countries where there are sizeable transpopulations, as in Thailand and the Philippines, are antiquated and ironically lag behind their East Asian neighbours in terms of accepting the existence of transgender people in society. Currently, a Clerical Error Law passed in 2001 in the Philippines allows for birth-certificate name change but for limited reasons and not including gender identity. A proposal to amend this law is up for sponsorship at the Philippine Senate and will make birth-certificate sex change completely impossible for trans-identified people in the Philippines.

The inability of Thai and Filipino transpeople to change their legal documents in simple and easy steps makes them more vulnerable to discrimination. In schools, where there are uniform rules for male and female students, transstudents in these two countries may struggle to be able to wear the uniform of the gender of their choice. They may also have difficulty getting their school records, including transcripts and diplomas, to reflect their preferred name. When it comes to employment, transgender people in Thailand, Singapore and the Philippines face the same hurdle – finding workplaces that are accepting of them. Human-resources personnel are usually ill equipped to handle transgender employees whose documents do not match their social gender presentation. Access to health and other social services may also prove limited because of transphobic attitudes from medical practitioners. Transpeople become easy targets for prejudicial treatment and ridicule for having documents with a gender marker that contradicts their appearance. In the Philippines and Singapore, access to public accommoda-

tions is a big issue for transgender people because many establishments like restaurants, gyms, clubs, spas, trains, hotels, etc. impose anti-transgender policies like no cross-dressing or forcing transclients to use facilities associated with their birth-sex assignment. Transbaiting to enforce these humiliating policies is done through ID checks. The absence of anti-discrimination laws adds a hurdle for transpeople in these countries to seek redress. In Thailand and the Philippines, penal laws also do not recognise transpeople's gender identity. If a transperson commits a crime, he or she will be most likely imprisoned based on his or her sex assignment at birth as recorded on their ID cards. Many transpeople in the Philippines try to circumvent the law's limitations by securing identification documents that reflect their identity through sometimes illegal but mostly creative means (i.e., black-market passports, credit-card or bill statements declared in their preferred names, fake IDs, etc.)

***Almost ten years ago in Japan, gender recognition legislation was introduced due to the efforts of a trans MP and the local trans movement. Did this success have an influence in other countries in East and Southeast Asia?***

Aya Kamikawa, the first open trans woman in the Japanese Parliament, was elected in 2003, after which the drafting of the Japanese trans law started. The law came into force in 2004. In 2002, the South Korean celebrity Harisu was allowed by a court to change her name and gender from male to female. In the same year, an MP proposed legislation governing legal sex change for South Korean citizens. In 2006, the South Korean Supreme Court ruled in favour of a trans man's petition seeking a name and sex change in his birth certificate from female to male. All of these incidents, it can be said, happened nearly around the same time. The effect may not always be immediate, but definitely, change somewhere always brings change in another place, sooner or later.

Unfortunately, the legal systems of Southeast Asian countries have proven to be quite parochial. I know

► In an interview,<sup>117</sup> Aya Kamikawa explained that, after being elected into the Setagaya Ward Assembly in Tokyo in 2003, she could raise public awareness regarding the situation of gender-variant/trans people in Japan. Together with the Japanese trans movement, she could change the situation, and the first Japanese Gender Recognition Law was passed two years later. Thus, between 2004 and 2005, up to 330 transsexuals applied for legal gender recognition in Japan. Still, the law had many restrictions and requirements. Parts of the law could be improved after Aya Kamikawa was re-elected for a second term in 2007.



of no legislation or judicial decision in Southeast Asia that refers to any of the strides taken by the legal systems in Hong Kong, South Korea and Japan towards recognising the gender identity of their transcitizens.

***In some countries, colonial laws that criminalise gender-variant/trans people still exist. In other countries, prosecutions based on nuisance or loitering laws are a threat to gender-variant/trans people when they are in public, and especially when using public toilets. Furthermore, in some countries state-sponsored discrimination against gender-variant/trans people has been documented. Could you give an overview of these laws and forms of prosecution and discrimination?***

Anti-prostitution and public-nuisance laws are used by law enforcers to harass trans women in Thailand, Singapore and the Philippines. In Singapore, a colonial sodomy law, Section 377A, can be used to persecute trans women as 'gay men'. In the Philippines, the very old Penal Code contains a section on vagrancy that is also used to arrest trans women who are caught walking in the street at night. I know of a case about a year ago of police officers arresting trans women who held an impromptu beauty contest at a cemetery, charging them with public scandal, which is another provision in the Philippine Penal Code.







**Could you give a brief overview of the health-care situation in regard to medically supervised hormone therapy, GRS and other forms of body modification? How does the situation differ across the countries in the region, and to what extent do people travel to other countries to get health care? What are in your view some of the most pressing issues as concerns the health care of gender-variant/trans people?**

Except for Hong Kong, the public health systems of most countries in East and Southeast Asia do not provide for or fund the specific health-care needs of transpeople. Expenses relating to hormones, surgery and transition-related psychological support, if sought, are usually paid for by transpeople in these countries out of their own pockets and can exact a heavy financial burden. Hor-

◀ Seung-hyun Lee, jurist and trans activist from South Korea, explained in an interview<sup>118</sup> that the South Korean legal system is a civil law system influenced by German civil law, which influenced Japan, the former colonial power over South Korea. He added that in 2002, the Busan District Court handed down the first constitutional law ruling regarding legal gender recognition. A gender-recognition bill, which followed the court decision in the same year, was not passed. In 2006, South Korea's Supreme Court published guidelines for legal gender recognition, but a gender-recognition bill proposal in the same year was not passed.

mones for trans women are easier to secure in Thailand and the Philippines compared to hormones for trans men. The latter are also more expensive. More doctors also perform surgical procedures for trans women than trans men. Many trans people in the Southeast Asia tend to self-medicate because of the high costs of transition-related health care. They also tend to shun hospitals and clinics out of fear of being outed or treated shabbily at these health-care venues. A recent paper prepared by Dr Sam Winter for the United Nations Development Programme (UNDP) in Thailand purports that nearly half of the transgender population in Asia and the Pacific may acquire HIV due to poverty and high-risk behaviour.

**Transphobic violence, hate crimes and discrimination are challenges gender-variant/trans people in the region have to face. None of the mentioned countries have hate-crime or anti-discrimination legislation. Is there any activism towards hate-crime and/or anti-discrimination legislation and the inclusion of gender identity and/or gender expression in these countries? What, in the view of activists from the region, would be effective means to counter transphobic violence and discrimination?**

Yes, there are many initiatives on the ground to confront discrimination against, and hatred and prejudice towards, sex- and gender-diverse Filipinos. For example, two years ago, a group of activists from Mongolia, Thailand, Singapore and the Philippines, including myself, attempted to create an online clearinghouse of cases of abuse and violence against trans women in Asia and the Pacific right around the time a trans woman from Vietnam was raped in August 2010 and authorities there refused to persecute her rapists. Unfortunately, the project did not take off. STRAP also supported a campaign to stop electronic violence against women called Take Back the Tech, initiated by the Foundation for Media Alternatives (FMA) in Manila. We are also a partner organisation of the Rainbow Rights (R-Rights) Project, Inc.'s human-rights-violations documentation project, a multi-country, multi-year project that seeks to document violence against lesbian, bisexual and transgender women in Malaysia, Japan, Philippines, and other countries. STRAP has supported and been vocally calling for the passage of a proposed anti-discrimination law in the Philippine Congress. The bill was filed 13 years ago and was re-filed in 2011 through the Committee on Women. There is also a new proposal in Congress to name 17 May National Day Against Homo-, Bi- and Transphobia (NADAHO), which is a good way to call attention to anti-LGBT practices.

**We already mentioned the development towards gender-recognition legislation in Japan. Do you know of any other good practices in the region and what led to them?**

In 2007, the Nepalese Supreme Court mandated the government to remove laws discriminatory of LGBT Nepalese and create a third gender category for Nepal's LGBT community. Nepalese LGBT people can now choose 'other' as their gender marker in documents.

**In 2009, the Asia Pacific Transgender Network (APTN) was founded. Could you please tell us whether – and if so, how – the APTN has had an impact on the situation in the region?**

APTN has focused on HIV/AIDS since its inception. For me, its greatest achievement is bringing trans women activists in the region together and giving them a platform to raise their voice at the international level. Its members provided valuable information for Dr Sam Winter's UNDP report mentioned above. We support APTN and have high hopes for its potential to further transgender-rights advocacy in the region.





**To what extent is the activism of gender-variant/trans people in East and Southeast Asia connected to other Asian and transnational movements? Have any changes ensued from the increasing discussion of gender identity in globalised human-rights discourses, for instance in relation to the 2007 Yogyakarta Principles or the UN Resolution on Sexual Orientation and Gender Identity from June 2011?**

I believe that people working in trans movements across Asia are lucky to be living in the Internet and social media age. The internet and social media have brought trans activists together not only as friends but also as peers in advocacy. We are able to work together, look up to each other, celebrate each other's victories and support each other in our struggles advocacy-wise. Much needs to be done to mainstream the Yogyakarta Principles and to make the promise of the June 2011 UN *Resolution on Sexual Orientation and Gender Identity* come true. But a transgender revolution has been started all across Asia that is unstoppable. There is no turning back now, and we can only hope that trans activism now can only lead to a future ever so bright for transpeople in Asia and around the world.



# GUEST CONTRIBUTION



▲ Tamara Adrián is a lawyer and Doctor in Law, having graduated with honours. She is a professor of law as well as an LGBTI activist, and she acts as co-president for ILGALAW. Furthermore, she is a member of the board of ILGALAC (the International Lesbian, Gay, Bisexual, Trans and Intersex Association in the region of Latin America and the Caribbean), GATE (Global Action for Trans\* Equality) and IDAHO (International Day against Homophobia and Transphobia) and she acts as an advisor for the Pan American Health Organization (PAHO) and the WHO.

