

Discussion Paper

Transgender Health and Human Rights

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Cover Photo

UNAIDS, Transgender people in Argentina advocating for the passing of the gender identity law

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The title of this paper—*Transgender Health and Human Rights*—reflects the common use of the term ‘transgender’ in discussions around gender identity. However, the body of the paper refers to ‘trans’ people, a term that is becoming increasingly popular. The word ‘trans’ is used here to include all people whose sense of their gender identity differs from the sex they were assigned at birth. Terminology is important; the words people use to describe their identity convey a sense of belonging, through connections to a shared history or community. No single term can capture the diversity of gender identity and expression around the world. The case studies and quotes in this paper use local terms from specific regions. A broader discussion of key terms is provided in the terminology section found below.

INTRODUCTION

PURPOSE

This discussion paper aims to increase understanding of the human rights issues that trans people face, and the priority actions required to secure trans people’s right to dignity, equality, health and security. It focuses predominantly on the rights to health, to legal gender recognition and to freedom from violence and discrimination. Trans people have consistently identified these rights as key priorities.¹ Traversing these issues is essential to addressing the underlying structural factors that marginalize trans people, negatively impact their health and exclude them from the benefits of development.

This paper was written for the United Nations Development Programme (UNDP) to inform its work, and that of other UN agencies, including with local trans communities. It draws on the experiences of trans people around the world, and suggests practical actions that UN staff can take to be more inclusive of trans people, both in daily interactions and in their broader work, particularly in the areas of health, HIV, the rule of law and development.

UNDP’s work covers a range of issues that influence trans people’s lives. Its main engagement on trans issues has been through the lens of HIV and human rights. The HIV, Health & Development Practice leads this work, which is also addressed by the UNDP-supported Global Commission on HIV and the Law.² However, other aspects of development that UNDP engages with, such as poverty reduction, governance, citizenship and access to justice, are also highly pertinent to the profound and systemic marginalization that trans people experience. These elements are clearly noted in UNDP’s Strategic Plan for 2014–17, which emphasizes poverty eradication and the reduction of inequalities and exclusion as the primary vision of sustainable development, informed by outcomes of inclusive growth, stronger democratic governance, and universal access to basic services.³ This paper seeks to engage readers by reflecting the various aspects of health, human rights and development that come into play when examining trans issues.

INTERNATIONAL HUMAN RIGHTS STANDARDS

All human beings are born free and equal in dignity and rights.⁴ Trans people have these same human rights.

The legal obligations of States to safeguard the human rights of trans people are well established in international human rights law. As the United Nations High Commissioner for Human Rights has emphasized, human rights treaty bodies have stated repeatedly that States have an

1 See CONGENID (2010) Preliminary draft documents of the First International Congress on Gender Identity and Human Rights, Barcelona, 1-6 June 2010, accessed 28 August 2013 at: <http://transgenderasia.org/docs-congenid-draft.pdf>

2 Global Commission on HIV and the Law (2012) *HIV and the Law: Risks, Rights and Health*, accessed on 21 December 2013 at: <http://hivlawcommission.org/>

3 UNDP (2013) *Changing with the World: UNDP Strategic Plan 2014–17*, accessed on 21 December 2013 at: www.undp.org/content/dam/undp/library/corporate/4_UNDP_strategic-plan_14-17_v9_web.pdf

4 Universal Declaration of Human Rights (Article 1)

obligation to protect all people from discrimination on the ground of gender identity. The fact that someone is trans does not limit that person's entitlement to enjoy the full range of human rights.⁵

The Organization of American States (OAS) has strongly affirmed the rights of trans people through four OAS General Assembly Resolutions on Sexual Orientation and Gender Identity.⁶ In June 2013, the OAS adopted the Inter-American Convention against All Forms of Discrimination and Intolerance, which explicitly lists gender identity and expression as prohibited grounds of discrimination. In April 2010, the Council of Europe's Parliamentary Assembly adopted a resolution on discrimination on the basis of sexual orientation and gender identity.⁷

The right to development entitles every human being and all peoples "to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."⁸ For trans people, this vision is not yet reality in any region of the world.

