



letrans

N° 02

May 2016

Informational Magazine; Analysis and thought from the Trans world - Asociación OTD Chile

CAN A JUDGE DECIDE WHO I AM?

TRANSVIEW

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TRANSBACKGROUND

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The right to decide on our own identity



Organizando Trans Diversidades

With this second number of our magazine *Le Trans* in 2016, we are now taking a new step towards visibility and positioning of the trans culture in Chile.

If the first number has demanded hard work for us, the second number hasn't been different and we are happy that we achieved this.

For this number, we have worked gathering information and magazines which show the situation on the Gender Identity Law process and the process that us, as a Trans* movement, have been working on in order to achieve the approval of this important normative.

After months of several work trying to convince the government which showed itself closed to attend the main demands of the Trans* movement, such as counting on an administrative Gender Identity Law which includes the right of Trans* children and Teenagers, finally with the impulse of the Supreme Court, they finally got to understand this.

This wouldn't have been possible without the constant strength of our allies of the *Frente de la Diversidad Sexual*, *Fundación Transitar* and *Sindicato Amanda Jofré*.

The international support has also shown in our struggle, we would like to give special Thanks to *Mauro Cabral* for his collaboration in order to activate the support of international organizations which much help to grant respect on the Gender Identity of every person in the best way possible.

A new year full of challenges is now coming, in which we hope to move the biggest amount of collaborators to fight for the most basic right of all of the existent, and in which all of the other rights a person must have are based.

Michel Riquelme
president of OTD Chile

SUPREME COURT AND THE GENDER IDENTITY LAW

Opening the door for a bureaucratic procedure

by Miguel Ángel Sevilla, journalist



On 17 November 2015, the Chilean Senate Commission on Human Rights, Nationality, and Citizenship requested the Supreme Court's opinion on the law draft recognizing and protecting the right to gender identity. The Court's response was a clear reassurance to the institutional defense of

trans people. The document (23 November 2015) confirms that the draft as it stands limits legal procedures. It also explains that the legal processes involved in the draft emerge exclusively from the solicitor's will and that a bureaucratic procedure protects people's dignity better:

The judge would only become relevant in cases in which the administrative authority opposes the change or in cases of children and youths.

With this opinion the Judiciary Power is in line with the *Yogyakarta Principles promoted by the Inter-American Human Rights Commission (IHRIC). Those principles define gender identity as 'the internal and individual experience of gender as persons feel regarding themselves. This may or may not correspond with the assigned sex at birth...'

* Name of Indonesian city where was held a meeting of specialists in international law on Human Rights, and is a benchmark in rights for sexual diversity.

a) The tribunal will not be able to demand 'the use of pharmacological, psychological, psychiatric, or surgical treatments, as conditions to access the request involved in this law';

b) The tribunal will not be able to request 'medical examinations by the National Medical Legal Service or any other entity for its own persuasion regarding this request'; and

c) The tribunal will not be able to request 'medical or psychological examinations to the National Medical Legal Service or any other entity for its own persuasion regarding this request'. This prohibition applies to 'all cases involved in this law'.

Due to their restrictive character in a non-contentious procedure, such dispositions contradict article 820, the second section on article 824, and the first in article 826 from the Civil Code. Together with the fact that the requirement is subjected to the claimant's will, these reasons sustain that this procedure should be carried out as a bureaucratic process in the Civil Registry. This would maintain better the dignity of people by not exposing them to a legal procedure...

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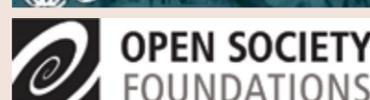
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Proofreading: Mariechen Euler, Miguel Ángel Sevilla.

Photography: Armando Escoffier.

Back cover illustration: Damián San Martín.



Esta revista se imprime gracias a la colaboración de la División de Organizaciones Sociales de la SEGEGOB de Chile, quienes colocan sus talleres a disposición. La D.O.S. no asume responsabilidad alguna sobre los contenidos de la presente edición.