## ▶ 3.4 STAIRWAY TO EQUAL RIGHTS: THE DIFFICULT IMPROVEMENT OF RIGHTS FOR GENDER-VARIANT/ TRANS PEOPLE IN LATIN AMERICA AND THE CARIBBEAN – BY TAMARA ADRIÁN

### 3.4.1 Introduction

In this chapter,<sup>119</sup> I will try to summarise the various and radically different situations faced by gender-variant/trans groups, movements and people in Latin America and the Caribbean (LAC) in order to achieve legal recognition of their gender identity and equal rights, as well as the right to be protected under some affirmative-action provisions in specific human-rights areas from which

they have been radically excluded, particularly education, housing, work, access to health and protection against hate violence. We will notice that the steps of this ‘stairway to heaven’, as the path to equal rights is perceived, is very difficult to climb, mainly because hegemonic forces dramatically oppose any improvement conducting to equal rights, not only in countries where sexual practices among same-sex persons are criminalised, but also in those countries where allegedly progressive governments are in power.

We may also notice that the most significant improvements have been achieved in those countries where one of two conditions obtain: these countries either (i) are governed under democratic systems with a plurality





of parties of any tendency where progressive public policies are in place; where there is a strong laic state movement; and where democratic left parties are in power as either a majority or as part of a broader centre-right government; or (ii) possess pluralist highest or constitutional courts whose judiciaries are highly trained jurists committed to the protection of human rights. In contrast, the least improvements had been achieved in countries where radical ideas prevail, whether from the right, the left, or derived from religious radicalisms. These fundamentalist forces often combine and form a common opposition to improvements in this field.

In order to summarise, I will analyse: 1) access to legal recognition of gender identity; 2) access to specific health-care providers; and 3) protection of access to education, work, health, housing and other basic human rights, and against hate crimes.

### 3.4.2 Access to legal recognition of gender identity

#### A. Countries where legal recognition of gender identity is available

Internationally, the legal recognition of gender identity for gender-variant/trans people and the standards for application of human rights have changed dramatically over the decades, and these changes have been progressively incorporated into the laws, legal practices and even the decisions rendered by UN and OAS organs.

The departing point should always be the 'right to an identity' as a human right consecrated in the UN Universal Declaration of Human Rights. This right has often been confused with the right to have proper legal identification, be registered in a birth-registry office and obtain legal identification in order to have access to citizenship and civil rights. But nowadays the right to an identity has been reformulated as the right to be who you are, without external interference from the state or others, and as the right of the state to legally respect, recognise and not

arbitrarily interfere with who you are. We therefore have to differentiate clearly between the right to identity and the right to have a legal identification reflecting that identity.

Often, the non-recognition of gender identity includes refusing to accept ID photos that show the person's actual appearance when that appearance conflicts with the individual's legal sex – thus in practice depriving gender-variant/trans people of the right to have an ID. Even in spite of such opposition, however, the legal recognition of gender identity has evolved dramatically over time and around the world. In this regard, we may distinguish three distinct stages:

#### B. Countries where recognition of gender identity is available only after GRS

Many countries in Latin America are still in the early stages of legally recognising gender-variant/trans people's identity, and they only recognise this identity after GRS. As most of the countries in the region do not allow for GRS in public hospitals and most gender-variant/trans people do not undergo this surgery, in practice legal recognition of a gender-variant/trans person's identity is almost impossible in practice in most of these countries.

##### a. Countries with laws allowing for the legal recognition of identity after GRS

The only country allowing a legal change of gender identity is Panama, under the law relating to the Civil State of Persons and Civil Registry as of 2066 (art. 120). This change is made by the Civil Registrar Officer by means of an administrative decision rendered in view of a certificate issued by a forensic doctor.

##### b. Countries where the courts allow for the legal recognition of identity after GRS

In other countries, legal recognition of gender-variant/trans people's gender identity after GRS has been achieved through court decisions based on general principles of law and equality, without any local law expressly authorizing such recognition.



This is the case in Cuba, where courts have handed down a small number of decisions that recognise gender and name changes for gender-variant/trans people after GRS. Because GRS was only available abroad for many years, until recently few such decisions had been handed down. After a 2008 resolution by the Ministry of Health, GRS is available in Cuba under certain conditions in state-owned health facilities, particularly with the intervention of the National Center for Sex Education (CENESEX). Between 2008 and 2011, around 20 GRSs (both MTF and FTM) have been reported, and judges have decided in favour of the legal recognition of the gender identity of those who underwent the surgery. CENESEX proposed to the National Assembly of the People a Gender Identity Law in 2008, but the text of this proposal is not available, nor has it been approved so far, despite several announcements.

In Bolivia, change of name and sex had been denied by the courts until recently. A small number of favourable decisions have been handed down since 2009, based on the fact that the 2008 Constitution expressly forbids discrimination based on gender identity.

### **C. Countries where legal recognition of gender is available after GRS but change of name is allowed before GRS**

In some countries, gender-variant/trans people are permitted to change their name during their transition, but they are only permitted to change their sex after GRS. This practice, however, has not been included in any laws. We may observe (a) countries in which this solution is generally available; and (b) countries in which this solution is sometimes available on an exceptional basis.

#### **a. Countries where this solution is generally available**

The country in which this legal practice is most common is Colombia. The Constitutional Court of Colombia, in a decision known as T-594/93, decided that any citizen is free to identify himself/herself with a name different than the one legally determined at birth and has

the right to change it by means of a simple administrative procedure before a public notary. Since the 1980s, lower courts, following the rules for non-controversial procedures, have permitted an original birth certificate to be annulled and a new one to be issued only after GRS. During the 1990s and until recently, this was the most advanced legal solution in the region, although it was created by the courts rather than by statute.

#### **b. Countries in which this solution is exceptionally available**

Chile has had quite an inconsistent legal practice with regard to trans issues. However, the 1970 law relating to the change of name has been applied in some cases to gender-variant/trans people during their transition. But the general rule is that courts allow for the change of name and sex only after a GRS.

Brazil has a limited recognition of people's *nome social* (social name). This recognition had been achieved by local laws in some important states, such as São Paulo and Rio de Janeiro. Under such laws, gender-variant/trans people are allowed to receive some basic documents that recognise their *nome social*, including those associated with metropolitan transportation systems, hospitals and public offices. Recognition of gender identity, however, is generally only available after GRS. In spite of the fact that most GRSs are performed in public hospitals in Brazil, before 2009 there were many practical difficulties in acquiring a legal identity that matched a gender-variant/trans person's gender identity, since local courts were often reluctant to grant such requests, and individuals were obliged to go through the entire panoply of legal steps in order to have their gender recognised. In order to avoid this situation, the Supreme Federal Court, Brazil's highest court, decided in 2009 that the state was obliged to recognise gender identity after GRS, promptly and without any unjustifiable delays.

Ecuador has quite a confusing situation. According to the 2009 Constitution, discrimination on the grounds of sexual orientation, gender identity and gender ex-





pression are expressly forbidden. However, advancements in the matter of legal recognition of gender identity have been contradictory. In 2008, before the enactment of the new Constitution, the People's Defender issued a decision published in the Official Paper of Ecuador ordering the Civil Registry Office to register the change of name of any gender-variant/trans person who requests such a change. Since then, a number of changes of name have been granted, but the original sex appears on identity documents, easily exposing the person to discrimination, and change of sex is not possible, even after GRS, without a judicial decision.

#### **D. Countries where recognition of gender identity is available without GRS**

The first country to recognise a change in gender identity without GRS was Mexico, although only in the Federal District (that is, Mexico City). In this regard, the Federal District's Civil Code was amended in 2008 to allow gender-variant/trans people who have not undergone GRS to request that their gender identity be recognised. This recognition is only granted through a court decision, however, and only after 'medical evidence' of transsexuality.

Uruguay approved a Gender Identity Law in November 2009. Under this law, gender-variant/trans people may request that their gender identity be recognised if they can provide evidence that their gender identity has conflicted with the one they were given at birth for at least the previous two years. The time requirement is waived if the person had had GRS. During the first two years of this law's existence, it was very difficult to acquire legal recognition of gender identity, but this situation has changed as a result of pressure from Uruguayan NGOs.

The third country to recognise a change in gender identity without GRS was Argentina. The Argentinian Gender Identity Law of June 2012 must be recognised as the most advanced gender-variant/trans law in the world. It allows for the administrative recognition of gender identity without GRS and without pathologising the gender-

variant/trans person in any way. The individual does not need to present any medical or psychological reports, and it is enough to prove that the person is living in the gender with which he/she identifies. The request is presented to the Registrar Officer, who is required to make a decision within ten working days. The result of this petition is the annulment of the original birth certificate; the issuance of a new birth certificate, ID and passport; and an order to amend all previous records, including diplomas and social security registration. This is the only law that also includes affirmative-action policies to overcome the effects of segregation and discrimination over the decades.

#### **E. Countries where a change of name but not of sex is sometimes available**

In Puerto Rico, there was a reversal in 2005 of a decision rendered in 2000 by the Supreme Court, in which a woman who had undergone GRS was permitted to have her name and sex changed on her birth certificate. At present, it is possible to have one's name changed after GRS, but not one's sex.

#### **F. Countries where legal recognition of gender identity is not generally available, or where it is no longer available**

If we aggregate the populations of Mexico, Colombia, Ecuador, Panama, Brazil, Uruguay, Argentina, Chile and Bolivia, we may conclude that most of the population in LAC is covered by some kind of legal recognition of gender identity of gender-variant/trans people. Even if the available remedies vary significantly from country to country, there is hope in this difficult task of getting equal rights and fighting discrimination. However, other countries in the region are reluctant to consider change of name and/or sex even after GRS.