International human rights standards recognize the diversity of humankind and explicitly protect the rights of marginalized groups such as trans people. States are obliged under international law to respect, protect and fulfil human rights. Yet UN treaty bodies and special procedures are increasingly documenting how States violate trans people's human rights, fail to protect against abuses by third parties and refrain from acting to secure trans people's enjoyment of basic human rights.⁹

The legal, economic and social marginalization of trans people affects every aspect of their lives. Social exclusion is reflected in laws that do not acknowledge the existence of trans people, either as a third gender or as people who wish to transition from male to female, or from female to male. Without legal protection, trans people are vulnerable to daily violence and discrimination, with cumulative impacts. Some impacts are visible, such as the HIV epidemic among trans women in many parts of the world. Most impacts are insidious, with trans people, their families and communities left to support each other and struggle for their rights.

Human rights experts have offered guidance on how to apply existing human rights standards to the very real problems that trans people experience. For example, the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity provide clear recommendations for applying international human rights laws and standards to issues of sexual orientation and gender identity.¹⁰

This discussion paper is divided into eight sections:

- **Terminology**
- **Background** – *History, numbers, visibility and invisibility*
- **Violence** – *Family violence; murder and rape; torture and other forms of cruel, inhuman and degrading treatment*
- **Discrimination** – *Right to education, right to work, legal protection*
- **Health** – *General health services, HIV and AIDS, gender-affirming health services*

5 Office of the High Commissioner for Human Rights (2011) *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, A/HRC/19/41, para. 16, accessed 15 August 2013 at: www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-41_en.pdf

6 Organization of American States (2012) *Human rights, sexual orientation and gender identity*, Resolution AG/RES. 2653 (XLI-O/11), accessed on 17 October 2013 at: www.oas.org/en/iachr/lgtbi/docs/GA%20Res%20%202721.pdf

7 Parliamentary Assembly of the Council of Europe (2010) *Discrimination on the basis of sexual orientation and gender identity*, Resolution 1728, accessed 3 October 2013 at: <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta10/ERES1728.htm>

8 United Nations General Assembly (1986) *Declaration on the Right to Development* (Article 1.1), A/RES/41/128, accessed on 17 October 2013 at: www.un.org/documents/ga/res/41/a41r128.htm

9 Office of the High Commissioner for Human Rights (2012) *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law*, p. 10

10 International Commission of Jurists (2007) *Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity*, accessed 17 October 2013 at: www.icj.org/yogyakarta-principles/

- **Legal Gender Recognition** – *Right to recognition before the law, forced sterilization, progressive gender recognition laws, recognizing third gender options*
- **Conclusion: Trans social inclusion**
- **Selected Resources**

Each section includes action points. Many of the resources in the footnotes and selected resources provide more detailed recommendations directed at specific actors, including health professionals, policymakers and educators.

TERMINOLOGY

Gender identity: Every human being has a gender identity—a deeply felt sense of being male, female, or something other or in-between.¹¹ This discussion paper uses the term ‘trans’ to include all people whose internal sense of their gender (their gender identity) is different from the sex they were assigned at birth.¹²

Recognizing and accepting someone for who they are upholds their dignity as a person. Someone born female who identifies as male is a trans man. He might also use the term ‘FtM’ or ‘F2M’, or simply ‘male’ to describe his identity. A trans woman is someone born male who identifies as female. She might describe herself as MtF, M2F or female. There are many other trans identities, including those that describe a third gender, being both male and female, or identifying as gender non-conforming or gender variant.

The opposite term to transgender is ‘Cis-gender’. It refers to someone whose biological sex matches their gender identity.

Gender expression: Every person has their own sense of gender expression, how they express their masculinity and/or femininity externally. Trans people are particularly vulnerable to discrimination when their gender expression combines elements of both masculine and feminine gender expression.

Gender non-conforming or gender variant: Gender non-conforming encompasses people whose gender expression is different from societal expectations and/or stereotypes related to gender. Not all trans people are gender non-conforming. Some trans women, just like other women, are very comfortable conforming to societal expectations of what it means to be a woman. Similarly some trans men simply wish to blend in among other men.