Franco Fuica

vicepresident of OTD Chile

The right to decide on our own identity

by Armando Escoffier, Le Trans editor

If we have to mention people who have been and actually are a structural contribution in the Chilean Trans struggle, Franfo Fuica occupies an important place in the list. 35 years old and 11 doing activism, Franco has become a solid leader, convincing at the time to install and defend a political speech, which is supported by his own experience.



You live as trans and the gender diversity turns flesh, in order to convert it in a political entity which is able to interpret and transform reality.

The actual generation of trans activists who, from a transfeminist inspiration, leave behind victimization manifesting the actual cultural gender construction and the ambiguity that exists in the psychosexual human universe.

Creator and co-producer of Transfest, the first trans festival in the country, Franco is the vicepresident and legislative coordi-

nator of the OTD Chile Association.

This and other activities, like his trade union activism and trans labor inclusion efforts, allow him no respite. A seasoned and well-established cyclist, his life has a lot of pedalling forward too. The daily effort put on the association's internal growth, political relations and the gender identity law project maintain him constantly in action.

We ask Franco about this project and he answers in a warm, clear and confident way.

Franco, how long have you been an

activist and how did it started?

I was a student leader in my university, so I think being a Trans activist was the inevitable next step, as I was just starting to transition, back in 2005, 2006. In these years me and a friend created an organization called CUDSO (Coordinadora Universitaria por la diversidad sexual de Osorno). Then I became part of Organización de Transexuales por la Dignidad de la Diversidad, and after finishing my studies I was given the chance to coordinate the Southern Chapter of the organization.

When and how does the gender

identity law project start?

A gender identity law started to be thought about a long time ago, before the current project started to gain momentum. I believe there were at least 3 previous projects with a strong pathologization bias, as they asked for psychiatric or psychological certificates. The current project was presented on May 2013 and was elaborated upon the existing name change law non-contentious procedure.

Initially, the project was presented as not too progressive, so it could be admitted and not rejected by the congress. It also was backed by a lot of prestigious organizations like Organización de Transexuales and Iguales Chile, what in my opinion was vital for the project to keep going forward. We'd also like to highlight the huge incentive we felt to see the Argentinian gender identity law become a reality. After that, doing it here transformed into a moral obligation.

The development of the project had a lot of trial and error, and it wasn't a collective effort but a guided one that tried to accommodate the Argentinian law to our conservative reality.

How has the process developed once it reached the senate's human rights comitee?

This initiative reached the senate's human rights committee, chaired in that time by the Senator Lily Pérez, who was one of the five senators which presented it, so we expected this to mean a quick procedure in the comitee. It wasn't that way, so the procedure took longer than we expected and the change of the presidency took us by surprise. Because of political agreements this charge was assumed by the Bio Bio Senator, Jacqueline Van Rhysselberghe, who was an old fashion designer and pathologizing vision on the subject, even referring to Sexual Diversity people as "weird".

This meant the procedure to take longer. Month by month new indication income periods, totally out of the common procedure, as the only strategy to exhaust the

In that moment, the project got out of the Human Rights Committee, and passed to the Constitutional Committee of the Senate and, even though it's categorised as "urgent" this doesn't mean it's being processed...

organizations which were tracking the law.

About our participation and vindications, in particular when it comes to process the corrections in the Civil Registry with an administrative procedure, a first step was taken with help from the IWO (International Working Organization) which allowed to develop a dialogue with the Argentinean experience. Between the national organizations which participated in this dialogue, "Trans Strength" was created: composed by MUMS, Sindicato Amanda Jofré, MOVILH, Fundación Iguales, Fundación Savia y OTD Chile, a group of organizations which begun to meet and discuss the project in order to propose parliamentary indications.

The second step was to search for a senator who would sponsor our set of indications. This was achieved with Guido Girardi. Our indication about Administrative procedure was allowed between the others to be voted, even though it was inadmissible, since the same indication granted new functions to a State administration organ, which could only be done from the Executive power. Still it was voted against the procedure. In that moment, our lobby wouldn't show many results inside the Council.