##### **a. Countries where recognition has never been achieved**

It has never been possible to change one's name or gender in most Caribbean countries, with the exception



of those that are still European colonies. Transphobia is so severe in such countries that most gender-variant/trans people decide to emigrate or request asylum. Indeed, in many of these countries, same-sex intercourse and cross-dressing are punished.

It has also always been impossible to change one's name or gender in most of Central America, including El Salvador and Nicaragua, which officially prohibit discrimination. Mention should be made of Honduras, where hate crimes are committed more often than in practically any other country in the region. Recently, we have had notice that El Salvador recognised the gender identity of a gender-variant/trans person after GRS, but this is for the time being an isolated case.

It has also always been impossible for gender-variant/trans people to change their name or gender in Paraguay and Guyana. In Peru, there are a very small number of isolated cases in which gender-variant/trans persons have had their change of name and/or sex recognised after GRS.

#### **b. Countries where recognition is no longer available**

Venezuela has a highly contradictory record with regard to gender-variant/trans people. It was the very first country to recognise the gender identity of a gender-variant/trans person in 1977, following the standards of that time – i.e., after GRS. And it also had the very first private clinic devoted to helping gender-variant/trans people during their transition. Between 1977 and 1998, more than 150 cases were decided in favour of the change of name and sex. But, despite the fact that a self-styled 'revolutionary' government is in power, no gender-identity recognition has been granted for gender-variant/trans people since 1998, and only two for intersex people. In theory, Venezuela's Organic Civil Registry Law of 2010 allows a change of name, but not the change of sex, in cases of "incongruence with gender". Despite this law, in practice it has been impossible to have any change of name recognised. In May 2004, the author of this chapter

requested to have her identity recognised by the Constitutional Chamber of the Supreme Tribunal of Justice, by means of a constitutional procedure for direct protection, and since then this court has kept silent with regard to a decision, and even with regard to the issuance of a certified copy of the file.

#### **3.4.3 Access to specific health-care providers and policies**

Denial of health-care services to gender-variant/trans people due to discrimination is not uncommon in LAC, and very few countries have made progress in this regard. Furthermore, health-care services and providers targeted specifically at gender-variant/trans people are very uncommon.

In this section, I summarise the main health problems faced by gender-variant/trans people in LAC and the few advances made in some countries with regard to access to health.

#### **A. Main health problems suffered by gender-variant/trans people in LAC**

In most countries in the region, non-medically supervised body-modification procedures are available, targeted either exclusively at gender-variant/trans people or at the general population. Because some of these procedures are available to non-gender-variant/trans people, they put more people at risk than just gender-variant/trans people.

The health-care department in the State of São Paulo, Brazil, reports a number of cases in which complications arising from body-modification procedures are so serious that medical treatment becomes impossible. This situation is most common in cases where foreign materials have been injected into the body, predominantly under the skin and in muscle tissue. In some such cases, so much body tissue would have to be removed along with the foreign material that surgery is impossible.





Such complications are common, for instance, with injected medical silicone or bio-polymers, particularly when used to modify hips and lower body shape. Negative consequences relating to body modification, including necrosis of limbs, infection and even death, are often reported by the media. Some gender-variant/trans people, or individuals related to their communities, offer body-modifications procedures using materials other than medical silicone or bio-polymers. Among the materials most often used are industrial silicone and industrial heavy oil, such as that used for airplanes. These medically unsuitable materials – used to shape breasts, hips, butts, the lower body and the face – constitute a significant health risk for gender-variant/trans people. Medical reports show that these kinds of procedures are often performed without sterilising or disinfecting the instruments or the body, thus creating a high risk of sepsis, infection and complications. In many cases, it is reported that these materials migrate to lower parts of the body, particularly the legs, creating a risk of thrombosis and gangrene. A number of heart attacks and pulmonary strokes, caused by coagulation or the migration of the material, have also been reported. Cancer has also been reported in some cases.

General reports also show that the overlapping and intersectionality of different grounds for discrimination, such as gender identity, a low level of education, low labour qualifications, poverty and low self-esteem, contribute to the creation of other general risks to health. Thus, poor health is reflected in dental, skin and other problems. Furthermore, according to the Joint UN Programme on HIV/AIDS (NUAIDS), trans women are among the groups at risk of contracting sexually transmitted infections, and they are at greater risk than any other group of contracting HIV, hepatitis C and other infections. As a result, all the UNAIDS efforts since 2011 classify trans women separately from MSM, finally acknowledging the gender identity of gender-variant/trans persons.

## **B. The very few improvements in health care in LAC**

The region in general has advanced very little in regards to establishing health-care policies specifically geared toward gender-variant/trans people and their health needs. Brazil is the country that has shown the most improvement in this regard. This country's most important states and cities, including São Paulo, Rio de Janeiro and Curitiba, other cities and the Ministry of Health have created health-care facilities and services devoted primarily or exclusively to providing health services specifically to gender-variant/trans people. Cuba's Ministry of Health has also established guidelines for the provision of health-care services, including GRS, to gender-variant/trans people. In general, such services are only available for persons recommended by CENESEX.

Other countries have introduced more limited public health-care policies, centres and services geared towards gender-variant/trans people. Ecuador and Chile, for example, provide some limited health services. In Nicaragua, a resolution issued by the Ministry of Health forbids discrimination in health-care facilities on the grounds of sexual orientation or gender identity. In Mexico City, the Secretary of Health has introduced some health-care services addressed to gender-variant/trans people, but mainly in regards to HIV and other STIs, and they barely address other health problems. It is important to mention that PAHO is currently working on Guidelines for Health Care Services for Trans People.

#### 3.4.4 Protection of other human rights

In general, access to education, work, health and housing, protection of personal security and against hate crimes and the implementation of other basic human rights is unavailable for gender-variant/trans people in LAC. Hate crimes targeted at trans women are to be considered an aggravated form of gender-based crimes. The absence of campaigns for public education is the rule, and protection against bullying, sexual harassment and other forms of discrimination and violence is almost non-existent. The efforts made in some countries, particularly Argentina, Mexico, Brazil and Uruguay, but also El Salvador, Nicaragua, Ecuador and Chile, to reduce stigma, discrimination and violence have only had a limited effect so far, as described in other chapters.

#### 3.4.5 Conclusion

The reports of the surveys conducted by TGEU's TvT research project and our own research show a highly differentiated situation with regard to the legal recognition of gender identity in the various LAC countries. Argentina in particular is above the standards of the most advanced European countries. Other countries, such as Mexico and Uruguay, also have rather advanced policies in this regard. In other countries, such as Colombia and Ecuador, the change of name is possible at any time, but the recognition of gender is possible only after GRS. Other countries, such as Cuba and Panama, allow the change of name and sex only after GRS. Some countries, such as Puerto Rico, allow for change of name but not of sex. Other countries have never consented to the change of name or sex, even after GRS or for intersex people. And in other countries, such as Venezuela, where courts had permitted change of name and sex after GRS for many years, this practice is no longer possible.

Gender-variant/trans people face significant health problems, which are aggravated by the lack of health-care public policies, facilities and physicians addressing such problems. Gender-variant/trans people are often denied health care. Very few countries, Brazil among them, have health-care policies addressed specifically to gender-variant/trans people. This shortcoming is currently being addressed by PAHO as it prepares its Guidelines for Health Care for Trans People in the Americas.

Finally, gender-variant/trans people in LAC, as elsewhere, are often confined to the margins of society, as a consequence of Transphobia and the absence of public policies to educate the public and reduce stigma and discrimination. In such conditions, it is very difficult for gender-variant/trans people to secure access to education, work and housing, and to receive protection against violence and hate crimes.





# INTERVIEW

◀ Richard Köhler is TGEU's Policy & Capacity Officer. He has been active in human rights for over a decade, and he has focused especially on trans equality in Europe, including as a member of TGEU's steering committee for four years. Richard has been working in international development cooperation with and in Russian speaking countries for ILGA Europe and the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ).



## 3.5 THE LEGAL AND HEALTH-CARE SITUATION OF GENDER-VARIANT/ TRANS PEOPLE IN EUROPE: AN INTERVIEW WITH RICHARD KÖHLER

**Richard, as TGEU's Policy Officer, you are well aware of the legal situation for gender-variant/trans people in Europe. Could you please give a brief overview of the differing legal situations of gender-variant/trans people in Europe in regard to legal gender recognition, including any requirements? Which countries provide legal measures to make it possible for gender-variant/trans people to change their legal name or gender, and what problems do gender-variant/trans people who want to change their legal name or gender face in practice?**

All 47 member states of the CoE agree on the importance of having procedures in national legislation that allow for change of documents in a quick, transparent and accessible way. However, only 36 countries – Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Malta, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russia, Slovakia, Spain, Sweden, Switzerland, Turkey and Ukraine – have some form of legal procedure; whereas the remaining 13 countries – Albania, Andorra, Armenia, Ireland, Kosovo,

Liechtenstein, Luxembourg, Macedonia, Moldova, Monaco, San Marino, Serbia and Slovenia – do not provide the legal possibility of having one's gender identity recognised. Out of those 36 countries with legislation, all require a 'GID' diagnosis or equivalent medical/psychological opinion; 26 of these 36 countries demand compulsory sterilisation (or proof of infertility); and in 24 of these 36 countries, an existing marriage has to be dissolved first. These are only the obstacles defined in the legal texts, and a gender-variant/trans person not able or willing to meet those 'requirements' may be denied official recognition of their identity. In practice, however, further obstacles also exist: incompetent, ignorant or transphobic public officials who lack clear guidance and regulations on how to apply existing laws, which forces gender-variant/trans people to be the legal experts and often to fight long legal battles by themselves. Discrepancies between legal provisions and practice are widespread, as the TvT Legal and Health Care Mapping illustrates. In countries requiring a court order, an overstrained court system or high legal costs may prevent or delay gender-variant/trans people from ob-

taining official recognition. In many countries, it is mandatory to go through so-called ‘gate keepers’, medical specialists who are responsible for diagnosing ‘GID’ and who can thus grant or deny a person from changing documents. Their education and intentions might be insufficient; their worldview might be limited to two genders and to heterosexuality as the norm; and they are responsible for diagnosing a highly questionable mental health ‘disorder’ and might block a gender-variant/trans person who does not fit the given criteria. Especially for gender-variant/trans people with a migrant background, no residence permit and mental or physical challenges, who may be engaged in sex work, and who face poverty, social exclusion, street harassment and police violence, legal gender recognition is practically either not available (lack of nationality/residence) or in its bureaucratic complexity unfeasible. Also for gender-variant/trans persons who are under age and under guardianship, legal gender recognition might simply be out of reach.