Intersex: While a trans person is usually born with a male or female body, an intersex person is born with sexual anatomy, reproductive organs and/or chromosome patterns that do not fit the typical definition of male or female. These may be apparent at birth or emerge later in life, often at puberty. There are many different intersex medical conditions. Typically intersex people do not want to be defined by a medical condition or term. Most intersex infants are subjected to procedures, including genital surgery, to adapt their bodies to culturally dominant definitions of maleness and femaleness.

Although this discussion paper focuses on trans people, many of their experiences are shared by intersex people, particularly in the areas of legal gender recognition and access to health. In several regions, including Africa, trans and intersex advocates work closely together on these issues.¹³ Intersex people who also identify as trans face additional barriers if they wish to medically transition. Surgeries altering an intersex child’s body may limit the surgical options available if that child wishes to transition later in life.

¹¹ For some people, gender identity is fluid or changeable.

¹² This is similar to the use of the umbrella term ‘trans’ in other recent publications including: Open Society Foundation (2013) *Transforming Health: International Rights-based Advocacy for Trans Health*, accessed 28 August 2013 at: www.opensocietyfoundations.org/reports/transforming-health

¹³ For example, Transbantu Zambia.

Sexual orientation: Sexual orientation is another intrinsic part of a person's identity. It refers to a person's capacity for profound emotional, physical or romantic attraction towards other people. It is distinct from gender identity; trans people may be heterosexual, lesbian, gay or bisexual (or pansexual).¹⁴

The acronym 'LGBT' stands for 'lesbian, gay, bisexual and transgender'. It includes three sexual orientation terms (lesbian, gay and bisexual) and one gender identity term (transgender, or trans). This distinction between sexual orientation and gender identity is not always clear-cut, particularly in communities and cultures where one term is used to describe both. In most of the Pacific and parts of Asia, the same term is used by trans women and many gay men.

Transition: 'Transitioning' refers to the process trans people undergo to live in their gender identity (for example, as male, female or as a third gender). Many of the steps aim to change how others perceive gender identity. These are sometimes called 'social gender recognition' and may involve changes to outward appearance, mannerisms or the name someone uses in everyday interactions.¹⁵ Other aspects of transitioning focus on legal recognition, and often centre on changing name and sex details on official identification documents. There are often overlaps, particularly in countries where it is difficult for people to informally change their name without going through a legal process.

Transitioning may also involve medical steps such as hormone treatment and surgeries. However, transition is not defined by medical steps taken or not taken. As discussed in the health section of this paper, many trans people do not have access to gender-affirming health services, and others may not need to access such services. Controversially, most trans people who do have access to gender-affirming health services are required to accept a mental health diagnosis in order to be eligible to transition.

ACTION

- ▶ Learn and use positive local terms for trans people, and avoid derogatory terms.
- ▶ Give people the choice to share their preferred name and pronoun in community consultations (e.g., on name tags or through introductions).
- ▶ When unsure of someone's gender identity, discreetly ask their preferred pronoun and name.
- ▶ Include trans terms and examples in publications.
- ▶ Attend trans community events to show support and to gain greater understanding of trans people's lives.

14 The term 'bisexual' is typically used to describe a person who is attracted to men and to women. Given the existence of people who identify as a third gender or sex, the term 'pansexual' more appropriately describes people who are attracted to others irrespective of their sex.

15 A trans woman may wear a wig or a gender-affirming prosthetic that enhances the size of her breasts. A trans man may have a prosthetic in the shape of male genitals.

HISTORY

Around the world, there have always been people whose gender identity and expression differ from the cultural expectations associated with the sex they were assigned at birth. Some people born in male bodies lived as women, some born in female bodies lived as men, and others identified as a ‘third gender’.

“We are part of our culture. We have been for centuries . . . fa’afafine, fa’afatama, gay, lesbian and any that identify as trans have successfully managed to carve out a harmonious existence with our people.”

—Ymania Brown, Samoa¹⁷

Culture and religion can be key parts of a trans person’s identity. In parts of Asia and the Pacific, there are traditional terms for trans women, including those who identify as a third gender. Some trans women historically performed specific ceremonial roles.¹⁶ This visibility has continued to the present day.