On the other side, we also did lobby

From now on...a law which ensures and protects the Gender Identity Right, which isn't pathologizing, which doesn't take trials, in spite of the age of the person and hopefully with a pack of actions that would allow to improve and equate the life conditions of trans people with cis people's conditions.

through the Executive, which meant to meet with the Governmental Spokesman at that time, Álvaro Elizalde, who showed great will to listen and considering all of our proposals, which were, for example: that underaged people could access the correction of their birth certificate, that migrant people could access to the procedure too if they have their definitive residence in Chile, amongst other things, besides including that the procedure should be done in the Civil Registry. In that period, one of the Ministers was changed, which meant that Elizalde had to be changed for Díaz Minister, who designed an hybrid to give response to our demand of having an Administrative procedure, making a strategy which would be carried out in the Family Tribunals in an Administrative way, without going through a common trial.

In that moment, the project got out of the Human Rights Committee, and passed to the Constitutional Committee of the Senate and, even though it's categorised as "urgent" this doesn't mean it's being processed. So, let's wait to see what happens, the important thing is that today we're counting on a lawyer who allows us to keep on defending our position.

What should happen from now on?

From now on... a law which ensures and protects the Gender Identity Right, which isn't pathologizing, which doesn't take trials, in spite of the age of the person and hopefully with a pack of actions that would allow to improve and equate the life conditions of trans people with cis people's conditions.

In the past november 9th, a protest was held at the front of the Socialist party. Do you and the trans world feel, represented by those organizations, that trans people haven't been heard?

Absolutely. Mainly because, if well, the topic isn't that known, organizations and activists that call themselves representatives of the trans community carry a very victimizing, pathologizing and criminalizing speech about trans people, taking others to look at us with pity, like we wanted solutions to keep on being lacked of privileges and helped all the time. It's not that way, what we need is them to see us a persons, working and productive people in equal conditions and that, if in moment we didn't have the same conditions was simply because the society we built was old fashioned and transphobic due to the predominant prejudice and the ignorance, we must take over for this situation to change. In this case, OTD Chile is an example of change, trans people who take parte of it has gone out of the pathologizing speech and now they are empowered in society, without fear, because they understand that they are called to educate their environment, they can have a limitless life project, because there are no limits. While there are many forms of discrimination, the one that is exerted because of gender identity is very strong since it voids people all over themselves, because even though trans people are able to learn, to work and be productive in society, they are segregated to high levels of instability and violence. In this scenary, it isn't recognized that trans people are able to delineate and develop their life project and decide on their own identity. It is very important to see how the limits imposed by society, in a underco-

In this scenary, it isn't recognized that trans people are able to delineate and develop their life project and decide on their own identity.

vered way, disappear with the personal and colective empowerment.

People tend to group the whole LGTBI universe in just one conglomerate and inside this one, gay population which is majority and has had a long struggle around their rights is visibilized as hegemonic but...What level of presence have trans people had in the Government and the Parliament?

We have gone from less to more, specially because we have been getting into the scenary of the LGTBI organizations in a strong way, without searching for the approval nor aliances with with the biggest organizations, just doing a focused job and sometimes a lonely job, but very constant and strong.

According to the incorporated indications by the Senate Committee. What could you tell us about the positive and negative of this Law, specially in the phase that's going through?

In this moment, the positive thing is that nothing is requested to access the rectification, but the negative thing is that a few lines lower you can read that the requester can show proofs (which opens a world of terrible possibilities). It's good to include underaged, but it's not good that it would have to be done by trial because, if their parents or caregivers agree with it, it could be done at the Civil Registry, it should be that way. The fact that affirmative actions aren't included is a big problem, but we know there are not many options, politically speaking.

Under what perception can you understand that a person's identity and, therefore, their "right to be" should be at the hands of a judge?

Under none. Understanding that it's an intimate part of a person, it doesn't make sense, the fact that someone interferences or tries to even "convert" or reeducate a trans person's identity. To me, the only reason is the will to control, measure, quantify how and why a person goes from the gender conventionality to the B or X, Y or Z conventionality. Everything would be more simple if we got people to understand that gender is a convention, that it isn't related to genitals. Biology and gender can be developed in two different lines inside the same sexuality. For segment of society, the transgender condition goes under a pathologizing view.

What would you add to it??