The European continent is comprised of 50 countries, 27 of which form part of the EU and 47 of which belong to the CoE. The countries that until 1989 belonged to either Western or Eastern regimes are socially, culturally and politically diverse today. In various countries, trans activism as part of a wider human-rights movement has begun emerging only very recently. Especially since the mid-2000s, trans activism has become increasingly organised on a Europe-wide scale. TGEU was founded during the 1st European Transgender Council in Vienna in 2005. To date, TGEU has 61 members in 33 countries and is registered as a not-for-profit NGO. TGEU raises awareness on issues gender-variant/trans people face with regional (European) authorities, provides capacity building to the European trans movement and engages and supports research such as its TvT project.

**TGEUs Central and Eastern European Working Group, to which you belong, has paid special attention to different regions in Central and Eastern Europe. What is the situation regarding legal gender recognition in these regions, and is it at all possible to make general comparisons with the situation in Western Europe? What differences exist in terms of formal legislation and actual practice?**

It is generally difficult to compare one country with another in Europe; sometimes even within a single country, the legal situation and thus practice differ greatly, e.g. in Switzerland. However, historically countries in Western Europe in their legal projects often followed the example of Sweden since the 1980s by developing an often very restrictive access system, which requires sterilisation and GRT. In countries that formed part of or were inspired by the Soviet Union, the approach might be very medicalised (often centred around one medical commission), even while they grant access to a new set of documents without the gender-variant/trans person having undergone invasive surgery or obtained proof of sterilisation. However, that is rather the theory, and implementation might be





more dependent on the degree to which a given country follows the rule of law. Nonetheless, one cannot set aside the developments in other parts of Europe, for instance the increasingly common legislation that does away with surgical and sterilisation requirements. Where new legislation is introduced, it is generally more likely to be 'state of the art'. In Balkan countries, an increasingly strong trans movement is reflected in the legal measures being proposed. Moldovan authorities resisted the pressure from activists to introduce legal gender recognition for a long time, but they can no longer refuse applicants after a Court of Appeal ruling in Chisinau in May 2012. In Poland, where legal gender recognition has so far been decided by case law, an activist-initiated proposal for legal gender recognition was submitted to the Polish Parliament in May 2012. The situation in Hungary is in practice favourable, as it provides gender-variant/trans persons (with proof of 'GID' diagnosis) with new documents, but its legal basis is weak, and changes currently underway may not turn out to be an improvement. In Romania, the same court might decide against awarding legal gender recognition in one case, even though it had ruled otherwise in a similar previous case. In the Czech Republic, changes to the existing legislation show a trend towards increasing the hurdles. Lawmakers in Ukraine, Russia and Lithuania are very unlikely to proactively revamp existing laws, which have major flaws in their implementation. On the contrary, Lithuania is still awaiting the parliamentary debate and decision on a proposed ban on gender reassignment, which would erase the legal basis for legal gender recognition. Activists in Russia and Ukraine have been reporting for a long time about the dysfunctional application of existing laws – and with both countries leaning towards laws criminalizing public speaking about trans issues, an improvement cannot be expected.

***Some countries in Western Europe have anti-discrimination legislation that explicitly mentions transgender or gender identity. Could you give a brief overview of anti-discrimination legislation?***

Nearly all countries in Europe have some form of protection against discrimination in national legislation. However, the failure to have discrimination against gender-variant/trans people recognised by courts and policy makers under general anti-discrimination provisions reveals the need for the explicit inclusion of gender identity as a prohibited grounds for discrimination in national legislation. All member states to the CoE signed up to the European Charter on Human Rights and have thus committed themselves to ensuring that equality and non-discrimination are respected by their national laws. In 2010, all members of the CoE agreed to a set of recommendations on measures to combat discrimination on the grounds of sexual orientation and gender identity (Rec (2010)5). It is the first inter-governmental soft law agreement of its kind in Europe that also particularly focuses on the rights of gender-variant/trans people. Since 1996, gender-variant/trans people in EU member states have fallen under the EU founding principle of equal treatment of women and men. The relevant anti-discrimination legislation, particularly in regards to access to employment and goods and services, also covers discrimination in relation to gender reassignment, and in 2007 all member states were required to incorporate it into national law. However, five years later the situation remains patchy throughout Europe: 35 countries (Andorra, Armenia, Austria, Azerbaijan, Belarus, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Georgia, Greece, Iceland, Ireland, Italy, Kosovo, Latvia, Liechtenstein, Lithuania, Luxembourg, FYR Macedonia, Malta, Moldova, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Russia, San Marino, Slovenia, Turkey and Ukraine) in Europe do not award protection against discrimination on grounds of gender identity. In countries where anti-discrimination legislation

provisions also cover gender identity, few gender-variant/trans people or national human-rights structures are aware of this fact. Interestingly, in a number of Balkan countries (Albania, Bosnia and Herzegovina, Croatia, Montenegro and Serbia) that include gender identity in their anti-discrimination legislation, that inclusion was required for their accession to the EU. The fact that gender identity (or a form thereof) has been included shows the presence and influence of a civil-rights movement. How well these laws are actually implemented, and how accessible they are in practice, still needs to be seen.

**While some countries in Western Europe have hate-crime legislation that explicitly mentions sexual orientation, trans-specific hate-crime legislation has only been introduced in Croatia, Georgia and Hungary, and Scotland has proclaimed its intent to follow suit. Could you please give some details?**

The CoE's LGBT Recommendation (Rec (2010)5) explicitly and prominently addresses bias-motivated crime, calling for effective, prompt and impartial investigations, bias motive to be taken into account as an aggravating circumstance, protection of victims and witnesses of these crimes and their encouragement to report these crimes. In a legal proposal to strengthen the rights of victims of crime, the European Commission identified several types of victims and their specific circumstances (vulnerability), amongst them gender identity. Activists had pushed for this proposal, as well as for an inclusion of a definition of 'bias crime'. At the national level, Scotland was the first, and for a long time the only, country to have trans-inclusive hate-crime legislation. It would not have been possible without the unwavering struggle from domestic activists, who joined forces with other groups pressing for an inclusive law. The definition as found today in the law was first introduced in a less well-known law on banning certain chants in football. Once it was codified in this law, it was much easier for activists to get it included in hate-crime law. Similarly, gender identity was brought into the Croatian hate-crime law without big prior debate

because activists first had it introduced in an act on voluntarism. Other countries, especially in Western Europe, avoid introducing or reopening existing hate-crime laws or their national equivalents. There are debates amongst activists as to the effectiveness of a punitive system to overcome Transphobia – be it in an individual perpetrator or in society at large. Most recently, Hungary has adopted hate crime legislation inclusive of gender identity bias violence.

**Some countries have legal measures specifying discrimination or persecution on grounds of gender identity/expression as grounds for asylum. Could you give a brief overview of asylum legislation?**

Access to asylum in Europe is and will remain an important topic for many gender-variant/trans people. Many come to Europe with the dream of finally being able to live a life in dignity, peace and freedom, and in accordance with their gender identity/gender expression. The CoE's LGBT Recommendation (2010(5)) also urges governments to include fear of prosecution on grounds of gender identity in national asylum legislation and to prevent deportation to a country where the life or freedom of a gender-variant/trans person might be under threat. In December 2011, the EU extended part of the existing asylum legislation, the so-called Qualification Directive (Directive 2011/95/EU), to also include fear of persecution on grounds of gender identity. It is binding for all EU member states; however, the quality of its implementation has yet to be seen. Previously, gender-variant/trans asylum seekers had legal certainty in only three countries (Iceland, Portugal and Spain). Cases in other countries are decided on an ad-hoc basis with sometimes surprising results. For instance, Switzerland, which is not a EU member state, agreed to grant asylum to a trans man from the Balkans, whereas there was legal leeway to have him deported. In Sweden, in contrast, migration authorities refused asylum to a Russian trans woman, arguing that it was possible for a gay couple (mistaking her for a gay man) to live "discreetly" in Russia. In the summer of 2011, a trans woman from





Turkey was refused asylum in Austria, partly due to a procedural error; her case was re-opened less than 24 hours before her deportation after massive domestic and international pressure from civil society.