In each region where UNDP works, there is a diversity of terms for people born male who identify as female or as a third gender, including:

- **Latin America** – *travesti* in Central and South America, and the indigenous terms *muxe* in Mexico and *omeggid* in Panama
- **Africa** – *meme* (for trans women in Namibia) and *kuchu* (for trans, lesbian, gay and bisexual people in Uganda)
- **Asia** – *kathoey*, *poo ying kham phet*, and *sao phra phet song* (Thailand); *abang* and *mak nyah* (Malaysia); *bin-sing-jan* and *kwa-sing-bit* (Hong Kong); *transpinay* (the Philippines); *waria* (Indonesia); *hijra* and *aravani* (India); and *meti* (Nepal)¹⁸
- **Pacific** – *vakasalewalewa* (Fiji), *palopa* (Papua New Guinea), *fa’afafine* (Samoa, American Samoa and Tokelau) *fakaleiti* or *leiti* (the Kingdom of Tonga), *akava’ine* (Cook Islands), and *fakafifine* (Niue island)¹⁹

An estimated 155 of the 400 indigenous societies in North America traditionally had a third (and in many instances a fourth) gender. Two terms used in the past were *alyha* for trans women and *hwame* for trans men.²⁰

In most parts of the world there are fewer historical references to trans men, or people born female who have a masculine gender expression. In northern Albania, the term *burrnisha* describes people who were born female, took a vow of chastity, wore male clothing and lived as men.²¹ In Thailand, the term *kathoey* was historically used to describe any ‘non-normative’ gender behaviour, and encompassed trans men as well as trans women. This usage persists in rural Thailand today.²²

Trans men in Thailand and Indonesia today typically use the terms *tomboy/toms*, while in the Philippines, these terms are interchangeable with the word *transpinoy*. In Malaysia, *pak nyah* is used to describe trans men and *pengkid* refers to tomboys. Indigenous terms used today in the Pacific for trans men include *fa’afatama* in Samoa and *tangata ira tane* in New Zealand.

16 Some indigenous cultures allocated specific roles to ‘gender diverse’ people, sometimes recognizing them as a link between the spiritual and the physical world. For example, there are anecdotal accounts that *whakawāhine* (indigenous Māori trans women) in New Zealand historically were the only group allowed to touch the food given to *tōhunga* (spiritual healers). Source: personal communication with Selena Pirika (March 2009).

17 Personal communication with Ymania Brown from the Samoan Fa’afafine Association (July 2013)

18 Balzer, C. and Hutta, J. (2012) ‘Transrespect versus transphobia worldwide: A comparative review of the human-rights situation of gender-variant/trans people’, *TvT Publication Series*, Vol. 6, p. 80, accessed 14 October 2013 at: www.transrespect-transphobia.org/uploads/downloads/Publications/TvT_research-report.pdf

19 See the Pacific Sexual Diversity Network’s website: <http://psdnetwork.org/>

20 Today the umbrella word ‘two-spirit’ is a pan-Native North American term that bridges indigenous concepts of diverse gender and sexual identities with those of Western cultures. The term *nádleehi* is also used by those who identify as a third gender. See Thomas, W. and Jacobs, S. (1999) “. . . ‘And we are still here’: From Berdache to Two-Spirit People,” in *American Indian Culture and Research Journal*, Vol. 23, No. 2, pp. 91–107, accessed 3 October 2013 at: <http://aisc.metapress.com/content/k5255571240t5650/>

21 Elsie, R. (2010) *Historical Dictionary of Albania* (2nd ed.), p. 435. Lanham: Scarecrow Press

22 Sinnot, M. (2004) *Toms and Dees: Transgender Identity and Female Same-Sex Relationships in Thailand*, Honolulu: University of Hawai’i Press

Historical records from other parts of the world describe people born female who cross-dressed. Some of these individuals likely identified as male or as a third gender. Others may have been escaping strict gender roles, including the presumption that they would marry and have children. For some individuals, cross-dressing was likely a means of economic survival in societies where only men had access to paid work.²³

NUMBERS

There are no definitive statistics on the number of trans people around the world. Estimates in Western countries are typically based on numbers of people who access public gender clinics and therefore exclude those who do not medically transition, or who use private or overseas clinics. International literature suggests that as prejudice towards trans people decreases, their visibility increases.²⁴