Well, that we live in a macho and patriarchal world, which searches for a created and imposed model. If you look harder, everything is centered in men and not any type of man but white, tall, educated, rich and successful, heterosexual, cisgender and healthy, perfect to populate the world. Then, everything that isn't men show up: woman, who is constructed related to this man, with similar features...Now, everything this model is not is lacking of getting to a sanity level, it's pathologized. If you are gay (you were sick), if you are trans you are sick, you won't be able to have a family, you "think" you belong to a different gender, you're sick, everything that is out of the norm turns into a mental/social sickness, because it doesn't allow you to entirely develop in social spaces. Regarding trans issues, the difficulty has always been out of the person, it's not the person who feels bad because of the situation that's living (normally it isn't that way) but it's the environment that causes difficulty and that's not a person's disease, but the symptom of a society's respecting problem and, as it is a problem that scapes the poor chances of an organization, then it turns into a State problem who must educate to despathologize. **LT**



Elizabeth Manrique, psychologist, and Carol Barragán, psychologist and network coordinator.

The psychologists network was formed with the aim to support the Association and give response to the high demand of trans people seeking for accompaniment and concretion of psychodiagnosis -which not replicate the psychopathologizing speech which has prevailed in the "psi" sciences -, in order to start hormonal treatment, and in the case people wish to, start psychotherapeutic work.

OTD'S PSYCHOLOGISTS NETWORK

Specialists who focus into diverse gender identities

by Michel Riquelme, president of OTD Chile

The pioneer teamwork was formed by 5 volunteer psychologists. It began to structure through monthly meetings in which we achieved to organize a group and define action lines.

The OTD Association's psychologists network is led by Elizabeth Manrique y Carol Barragán. In the same way, we count on the support of the psychiatrist Ricardo Aguayo, who sees Trans* users once a month, just to deliver a certification, which sadly is still an obligatory requirement to any person who wishes to transition when it comes to body modification and the legal name and sex change.

The teamwork profile is based on psychologists who specialize in gender issues, who will to give accompaniment, orientate and intervene in a personal and familiar spectrum, facilitating development and life quality spaces for trans people. Respectful and promoter of Human Rights, focusing towards diverse gender identities. They don't think being trans is a disease. They do not apply any test to try to define the user's gender identity.

The teamwork works in a complementary way with the peer counseling, space to which trans people arrive when they approach in search of psychological service, or counseling and

information. The peer counseling is a key aspect at the start of gender transitioning of a person, since it is a space to recognize ourselves through others and an important chance to connect with a community who understands and values gender transition.

During 2015, more than 100 consultants were attended. Most of them trans people, their mothers, fathers and partners. **LT**

to request a consultation, write to: atenciones@otdchile.org





Lorena Lorca and the Gender Identity Law

“JUDGES ARE NOT MAILBOXES”

by Armando Escoffier, *Le Trans* editor

Lorena is passionate about social issues. She is argumentative and a stubborn advocate for justice in all areas. As a high school student she began struggling over the rights of women and children. Although she wanted to pursue a degree in politics, that course was forbidden in Chile when she graduated from school. Persisting in her motivation, she was later granted a scholarship to do her undergraduate studies in Argentina. But she finally decided to read Law at University of Chile, with the aim of, later, building a career as a dip-

lomat. 'But I realized that my performance was not good enough to be a diplomat' she told us, demonstrating her honesty and critical thought.

In 1993 he graduated as a lawyer. Since 1994 she is a Professor at the University of Chile, teaching Legal Clinics I and II. Since 1998 he is a lawyer of the State Defense Council, a task that occupies most of the time in which she is not teaching or practicing as a lawyer at the Legal Clinics.

In that job you can properly feel the

real weight of what it means for someone to go through changing their gender identity. 'It is incomparably beautiful delivering a sentence allowing someone change their name and gender. Later, they usually send a picture of their ID card over Whatsapp showing their new name... wonderful! There is nothing more fulfilling for a practicing lawyer than helping somebody in such a substantive way' emphatically told us Lorena. With her words she shows her dedication and commitment for each if the cases. Noticeably, her job goes beyond legal codes; she works with

flesh and bone people.

You began working on cases involving transgender people in 2009, through the Legal Clinics. That is, university students were participating in them. How did you defend those cases in front of the jury, and how were they treated before?