**Could you give a brief overview of the health-care situation in regard to medically supervised hormone therapy and GRS in Europe? Does the situation differ in Central and Eastern European countries? Do gender-variant/trans people have to travel to other countries for trans-specific health care?**

Research by the Commissioner for Human Rights confirmed significant gaps in the accessibility of trans-related health care for gender-variant/trans people. It might already be difficult, and in some countries impossible, to find an informed health-care professional. Lack of knowledge and prejudice often prevent professionals from responding to the demands of gender-variant/trans people adequately and in a timely manner. Thus Ireland apparently has only one endocrinologist able and willing to subscribe hormone treatment. None of the respondents to a trans-research undertaking by a Ukrainian NGO were able to identify a competent physician willing and/or able to provide hormone treatment. The TvT Legal and Health Care Mapping shows that in Europe, despite the existence of protocols in any given country, gender-variant/trans people take hormones without medical supervision. Excessively burdensome access requirements, such as a psychiatric diagnosis, actually impede the delivery of quality health care. Indeed, gender-variant/trans people are pushed to purchase hormones on the black market and ingest them without medical supervision. This situation can lead to serious health problems. Problems with access to medically supervised hormone therapy are further complicated as trans-related health care is often only available upon a 'GID' (or similar) diagnosis or even more complex access requirements such as real-life experience. Thus, in the Netherlands, Denmark and Sweden nationally available treatment paths are concentrated in a very limited number of institutions concentrate. In Denmark, the only 'competent' institution is quoted to have rejected

63 per cent of the applications between 1996 and 2005, while in Sweden about 91 per cent of the applications were accepted during the same period. Traveling to other countries (and continents) for trans-related health care is common in Europe; smaller countries in particular may be insufficiently equipped to provide GRS. The Commissioner's study counts 28 European countries that actually provide GRS – often of very different quality and accessibility; in 13 other countries, gender-variant/trans persons have to go abroad, as there is no service offered in their country. Within the EU, this cross-border health care should be covered by national health insurance, where it exists and when covers trans-related health care. However, gender-variant/trans patients are often unaware of this opportunity.

**In 2009, the then-Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg, launched the Issue Paper Human Rights and Gender Identity, which contained 12 recommendations to CoE member states. What significance did this Issue Paper have for gender-variant/trans people and activists, what developments have occurred since 2009 and what have been the greatest challenges?**

The development and launch of Hammarberg's Issue Paper coincided with and fed into the development of the CoE's aforementioned LGBT recommendations. One can only speculate as to where the European trans movement (but also some very concrete legal projects at the national level) would stand today without then-Commissioner Hammarberg's continuous support and awareness-raising for the human rights of gender-variant/trans people. His interventions played a role in the relatively fast and progressive evolution of a Portuguese gender-recognition law, as well as in the heated debate in Sweden on removing the sterilisation requirement in 2011. While we know that he often brought up gender-variant/trans issues in public speeches, we cannot even imagine with how many policy makers and legislators he directly raised these issues, urging them to take political leadership.



In 2009 the then-Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg, published the Issue Paper *Human Rights and Gender Identity*, which included the following recommendations:

### RECOMMENDATIONS TO COUNCIL OF EUROPE MEMBER STATES<sup>120</sup>

Member states of the Council of Europe should:

1. Implement international human rights standards without discrimination, and prohibit explicitly discrimination on the ground of gender identity in national non-discrimination legislation. The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity should be used to provide guidance for national implementation in this field;
2. Enact hate crime legislation which affords specific protection for transgender persons against transphobic crimes and incidents;
3. Develop expeditious and transparent procedures for changing the name and sex of a transgender person on birth certificates, identity cards, passports, educational certificates and other similar documents;
4. Abolish sterilisation and other compulsory medical treatment as a necessary legal requirement to recognise a person's gender identity in laws regulating the process for name and sex change;
5. Make gender reassignment procedures, such as hormone treatment, surgery and psychological support, accessible for transgender persons, and ensure that they are reimbursed by public health insurance schemes;
6. Remove any restrictions on the right of transgender persons to remain in an existing marriage following a recognised change of gender;
7. Prepare and implement policies to combat discrimination and exclusion faced by transgender persons on the labour market, in education and health care;
8. Involve and consult transgender persons and their organisations when developing and implementing policy and legal measures which concern them;
9. Address the human rights of transgender persons and discrimination based on gender identity through human rights education and training programmes, as well as awareness-raising campaigns;
10. Provide training to health service professionals, including psychologists, psychiatrists and general practitioners, with regard to the needs and rights of transgender persons and the requirement to respect their dignity;
11. Include the human rights concerns of transgender persons in the scope of activities of equality bodies and national human rights structures;
12. Develop research projects to collect and analyse data on the human rights situation of transgender persons including the discrimination and intolerance they encounter with due regard to the right to privacy of the persons concerned.

### IN THE TVT PUBLICATION SERIES, FIVE TRANSLATIONS OF THE ISSUE PAPER HAVE BEEN PUBLISHED SO FAR TO SUPPORT LOCAL MOVEMENTS:

**VOLUME 1:** Derechos humanos e identidad de género – Informe temático (Spanish)

**VOLUME 2:** Menschenrechte und Geschlechtsidentität – Themenpapier (German)

**VOLUME 3:** Tożsamość płciowa a prawa człowieka – Dokument tematyczny (Polish)

**VOLUME 4:** I Diritti Umani e l'Identità di Genere - Issue Paper (Italian)

**VOLUME 5:** Direitos Humanos e Identidade de Gênero – Relatório Temático (Portuguese)

These translations can be downloaded at: [www.transrespect-transphobia.org/en\\_US/tvt-project/publications.htm](http://www.transrespect-transphobia.org/en_US/tvt-project/publications.htm)



## 3.6 THE LEGAL AND HEALTH-CARE SITUATION IN OCEANIA

### 3.6.1 Introduction

Besides the well-known countries/islands of Australia, Papua New-Guinea and New Zealand (which is also known by the Maori word *Aotearoa*), Oceania also encompasses the large number of Pacific Islands that make up Micronesia, Melanesia and Polynesia. Oceania is therefore a politically, culturally and economically extremely heterogeneous region. The same holds true for the many gender-variant/trans communities and their social situation in the different countries/islands of the region. In many islands, there are local understandings of gender diversity that differ considerably from Western conceptions of a male-female dichotomy and of trans (people), and many islands also do not recognise the Western differentiation between sexual orientation and gender identity. Local terms – be they traditional, re-introduced, or newly introduced – include brotherboy, sistergirl in Aboriginal Australia; *tangata ira tane, takatāpui wahine ki tāne, takatāpui tāne ki wahine, hinehi, hinehua* in Aotearoa/New Zealand; *akawaine* in the Cook Islands; *vakasalewalewa* in Fiji; *mahu* in Hawaii; *fa’afafine* and *fa’atama* in Samoa; *rae rae*

in Tahiti; *leiti* and *fakaleiti* in Tonga; and *pinapinanine* in Tuvalu. Due to the lack of a term that can adequately represent all identities of gender diversity around the world, *leitit*, *fa’afafine* and others, in international contexts, (have to) subsume themselves under Western terms such as ‘trans’, ‘gender variant’ or ‘LGBT’.

As a consequence of the aforementioned heterogeneity, the legal and health-care situation for gender-variant/trans people in Oceania also differs enormously between countries like Australia and New Zealand on the one hand and the Pacific Islands on the other hand. Australia and New Zealand make legal gender recognition for gender-variant/trans people possible, possess anti-discrimination and hate-crime legislation that include gender identity, and do not criminalise or prosecute gender-variant/trans people. In both countries, trans-specific health care in the form of medically supervised hormone therapy and GRS is available, but only in New Zealand is public funding of trans-specific health care secured. In both countries, gender-variant/trans people

◀ *Trans men and boys and gender-variant/intersex people from the Asia Pacific region (and the Americas) at the Trans and Intersex preconference of the 2nd AsiaPacific Outgames Human Rights Conference in March 2011, in Wellington, New Zealand*

take hormones without medical supervision, however. The relatively good legal and health-care situation for gender-variant/trans people in Australia and New Zealand stands in marked contrast to the situation in the Pacific Islands. Legal gender recognition is only partly possible in one island, namely Tonga, where only legal change of name is possible. Anti-discrimination legislation exists in Fiji, Papua New Guinea and Samoa. But Samoa, the Solomon Islands and Tonga possess legislation that criminalises gender-variant/trans people. In Tonga and Samoa, for example ‘so-called cross-dressing’ is criminalised. It is very important to realise, however, that the existence of such legislation do not necessarily have a negative impact on the gender-variant/trans community. As elaborated in the TMM chapter and emphasised in the following interview with Joleen Mataele, the situation for gender-variant/trans people in Tonga is also influenced by widespread Transrespect. Prosecution of gender-variant/trans people is not reported in Tonga or Samoa, while in Papua New Guinea and the Solomon Islands anti-homosexual

and gross-indecency laws are used to prosecute gender-variant/trans people. Here we see a difference between the situations in Melanesia and Polynesia. In the Pacific Islands in particular, it is extremely important to differentiate between existing laws and the actual legal situation. Trans-specific health care is not provided in the Pacific Islands. In islands like the Cook Islands, Fiji, Samoa and Tonga, gender-variant/trans people therefore take hormones without medical supervision. These results have to be evaluated in the future, however, as the TvT data for this region are not as comprehensive as for other regions.

In the following, these aspects are discussed in some detail in an interview with Joleen Mataele, who coordinated the research in the Pacific Islands, as well as in a brief guest contribution by Peter Hyndal, who summarises the situation in the different states of Australia.





### 3.6.2 “Laws that criminalise cross-dressing in Tonga don’t affect us – we can dress in female clothing any time of the day even to work.”

#### Interview with Joleen Mataele

Joleen, you have coordinated the TuT Legal and Social Mapping research in Oceania, more specifically in the Cook Islands, Fiji, Kiribati, Papua New Guinea, Samoa, the Solomon Islands, Tokelau and your native island, Tonga. Can you please describe the situation of gender-variant/trans people in regard to legal gender recognition in these islands? According to our data, there are no legal measures for gender-variant/trans people to change their legal name or gender in the mentioned islands. Are there any other ways of changing one’s name or gender? Is this an important topic within the local communities at all?