A recent US study estimated that 0.3 percent of the US adult population may be trans.²⁵ A study in the Netherlands found that 0.6 percent of those born male and 0.2 percent of those born female wished to alter their body through hormones or surgery to match their gender identity.²⁶ A study of the Asia Pacific region suggested that there are over 9 million trans people in the region.²⁷ In India, the *hijra* community alone is estimated to number around 1 million people, without counting the many other trans women and men.²⁸

VISIBILITY AND INVISIBILITY

In some parts of the world, including the Caribbean, there are few openly trans people even within a wider lesbian, gay, bisexual and trans (LGBT) community.²⁹ In other parts of the world, such as the Pacific, gender diverse people are more visible than lesbians, bisexual people or even gay men.³⁰

“Know your identity as you would know your heart. In that you would know your place in your family, in your government, in your island and in the world.”

—Shevon Matai, American Samoa³¹

Visibility can increase acceptance and counter negative stereotypes that limit the opportunities available for trans people. The harmful impacts of ‘transphobia’—prejudice directed at trans people because of their gender identity or expression—can be reduced with positive depictions of gender diversity.

When trans people internalize transphobia, it undermines their self-esteem and ability to seek peer support. Evidence indicates that exposure to transphobia is a mental health risk for trans people, resulting in increased levels of

depression and suicidal thoughts.³² Isolation can be particularly acute for trans and gender-variant children and young people without family or peer support.³³ A US study found that 33 percent of trans young people had attempted suicide as a result of discrimination and bullying.³⁴

23 Halberstam, J. (1998) *Female Masculinity*, Durham and London: Duke University Press

24 Collins, E. and Sheehan, B. (2004) *Access to Health Services for Transsexual People*. Dublin: The Equality Authority

25 Gates, G. (2011) *How Many People are LGBT?* Los Angeles: UCLA School of Law, Williams Institute

26 Kuyler, L. and Wijsen, C. (2013) ‘Gender identities and gender dysphoria in the Netherlands’ in *Archives of Sexual Behaviour*, July 2013

27 Winter, S. (2012) *Lost in Transition: Transgender People, Rights and HIV Vulnerability in the Asia-Pacific Region*, p. 9. Thailand: UNDP Asia-Pacific Regional Centre

28 Balzer, C. and Hutta, J. (2012) p. 79

29 Personal communication with Deyone Guiseppi, Trinidad and Tobago (July 2013)

30 Clearly there are overlaps between trans communities and LGB communities, as many trans people have a lesbian, gay or bi / pansexual orientation.

31 Interview with Shevon Matai, Society of Faafafines in American Samoa (SOFIAS), March 2011 for the Wellington OutGames Human Rights conference legacy website, accessed 28 August 2013 at: www.wellington2011.org/presentations_page_3.html

32 Global Commission on HIV and the Law (2012) *HIV and the Law: Risks, Rights and Health*, p. 52, accessed on 17 October 2013 at: <http://hivlawcommission.org/resources/report/FinalReport-Risks,Rights&Health-EN.pdf>

33 See, for example, McDermott, E., Roen, K. and Scourfield, J. (2008) ‘Avoiding shame: Young LGBT people, homophobia and self-destructive behaviours’ in *Culture, Health & Sexuality* 2008; 10(8) pp.815-29; Nemoto, T., Iwamoto, M., Perngparn, U., Areesantichai, C., Kamitani, E. and Sakata, M. (2012) ‘HIV-related risk behaviors among kathoey (male-to-female transgender) sex workers in Bangkok, Thailand’ in *AIDS Care* 24(2) pp.210-9

34 Clements-Nolle, K. et al. (2006), ‘Attempted suicide among transgender persons: The influence of gender-based discrimination and victimisation’ in *Journal of Homosexuality*, 51(3) pp. 53–69

Within trans communities there are minority groups that face even greater risk of marginalization and violence. These include trans people from indigenous, ethnic minority, refugee or migrant communities (particularly those who are undocumented).³⁵ Other vulnerable groups are trans people who sell sex (particularly where sex work is criminalized),³⁶ those who are HIV-positive, and trans prisoners (particularly trans women housed in male prisons). Trans and gender-variant children and young people are highly dependent on adults to protect their rights.