When I began working on those causes the reality was different: judges requested people to have gone through surgery in order to grant sex and name change. In other words, a poor transgender person,

In 2009, Lorena worked on her first gender identity change case facing a Chilean court. This was the first of more than 80 cases to change people's name and gender. She hence became the most experienced and successful lawyer in this matter. She has won each and every case avoiding judges' requests for surgical interventions and anatomic adaptations usually used to comply with conventional ideas of the gendered body.

could not change their name. In the case of a female transgender, judges requested a vaginoplasty. In male cases, they asked for a hysterectomy and other physical adaptations. These requirements are extralegal. That was the reality back then. Hence, people usually had a better chance of changing only their name, but not their sex.

We sought to argue in favor of changing name and sex using the laws in force.

A transgender person is not a sick person. Therefore, by no means I could demand my clients to get a surgery in order to win the trial. So how do I prove that the person is effectively transgender? I asked myself, how do I demonstrate that this person's name causes them an issued because they feel as women and their ID card says the opposite?

We realized, back then, that we could show that someone is transgender by bringing a certificate from a psychologist, a psychiatrist, or an endocrinologist when the person is taking hormones. I went to court with several people in such a situation. What we realized, however, is that the Civil Registry officials started changing their discourse. Now, they began defining things differently in order to reject our legal request. They would, for example, say that 'sex is the one that the midwife indicates in the childbirth certificate'.

Currently, the Civil Registry reports do not say that anymore. They are focusing on what they are meant to report: wheth-

er the person has previously changed their name in the past. Someone cannot change their name twice. Also, you cannot rectify your name if you have criminal records. The law also requests specifying whether the person is married and has children. We are advocating for the Civil Registry to do its job properly and inform what it must according to the law

And yet, there are also occasions in which tribunals request examinations...

Judges have asked the most varied reports from experts. From DNA reports, to psychological, physical, social, and even cultural evaluations. Very strange things.

The first physical examinations carried out were brutal. They even touched some people... quite violent. However, the Legal Medical National Service has changed in the last years. It became more aware and protective of people's dignity. Examinations have changed a lot. Some judges request reports from the Legal Medical National Service, others do not.

If the judge requests the examination I ask my clients whether they want to go through it. If they don't want to, then I present a legal resource arguing that the report is not legally necessary. If the court rejects the resource, and the person still does not want to go through the examination, they I appeal to the court. Every time, we have managed to revoke the decision.

Are there any cases in which the

court requests anatomical changes?

That almost never happens. But if it happens, we would appeal and revoke de decision.

Considering the current discussion on the Gender Identity Law: what advantages would you identify in that draft?

Nothing. Because, it is not positive that the procedure keeps on being a legal one. And, please, do not make it a family court matter. And this is the core of the current draft.

You need to think that these courts have not gone through any training to tackle gender discrimination. They keep on prioritizing the mother over the father. What are we talking about here? These courts are still anchored in this very basic idea of the primary roles. Do you think that by getting a brief training these courts will be able to understand that somebody that does not have a penis can also be a man? Never. Maybe one or two courts would be suitable. But what I fear the most about giving the procedure to family courts, is that they conduct closed

How is it possible that judge is conceived by the draft as an mailbox, as an entity that has almost no decision over the process? Judges are not meant to be mailboxes. The law should provide a bureaucratic procedure. Right now, the law draft seeks to solve a problem while simultaneously creating another one, which is huge for the legal system.

hearings. In those hearings judges basically say whatever they want to people. Why should we allow such a treatment? Why should trans people stand that?

Usually, my clients, those who I defend, do not need to attend court. The exceptions are very rare occasions, in which the judges call them for a hearing. I go with them to the hearing. And if the judge starts with strange, disproportionate questions, I raise my voice immediately. In other types of hearings that would be impossible.

The law draft is ineffective, because it does not solve the issues that are at stake here. If the draft seeks to rectify transgender people's birth certificate through a judicial proceeding in Family Courts, then do not implement it. Since 2009 we are getting rectifications in seven months in some courts.