For many Pacific Islands like Kiribati, Tokelau and the Solomon Islands, changing one’s name or gender is still illegal. Tonga, however, has allowed since 2010 for any National Tongan subject to change their name to whatever they want it to be. Leitis can make use of this, too.

In some Pacific Islands, laws that criminalise ‘so-called cross-dressing’ and that were introduced by former colonial powers or through the influence of missionaries still exist. Sometimes these laws are not acted upon, as in Samoa and Tonga. Can you tell us what this means for the highly visible *fa’afafine* and *leiti* communities in Samoa and Tonga, respectively? Does this affect them/you in day-to-day life?

No, it really doesn’t affect us. We can dress in female clothing any time of the day even to work, unless you are working in a government office or a bank. But for the private sector, we are allowed to wear anything we want.

#### Would you see this situation as a kind of discrimination?

It can be both ways, but we feel we are more comfortable working for the private sector. At the same time, transgenders and gay men who work for the government do dress in men’s clothes, but their actions and voices are still very feminine, and yet they are not discriminated against because of their sexual orientation.



# INTERVIEW

◀ Joleen Mataele is the current president and founder of the Tongan Leiti Association (TLA), as well as the chairperson and co-founder of the Pacific Sexual Diversity Network (PSDN). She is also well known as a singer and performer, and she organises the annual 'Miss Galaxy' contest in Tonga, a pageant that attracts gender-variant/trans people from all over Oceania and beyond. Joleen is also an entrepreneur in Tonga, running a restaurant.

**In Papua New Guinea, forms of prosecution based on laws that are directed against so-called 'same-sex conduct' are a threat to gender-variant/trans people when moving in public. Could you give us some examples?**

In some of their Highland suburbs or villages, it is allowed when it comes to their cultural practices – like a boy will have to take the semen of the father or uncle in order to prove that he has become a true countryman. But when it comes to social actions like going for sex with another man, it is then illegal. In Papua New Guinea, 'sodomy' and acts of 'gross indecency' between male persons are illegal. The maximum penalty for 'sodomy' is 14 years' imprisonment.

**Our data show that in many islands, people take hormones without medical supervision. Could you please give us some details as to what this means for the local communities?**

Proper hormone therapy isn't available. It would be very expensive to order it from overseas. The only

thing that is available in the Pacific is contraceptives such as Diane 35 and birth-control pills. Sometimes, the girls get their supply of pills and shots from friends from overseas, but it's too risky because some of this stuff is not suitable for their bodies. Some of the side effects are that some of them gain a lot of weight and can't control their eating habits, some of them have skin reactions and most of them have the worst migraines ever.

**According to our data, GRS is not available in any of the islands mentioned above. Is this a concern among the communities in these islands? Do gender-variant/trans people in the Pacific want to have surgery?**

Some of them do, but most of the Pacific trans and gender-variant people do not think that it's an issue.






Shevon Matai from Society of Fa'afafine in American Samoa (SOFIAS) explained in an interview:<sup>121</sup>

*We have to go to Hawaii to do that. I am talking about American Samoans for hormone therapy. Some girls have longed to go directly to the Philippines and Thailand. And all these are transgender cultures that travelled down to the Samoan Islands and girls are hearing about this. There is nothing [in American Samoa]. And I was hoping that this conference [the 2nd AsiaPacific Outgames Human Rights Conference in Wellington, New Zealand, March 2011] would have something on oestrogen hormones. How to get it? What are the bad side effects? These are the things we need to know.*

Selina from the Fiji Transgender Empowerment Network explained in an interview:<sup>122</sup>

*So [since 2010] we have a right to sexual orientation [in Fiji]. But the problem was that people don't understand the law..., especially the authorities: they don't understand the law itself, what a right to sexual orientation means. And they have no idea at all about transgenders.*

 **In your view, what are some of the most pressing issues as concerns the health care of gender-variant/trans people in the region?**

I think there is not much concern on this issue, unless you are going for sex-reassignment surgery. But for health issues such as HIV/AIDS awareness, it is the trans community that takes the lead on the advocacy for better health care and takes the lead in HIV tests and all.

**Our research on transphobic violence in the region gives the impression that such violence is a problem in some islands including Fiji, Papua New Guinea and New Caledonia, whereas in other islands, such as Samoa or Tonga, there is hardly any transphobic violence at all, and that, quite on the contrary, there are substantial forms of Transrespect. Can you confirm this? And if so, can you give some examples of both Transphobia and Transrespect?**

It is like this: the Melanesian countries are more difficult, but for Polynesian countries it is part of their culture. In the Polynesian Islands, it is very easy for us to be what we are in public and at any time of the day we wear women's clothes to work, markets, dance, the movies and church, and we are very comfortable doing that. And most of all, we are not discriminated against. As for the Melanesians, you can only see them at night and mostly in the city areas. And most of the time, if they come out in women's clothes, they are stopped by the cops and asked why they dress like women, and some even get beaten up.

**In 2007, the PSDN was founded. Can you tell us how the founding of the PSDN and its work have impacted on local activism in the Pacific Islands?**

Through PSDN, we are able to open a lot of doors for the other Pacific Islands, which have never established trans organisations. At the time we started, we only had four member countries; now we have eight member countries and three associate-member countries.

**To what extent are the activisms of the Pacific communities linked to the international trans movement? What challenges do you see in this regard?**

We do things in the Pacific differently, as we work and get involved with our communities as just one family: in other words, in order for us to get the respect we want, we have to respect our cultural values.

**Have any changes ensued from the increasing discussion of gender identity in globalised human-rights discourses, for instance in relation to the 2007 Yogyakarta Principles or the UN Resolution on Sexual Orientation and Gender Identity from June 2011?**

Pretty much. A lot has been recognised and discussed, but still nothing has been decided, except in Fiji, which in 2010 was able to decriminalise homosexuality.



# GUEST CONTRIBUTION



◀ Peter Hyndal has been actively lobbying around gender-variant/trans issues since 2003 and is a founding member of A Gender Agenda (AGA: [www.genderrights.org.au](http://www.genderrights.org.au)). AGA works with the sex and gender-diverse community, which includes transsexuals, transgender people, intersex people, cross-dressers and other gender-variant or gender non-conforming people. AGA has been successfully engaged in lobbying for human-rights based legal reforms for trans and intersex people at both a state and national level. Through AGA, Peter is also involved in a national network of Australian-based trans and intersex organisations that work collaboratively on issues of legal reform.

## ▶ 3.6.3 THE LEGAL AND HEALTH-CARE SITUATION FOR GENDER-VARIANT/ TRANS PEOPLE IN AUSTRALIA – BY PETER HYNDAL

### A. THE LEGAL SITUATION

#### a. Legal gender recognition:

##### Change of name and change of gender

Australia has gender-recognition legislation, and legally changing one's name is a fairly straightforward process. Although the various states and territories set their own requirements, in effect it is a straightforward and administrative process for someone to legally change their name, regardless of where their original birth was registered. With the exception of the Australian Capital Territory, all certificates recording a person's name change specifically state the person's sex as it is registered on their birth certificate.

Changing sex on birth certificates is determined on a state and territory basis. Although the specific requirements differ in each jurisdiction, all states and territories require divorce before allowing the sex shown on a birth certificate to be changed. As a result of a 2011 High Court case, Western Australia and possibly South Australia are the only states that will recognize a change of sex without medical proof of surgical sterilisation. People residing in Australia who were born overseas are not able to have their identified sex recognized unless their country of birth first changes their original birth certificate record.

In 2011, the policy in relation to sex shown on passports changed to allow a person's sex to be shown as

M, F or X. Although there is a requirement for a supporting letter from a medical practitioner, there is no requirement for hormonal or surgical intervention to receive a passport showing a person's gender identity of preference.

Different government agencies at the state, territory and national levels have conflicting procedures for recognizing a change of sex. Some require production of an amended birth certificate (which in almost all cases would require surgical sterilisation). Many will accept the sex shown on a person's passport.

#### b. Anti-discrimination and Hate-crime legislation

There are two tiers of discrimination and hate-crime protection in Australia. Many states and territories have some form of legislative protection for trans people. This is usually framed in terms of someone's status as 'transsexual' or on the basis of their gender identity. Some jurisdictions offer higher levels of protection for trans people who have changed the sex shown on their birth certificate (which in almost all cases would require surgical sterilisation) than for other trans people. There is currently no national protection in relation to gender identity, although an undertaking has been made by the current government to address this issue. Hate-crime legislation, where it exists, requires such a high burden of proof that it is rarely effectively used.

## B. THE HEALTH-CARE SITUATION

### Trans-specific health care

There are no standards that guide medical care for trans people in Australia, which means that there is little consistency regarding requirements to access trans-specific medical services. Trans people report highly varied, but predominantly negative, interactions with medical practitioners. Most medical practitioners have very low levels of knowledge. Many trans people travel large distances to access health-care services. Hormones can be accessed, but they are not funded when prescribed specifically for the purpose of transition. Despite this situation, trans people who are able to argue that hormones are being prescribed for a different reason are sometimes able to access hormones that are subsidized by the public health system. Although many medical practitioners still require psychiatric diagnosis prior to prescribing hormones, there is a growing trend away from this practice.

Although sex-reassignment surgery is available for trans women, public health-care coverage is minimal and most trans women travel overseas to access this surgery. Mastectomies are available to trans men. Under certain circumstances, these are partly subsidized by the public health-care system. Lower surgery for trans men is not available in Australia. Psychiatric diagnosis is required as a matter of practice rather than legal requirement.