Where trans-inclusive health services are available, most resources are dedicated solely to adults. In many parts of the world there is limited or no public funding for trans health care, and trans people face high costs to gain legal recognition or even to access safe spaces where they can meet others. Cumulatively, these barriers severely limit options for trans people who are poor.

Despite these challenges, trans people are increasingly standing up for their human rights around the world.³⁷ The Trans Murder Monitoring project is an international, community-led response to murders of trans and gender-variant people motivated by their gender identity.³⁸ In all regions, trans people provide frontline HIV services to their own communities. Examples include the Samoa Fa'afafine Association, the Tonga Leiti Association, and Sisters: Centre for Transgender in Pattaya, Thailand, which is a trans-led drop-in centre for trans sex workers. Trans groups in Latin America have worked with the Pan American Health Organization to develop a health care protocol.³⁹ Trans people in Africa are documenting the experiences of their communities, demanding the right to speak for themselves. In South Africa this has included focusing attention on the slow implementation of progressive laws.

In Nepal, trans people sued to win the right to be legally recognized as their preferred gender. Strategic litigation is now underway in India.⁴⁰ In Kenya, trans people are asking the courts to protect their right to change names or sex details on documents.⁴¹ In Hong Kong, after a five-year legal struggle, a trans woman was recently allowed to marry her boyfriend.⁴² Latin American trans activists have been a pivotal force in Argentina enacting the most progressive legal gender recognition legislation in the world.⁴³ Similar proposals are being promoted in other parts of Latin America.

35 Balzer, C. and Hutta, J. (2012) p. 67

36 Arnott, J. and Crago, A. (2009) *Rights Not Rescue. A Report on Female, Male, and Trans Sex Workers' Human Rights in Botswana, Namibia and South Africa*, New York: Open Society Institute, accessed 18 August 2013 at: www.opensocietyfoundations.org/sites/default/files/rightsnotrescue_20090706.pdf

37 Balzer, C. and Hutta, J. (2012). Page 24 provides a summary of the growth of regional trans networks in Latin America, Asia, the Pacific, Africa and Europe since 2000.

38 Balzer, C. and Hutta, J. (2012)

39 Pan American Health Organization (2013) *Por la Salud de las Personas Trans*, accessed 14 October 2013 at: www.paho.org/arg/index.php?option=com_content&view=article&id=1207:nueva-publicacion-de-la-ops-advierte-sobre-la-marginacion-que-afrontan-las-personas-trans&catid=736:---prevencion-y-control-de-enfermedades-transmisi&Itemid=268

40 These cases are discussed in the legal recognition of gender section of this paper.

41 Personal communication with Audrey Mbugua, Transgender Education and Advocacy, Kenya (September 2013). See also: <https://transgenderkenya.com/>

42 N.A. (13 May 2013), 'Hong Kong court allows transgender woman to marry a man' in *The Guardian*, accessed 28 August 2013 at: www.theguardian.com/world/2013/may/13/hong-kong-court-transgender-marriage

43 This is profiled as a case study in the legal gender recognition section.

“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.”

—OHCHR, 2012⁴⁴

“Such violence may be physical (including murder, beatings, kidnappings, rape and sexual assault) or psychological (including threats, coercion and arbitrary deprivations of liberty).”

—OHCHR, 2011⁴⁵

reported experiencing domestic violence because of their gender identity.⁴⁸ Trans people may be particularly vulnerable to domestic violence if they fear a partner or family member will disclose their gender identity and expose them to prejudice and discrimination. Other risk factors include fear they will be denied access to hormones or be forced to marry.⁴⁹

In June 2011, the United Nations Human Rights Council expressed “grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity.”⁴⁶ It requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to prepare a study documenting discriminatory laws and practices and acts of violence. The study was tasked with specifying how international human rights law can be used to end such human rights violations. The resulting report concluded “a pattern of human rights violations emerges that demands a response.”⁴⁷

FAMILY VIOLENCE

This section focuses on the most severe forms of violence against people because of their gender identity or expression. However, it is important to note the debilitating and profound impact of all forms of violence against trans people, including violence from family members and partners. Almost one in five trans or gender non-conforming respondents to a recent US survey