But according to the current law draft the procedure should be very quick and simple in the court. The draft suggests that the judge will have to accept the rectification unless very exceptional, extreme events occur. Is the law draft actually putting judges in the position of a bureaucratic mailbox?

The Gender Identity Law draft is detached from reality. Let's be frank. In the

draft's bureaucratic development, organizations have thought new things. Initially the law draft's title spoke of 'gender identity', but in reality it's about 'rectifying birth certificates for trans people'. If the law draft were actually about 'gender' it would have to include many other things. But what it currently addresses is only trans people's birth certificate rectification, and to do so the draft is producing incongruent, and yet crucial methods. How is it possible that judge is conceived by the draft as an mailbox, as an entity that has almost no decision over the process? Judges are not meant to be mailboxes. The law should provide a bureaucratic procedure. Right now, the law draft seeks to solve a problem while simultaneously creating another one, which is huge for the legal system. Arguably, one cannot justify that one judge is conceived as an mailbox and another one is not. What justifies that for certain things judges are restricted in obtaining evidences and in others they are not? Judges are not buffoons!

I want a law draft that address a problem but not castrating the regular legal system in a different area. The draft must not be inconsistent. It is unconceivable that a law draft is inconsistent. Arguably, an eventual constitutional claim can question the law created through this draft. Nothing truly justifies a draft like this. I understand the intention behind the draft. I am in favor of positive discrimination, but it should occur within a valid legal context. Otherwise, we are talking about lies. We are lying to ourselves, and the project is a lie to itself. By looking at the legal technical details addressed by this draft I can conclude that will not solve what it seeks to solve. Nothing justifies it being like this.

Argentina, Mexico, and Colombia, among others, have laws or decrees that avoid judiciary procedures to change gender identity. Their procedures are purely bureaucratic. In your opinion, what explains the barriers to a

bureaucratic Gender Identity Law here in Chile?

The explanation is that there is no knowledge about the legal changes that have occurred. I have represented more than 50% of all trials in Chile since 2009, and in all cases I have managed to change my client's name and gender. We are talking about more than 80 people. This is, however, publicly unknown. Similarly, out of ignorance, people think that family courts are useful for these procedures, and they are not.

On the other hand, people also tend to pathologize transgender issues. That results from people's inability to understand these things. When I tell ministers at the court 'men are not those who have a penis' they look at me completely astonished.

If the Gender Identity Law draft was eventually implemented, would there be any issue for minors?

As I explained in a public discussion at the Central University (on December 2015): administrative and bureaucratic procedures involve both adults and minors equally. Luis Cordero, specialist in bureaucratic issues confirmed this as well.

What I honestly think is that we are in a very early stage. For us to properly assert our gender as an inner identity, for somebody to say 'I feel like a man, recognize me the way I am and feel, a man', we need many more evolutionary steps. Our

On the other hand, people also tend to pathologize transgender issues. That results from people's inability to understand these things. When I tell ministers at the court 'men are not those who have a penis' they look at me completely astonished.

Chilean society would need to advance a lot. Now, we can aspire for minors to be able to demonstrate that they feel like a man, for example. How? I believe that a psychological report would work. The Legal Medical National Service is legitimate to carry out the examination. They should do it for free. A psychiatric evaluation is, in my view unnecessary because we are not talking about an illness.

In your view, and knowing that Chilean legislation does not allow it. Would you agree on people being able to change their name and gender two or three times?

In my view there is no problem. Some people see this skeptically. In my view people should not be categorized in that way. It's a matter of our society evolving more, and if we are congruent, we should build progress in many more areas of social life. We are still very backward in many respects. So, we need to be realistic. It seems important to me that we progress in a coherent manner, that's why I believe there would be not difficulty in minors being able to change their names. I do believe that a free examination by the Legal Medical National Service is necessary.

Now the law draft is stuck in the Constitution and Justice Commission of the Senate, waiting for more suggestions. We do not know the modifications that will result from that.

Councilor Lorena Lorca, is probably the most experienced dealing with trans people's change of name and gender. And yet, she has not had the opportunity of being heard by government officials or members of the congress.