# APPENDIX



## **A. BRIEF HISTORY AND STRUCTURE OF THE TRANSRESPECT VERSUS TRANSPHOBIA WORLDWIDE PROJECT**

The TMM project formed the basis of what would later turn into the TvT project. It was launched on a voluntary basis by Carsten Balzer (Carla LaGata) in the first half of 2009 as a joint venture between TGEU and the online journal *Liminalis – A Journal for Sex/Gender Emancipation and Resistance*. Balzer, then a TGEU steering member, was subsequently given a TGEU mandate to develop a TGEU hate-crime and violence research project, which s\_he developed together with Amets Suess. This research project was designed in a comprehensive global format that

included the TMM as one of its main sub-projects. Julia Ehrt, currently TGEU's Executive Director, supported the TvT project from the beginning in her role as supervisor.

The Open Society Foundations (OSF) started to partly fund the project in January 2010, enabling the continuation of TMM research, the implementation of parts of the project including the website and the search for co-operating partners in the Global South and East, as well as further fundraising. After the ARCUS Foundation started to co-fund the TvT project in July 2010, the project's basic funding was secured. Thus, in August 2010 Jan Simon Hutta could be hired as a researcher to replace Amets Suess, who left the project in April 2010. Due to renewal grants in 2011



◀ *From back row to front: Jan Simon Hutta (TGEU, Germany), Carla LaGata/Carsten Balzer (TGEU, Germany), Naomi Fontanos (STRAP, the Philippines), Kris Randelovic (LGBT Gayten, Serbia), Jana Mittag (Heinrich Böll Foundation, Germany), Tamara Adrián (ILGALAW, Venezuela), Joleen Mataele (TLA, Tonga), Julia Ehrt (TGEU, Germany), Agniva Lahiri (PLUS, India), Whitney Quanita Booysen (Gender DynamiX, South Africa), at the panel presentation 'Trans Rights Are Human Rights!' at the Heinrich Böll Foundation.*

and 2012 from ARCUS and OSF, as well as smaller grants from the German Heinrich Böll Foundation and the Dutch government, the TvT project could be fully implemented, and in March 2012 Moritz Sander, TGEU's new Administration Officer, became part of TGEU's TvT team.

TGEU's TvT team, however, is only one element within a wider network of activists, researchers and organisations that form part of this worldwide project, which is first and foremost grounded in and serves gender-variant/trans people's movements and activism. The majority of TvT's members contribute to the project on a voluntary basis – including in many cases those who are paid. By September 2012, TGEU's TvT team worked in close co-

operation with 17 partner organisations and numerous trans activists and researchers in all six world regions and was counselled by an international Advisory Board of more than 20 LGBT, trans, and human-rights experts and researchers, as shown on the following page.







### Partner Organisations of the TvT Project:

- A Gender Agenda (Australia)
- ASTRA Rio (Brazil)
- GATE (Argentina/Thailand/USA)
- Gender DynamiX (South Africa)
- Grupo Gay da Bahia (Brazil)
- Labryz Kyrgyzstan (Kyrgyzstan)
- LGBT Centre (Mongolia)
- LGBT Gayten (Serbia)
- Observatorio Ciudadano Trans (Colombia)
- Pembe Hayat (Turkey)
- PLUS (India)
- STRAP (the Philippines)
- Tonga Leiti Association (Tonga)
- TVMEX (Mexico)
- Trans China (China)
- Transgender Law Center (USA)
- United and Strong (St. Lucia)

### Further collaborations exist with activists/researchers and/or legal experts from:

Antigua, Argentina, Azerbaijan, Bahamas, Barbados, Belize, Bosnia and Herzegovina, Chile, Cook Islands, Croatia, Cuba, Denmark, Fiji, France, Guyana, Hungary, Iceland, Ireland, Israel, Italy, Jamaica, Japan, Kiribati, Kosovo, Macedonia, Namibia, Netherlands, New Zealand, Norway, Papua New Guinea, Poland, Russia, St. Vincent, Samoa, Singapore, Slovakia, Slovenia, Solomon Islands, Spain, Sweden, Suriname, Switzerland, Tokelau, Trinidad and Tobago, Uganda, Uzbekistan, Venezuela and Zambia.

### The TvT Advisory Board comprises the following members:

Mauro Cabral (Argentina), Peter Hyundal (Australia), Silvan Agius and Dr Nicolas Beger (Belgium), Majorie Marchi, Dr Luiz Mott and Dr Joseli Maria Silva (Brazil), Dr Sam Winter and Jiangang Zhao (China), Dr Thamar Klein (Germany), Agniva Lahiri and Shabeena Francis Saveri (India), Sass Rogando Sasot (the Netherlands), Jack Byrne and Thomas Hamilton (New Zealand), Belissa Andía Pérez (Peru), Roger Tootooali Stanley (Samoa), Victor Mukasa and Liesl Theron (South Africa), Huya Boonyapisomparn (Thailand), Joleen Mataele (Tonga), Masen Davis, Justus Eisfeld, Anna Kirey and Dr Susan Stryker (USA) and Dr Tamara Adrián (Venezuela).

Strong efforts have been made to create fruitful, productive and lasting cooperations with other experts and organisations worldwide. A key moment in, and expression of, this collaboration was the TvT Training and Strategic Planning Meeting featuring a panel discussion in October 2011 in Berlin. Activists and researchers from India, the Philippines, Serbia, South Africa, Tonga and Venezuela evaluated, discussed and presented TvT research findings together with TGEU's TvT team on the panel 'Trans Rights Are Human Rights!' at the Heinrich Böll Foundation (see the image on page 108), which was live-streamed on the internet. From this panel discussion, the formation of a global TvT team involving representatives of the above-mentioned partner organisations

ensued. A similar meeting with activists from, India, the Philippines, Tonga and Venezuela is to be held in December 2012 in Stockholm, where the further development and growth of the TvT team beyond 2012, as well as its strategies for the future, will be discussed. A Survey on the Social Experiences of Trans People, which addresses experiences of both Transphobia and Transrespect and has been developed and recently conducted together with our partners in India, the Philippines, Serbia, Tonga, Turkey and Venezuela, will play an important role here. Having the format of peer research that aims to combine research with empowerment, it lays the ground for future TvT research and further regional and transnational collaborations.



## B. TMM Tables

### Reported murders of gender-variant/trans people in the world regions (as of September 2012)

	2008	2009	2010	2011	Total
<b>AFRICA</b>	1	2	-	1	<b>4</b>
<b>ASIA</b>	16	14	21	20	<b>71</b>
<b>CENTRAL AND SOUTH AMERICA</b>	94	165	181	204	<b>644</b>
<b>EUROPE</b>	13	19	9	12	<b>53</b>
<b>NORTH AMERICA</b>	19	13	9	14	<b>55</b>
<b>OCEANIA</b>	3	1	-	-	<b>4</b>
<b>Total</b>	<b>146</b>	<b>214</b>	<b>220</b>	<b>251</b>	<b>831</b>

### Reported murders of gender-variant/trans people in 55 countries (as of september 2012)

AFRICA	2008	2009	2010	2011	Total
ALGERIA		1			1
MAURITIUS				1	1
SOUTH AFRICA	1				1
UGANDA		1			1

ASIA	2008	2009	2010	2011	Total
AFGHANISTAN				1	1
AZERBAIJAN			2		2
CHINA	1	3	2		6
INDIA		4	2	4	10
INDONESIA	1	1	1	1	4
IRAN			1		1
IRAQ	3				3
MALAYSIA	1	4		1	6
PAKISTAN	3		3	6	12
PHILIPPINES	5	1	9	7	22
REPUBLIC OF KOREA			1		1
SINGAPORE	1				1
THAILAND	1	1			2





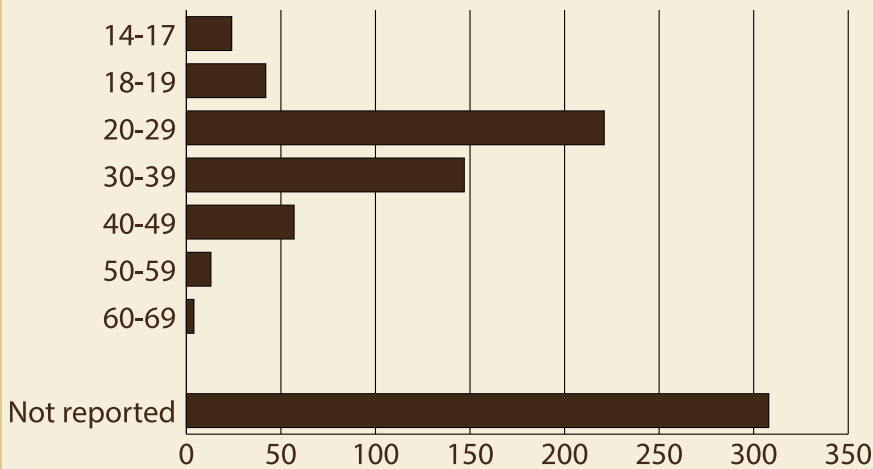
CENTRAL & SOUTH AMERICA	2008	2009	2010	2011	Total
ARGENTINA	2	3	3	10	18
BOLIVIA		1	5	1	7
BRAZIL	57	68	99	101	325
CHILE	1	1		1	3
COLOMBIA	13	13	15	18	59
COSTA RICA	3				3
CUBA		1			1
DOMINICAN RE-PUBLIC		4	4	4	12
ECUADOR	1	2	5	1	9
EL SALVADOR	1	5		1	7
GUATEMALA	1	12	14	4	31
HONDURAS	4	15	8	8	35
JAMAICA			1		1
MEXICO	4	9	14	33	60
NICARAGUA		2			2
PANAMA				1	1
PARAGUAY	2		1		3
PERU	1	4	2	2	9
PUERTO RICO		2	5	1	8
URUGUAY		1		1	2
VENEZUELA	4	22	5	17	48

EUROPE	2008	2009	2010	2011	Total
ALBANIA		1			1
FRANCE				1	1
GERMANY	2				2
ITALY	5	6	2	1	14
POLAND				1	1
PORTUGAL	1				1
RUSSIA				2	2
SERBIA		1			1
SPAIN	1	2		1	4
TURKEY	4	7	6	6	23
UNITED KINGDOM		2	1		3

NORTH AMERICA	2008	2009	2010	2011	Total
CANADA	1				1
UNITED STATES OF AMERICA	18	13	9	14	54

OCEANIA	2008	2009	2010	2011	Total
AUSTRALIA	1				1
FIJI	1				1
NEW CALEDONIA	1				1
NEW ZEALAND		1			1





◀ Ages of the gender-variant/trans people who have been reported as murdered between January 2008 and December 2011 (as of March 2012)



Profession/occupation/source of income of the gender-variant/trans people who have been reported as murdered between January 2008 and December 2011 (as of March 2012).