MURDER AND RAPE

UN and other human rights experts are increasingly speaking out against the murder of trans women. The Special Rapporteur on extrajudicial, summary or arbitrary executions;⁵⁰ the Special Rapporteur on violence against women;⁵¹ and the European Parliament and Council of Europe have all condemned such violence.⁵²

44 Foreword by the Chief of Global Issues, Office of the United Nations High Commissioner for Human Rights (OHCHR) in Balzer, C. and Hutta, J. (2012) p. 4

45 OHCHR (2011) para. 20.

46 Human Rights Council (2011) *Human rights, sexual orientation and gender identity*, Resolution adopted 14 July 2011, A/HRC/RES/17/19, accessed 4 October 2013 at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/148/76/PDF/G1114876.pdf?OpenElement>

47 OHCHR (2011) para. 82.

48 Grant, J., Mottet, L., Tanis, J., Harrison, J., Herman, J. and Keisling, M. (2011) *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, Washington DC: National Center for Transgender Equality and National Gay and Lesbian Task Force, p 88, accessed 3 October 2013 at: www.thetaskforce.org/reports_and_research/ntds

49 Greenberg, K. (2012) ‘Still hidden in the closet: Trans women and domestic violence’ in *Berkeley Journal of Gender, Law and Justice*, 27 (1) pp. 198-251, accessed 3 October 2013 at: <http://genderlawjustice.berkeley.edu/wp-content/uploads/2012/09/Still-Hidden-in-the-Closet-Trans-Women-and-Domestic-Violence.pdf>; LGBT Domestic Violence and Abuse Working Group (2011) *Domestic Violence: A Resource for Trans People in Brighton and Hove*, accessed 3 October 2013 at: www.domesticviolencelondon.nhs.uk/uploads/downloads/DV%20Trans%20guide_FINAL_FOR_WEB.pdf

50 See A/HRC/17/28/Add.1, pp. 114–117.

51 See A/HRC/14/22/Add.2, paras. 37-38, and A/HRC/17/26/Add.2, paras. 28–29.

52 Hammarberg, T. (2008) *Hate Crimes: The Ugly Face of Racism, Anti-Semitism, Anti-Gypsyism, Islamophobia and Homophobia*, Strasbourg: Council of Europe, Strasbourg.

Since January 2008, the Trans Murder Monitoring project has collected reports of trans people who were killed because of their gender identity or expression. Between 1 January 2008 and 31 October 2013, there were 1,374 reported killings of trans people in 60 countries.⁵³ Over 78 percent of documented murders were in Central and South America.⁵⁴

This number represents a significant, sustained level of brutal violence against trans people. Over 99 percent of the reported murders recorded by the Trans Murder Monitoring project are of trans women, including *travestis*.⁵⁵ Many were also brutally raped and tortured, their bodies mutilated and discarded. The vast majority of those murdered whose occupations were reported were trans sex workers.⁵⁶

The numbers collected through the Trans Murder Monitoring project are conservative. Disrespect for or ignorance about trans people's identities often leads the police and media to record trans women as male—typically as gay men.⁵⁷ Because trans people are frequently assumed to be gay, their rights are also compromised in environments where homosexuality is criminalized.

Around the world, the highest absolute numbers of trans murders recorded by the Trans Murder Monitoring project are in countries with strong trans movements and organizations that monitor reported murders. This raises concern about the potentially large number of unreported cases in areas where there is no such monitoring, such as Africa.

A number of studies in Asia have documented forced sex or physical abuse of trans women, including those selling sex. In some cases it is law enforcement officers who commit the abuse.⁵⁸

Sexual abuse and rape of trans men is common in some countries, including parts of Africa and Kyrgyzstan.⁵⁹ So-called 'corrective rape' punishes both trans men and lesbians for daring to step outside gender roles prescribed to those assigned female at birth.⁶⁰ These rapes "increase the risk of sexually transmitted infections, result in unwanted pregnancies, mental health issues and suicide, and have resulted in documented police-mediated negligence and abuse."⁶¹ In 2011, in response to community concerns, South Africa established a national task force on homophobic and transphobic hate crime, with a specific focus on 'corrective rape'.⁶²