It seems like the distance between political institutions and citizens organizations is progressively growing. As Lorena, many other people contribute to a more just society. They all should be given a voice in how our society designs new, more appropriate legislation and fairer public policies. **LT**



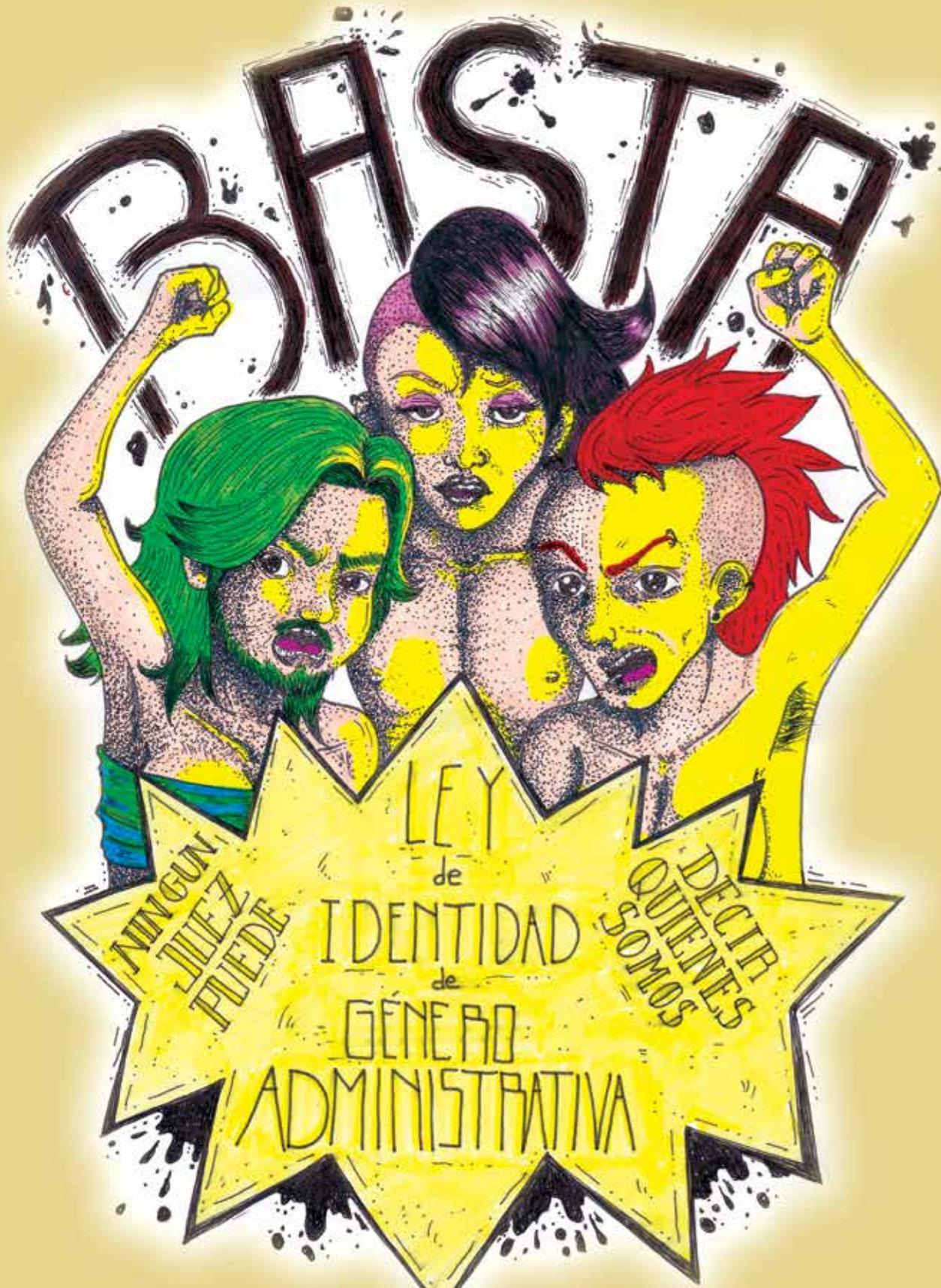


Illustration:
Compliments of Damián San Martín



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Le Trans Magazine Nº2 / May 2016
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