Ages of the gender-variant/trans people who have been reported as murdered between January 2008 and December 2011 (as of March 2012)

PROFESSION/OCCUPATION/SOURCE OF INCOME	
Sex worker	227
Hair dresser/stylist/beautician	17
Owner of shop/bar/hair salon	8
Employee	7
Merchant	6
Performer	5
Waitress/bartender	5
Activist	3
Religious leader	3
(Homeless)	2
Cook	2
Mason	2
Owner of boarding house	2
Police officer	2
Other	13
Not reported	512
<b>TOTAL</b>	<b>816</b>

AGE	
60-69	4
50-59	13
40-49	57
30-39	147
20-29	221
18-19	42
14-17	24
Not reported	308
<b>TOTAL</b>	<b>816</b>





## C. ABOUT THE AUTHORS

### Carsten Balzer (Carla LaGata)

Balzer, who holds a Ph.D. and an M.A. in Cultural Anthropology from the Free University of Berlin, wrote his Ph.D. thesis on gender-variant/trans communities in Brazil, Germany and the United States. S\_he has carried out fieldwork in Tanzania and the Brazilian Amazon region, as well as in Rio de Janeiro, New York City and Berlin; taught Cultural Anthropology and Latin American Studies at the Free University of Berlin; and has published a book and various chapters in anthologies and articles in peer-reviewed journals in the U.S., Brazil, Germany, Spain and the UK. S\_he is chairperson of the Scientific Advisory Board of the Transgender Network Berlin (TGNB), founding member of the online journal *Liminalis – Journal for Sex/Gender Emancipation and Resistance*, Editorial Board member of the academic journal *Transgender Studies Quarterly* (TSQ), and member of the Advisory Committee of the Open Society Foundations' LGBTI Rights Initiative. S\_he supported TGEU from its very beginnings in 2005 and served as a TGEU Steering Committee member from 2008 to 2012. Currently, s\_he is the lead researcher of TGEU's TvT research project, which s\_he initiated in 2009.

### Jan Simon Hutta

Hutta received his PhD in Human Geography from the The Open University, Milton Keynes, UK. His doctoral project investigated LGBT politics of anti-violence and citizenship in Brazil. Before that, he studied Psychology and Cultural Studies at the Free University of Berlin and the University of California, Santa Cruz. Apart from his involvement in TvT since the summer of 2010, he teaches Cultural Anthropology and Gender Studies at Humboldt University in Berlin. His work has been published in several journals and edited volumes. He has been involved in queer activism, has co-organised political and academic conferences and is a founding member of *sub\urban*, an interdisciplinary German-language journal on critical urban research.







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[110] Ibid.

[111] GDX and SIPD, 'GDX & SIPD Exchange Programme', w/o date, Gender DynamiX and Support Initiative for People with Atypical Sex Development, available from Gender DynamiX, Cape Town (w/o pages).

[112] Ibid.; Gender DynamiX, 'GDX AGM: An overview of the year that was', available at <http://mobile.genderdynamix.org.za/content/view/506/1> (last accessed on 21 Aug. 2012); 'People have realized the need for an African trans movement' (op. cit.), pp. 123 and 125.

[113] See the interactive maps at [http://www.transrespect-transphobia.org/en\\_US/mapping.htm](http://www.transrespect-transphobia.org/en_US/mapping.htm).

[114] Interview with Agniva Lahiri, conducted via e-mail between 1 and 12 June 2012.

[115] Interview with Shabeena Saveri, conducted on 9 Oct. 2010, Berlin, Germany.

[116] Interview with Satya, conducted on 18 March 2011, Wellington, New Zealand.

[117] Interview with Aya Kamikawa, conducted on 2 March 2011, Tokyo, Japan.

[118] Interview with Seung-hyun Lee, conducted on 18 March 2011, Wellington, New Zealand.

[119] The author based this chapter on her own research during the past twelve years on the legal and sociological issues affecting gender-variant/trans people in Latin America and the Caribbean, and on the expert questionnaires by TGEU's TvT research project addressed to some local experts, which were kindly submitted to the author by this organisation.

[120] See *Human Rights and Gender Identity* (op. cit.), pp. 43-4.

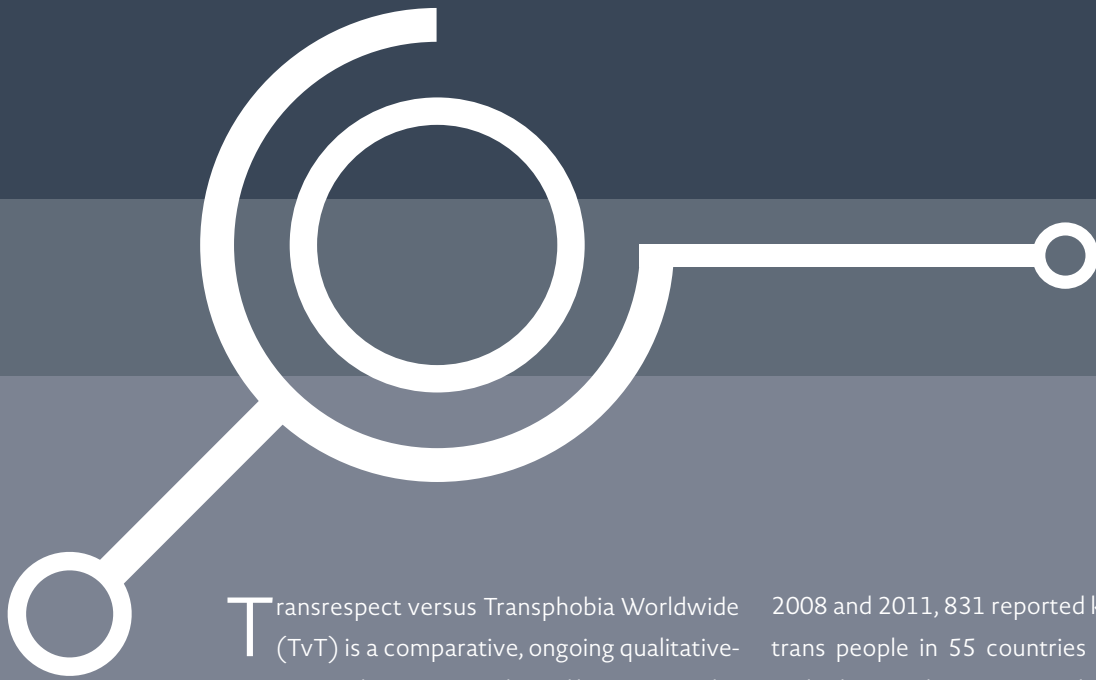
[121] Interview with Shevon Matai, conducted on 18 March 2011, Wellington, New Zealand.

[122] Interview with Selina, conducted on 17 March 2011, Wellington, New Zealand.









**T**ransrespect versus Transphobia Worldwide (TvT) is a comparative, ongoing qualitative-quantitative research project conducted by Transgender Europe's (TGEU) TvT research team in close cooperation with 17 partner organisations and numerous trans activists and researchers in the world regions of Africa, Asia, Central and South America, Europe, North America and Oceania. It has been counselled by an Advisory Board of more than 20 LGBT, trans and human-rights experts from all parts of the world. The project seeks to provide an overview of the human-rights situation of gender-variant/trans people in different parts of the world and to develop useful data and advocacy tools for international institutions, human-rights organisations, the trans movement and the general public.

This TvT research report presents, discusses and contextualises the key findings of two sub-projects. The first is the Trans Murder Monitoring (TMM), a systematic collection, monitoring and analysis of reported killings of gender-variant/trans people worldwide. Between

2008 and 2011, 831 reported killings of gender-variant/trans people in 55 countries have been documented, with the numbers constantly increasing. The second sub-project is the Legal and Health Care Mapping, which provides an overview of existing laws, law proposals, and actual legal and health-care practices relevant to gender-variant/trans people. It currently comprises 72 countries. One of the key findings is that in most countries where a legal change of gender is possible, the applying person must first receive a 'psychiatric diagnosis' that pathologises her, him, or hir and undergo 'gender-reassignment surgery' and/or 'sterilisation', a situation that clearly violates human rights.

This publication is the result of intense collaboration between TGEU's TvT researchers and numerous international experts and activists. It provides a polyvocal account of some of the major challenges and achievements of gender-variant/trans people and movements in the twenty-first century.

**[www.transrespect-transphobia.org](http://www.transrespect-transphobia.org)**

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