53 TvT research project (2013) 'Trans Murder Monitoring results: TDOR 2013 update', accessed 20 November 2013 at: Transrespect versus Transphobia Worldwide (TvT) project website: <http://www.transrespect-transphobia.org/en/tvt-project/tmm-results/tdor-2013.htm>

54 Balzer, C. and Hutta, J. (2012) pp. 22 and 68 and updated data to 31 October 2013, accessed 20 November 2013 at: http://www.transrespect-transphobia.org/uploads/downloads/2013/TDOR2013English/TvT-TMM-TDOR2013-Tables_2008-2013_EN.pdf. However, it should be noted that in some countries, particularly in Africa, it is difficult to obtain data. The high level of recorded murders in Latin America can also be attributed to the systematic data collection by local trans groups, as well as the wider sociopolitical context of violence and exclusion against many population groups in that region.

55 Personal communication with Carsten Balzer / Carla LaGata (15 August 2013).

56 Of all victims for whom occupational information was provided, sex workers consistently make up the largest number. Sex workers account for at least 70 percent of the annual figures for reported murders since the project started in 2008.

57 Turner, L., Whittle, S. and Combs, R. (2009) *Transphobic Hate Crime in the European Union*, p. 2. London: Press for Change; Balzer, C. and Hutta, J. (2012) p. 43.

58 See, for example: Khan, A.A., Rehan, N., Qayyum, K. and Khan, A. (2008) 'Correlates and prevalence of HIV and sexually transmitted infections among Hijras in Pakistan' in *International Journal of STD & AIDS* 19(12):817-20; Jenkins, C. (2006) *Violence and Exposure to HIV Among Sex Workers in Phnom Penh, Cambodia*, Phnom Penh: USAID

59 Human Rights Watch (2008) *"These Everyday Humiliations": Violence Against Lesbians, Bisexual Women, and Transgender Men in Kyrgyzstan*, accessed 4 October 2013 at: www.hrw.org/reports/2008/10/06/these-everyday-humiliations-0; Human Rights Watch (2011) *"We'll Show You You're a Woman": Violence and Discrimination against Black Lesbians and Transgender Men in South Africa*, accessed 4 October 2013 at: www.hrw.org/sites/default/files/reports/southafrica1211.pdf

60 South African Human Rights Commission (2008) *Report of the Public Hearing on School-based Violence*, p. 9, accessed 16 August 2013 at: www.sahrc.org.za/home/21/files/Reports/SBV%20Report_Chapter%201_2.pdf; Martin, A., Kelly, A., Turquet, L. and Ross, S. (2009) *Hate Crimes: The Rise of 'Corrective' Rape in South Africa*. London: Action-Aid International, accessed 16 August 2013 at: www.actionaid.org.uk/sites/default/files/doc_lib/correctiveraperep_final.pdf

61 Baral, S.D., Beyrer, C. and Poteat, T. (2011) *Human Rights, the Law, and HIV among Transgender People*. Working Paper prepared for the Third Meeting of the Technical Advisory Group of the Global Commission on HIV and the Law, 7–9 July 2011, p. 1

62 Nathan, M. (4 May 2011) 'South Africa creates historic task force to fight corrective rape, create LGBT hate crimes laws', accessed 3 October 2013 at: <http://sdgln.com/news/2011/05/04/south-africa-creates-historic-task-force-lgbt-hate-crimes-legislation>; Address by the Deputy Minister of Justice and Constitutional Development, the Hon JH Jeffery, MP, at the LGBTI National Task Team Workshop, 18 September 2013: www.justice.gov.za/m_speeches/2013/20130918-lgbti.html

TORTURE AND OTHER FORMS OF CRUEL, INHUMAN AND DEGRADING TREATMENT

Negative stereotypes endanger trans people's lives. Such stereotypes include the unfounded notions that gender diversity is unnatural, immoral or pathological.⁶³ Like other victims of gender-based violence, trans people are frequently dehumanized and blamed for their own abuse. The Special Rapporteur on torture has highlighted the link between discrimination against trans people and "the process of the dehumanization of the victim, which is often a necessary condition for torture and ill-treatment to take place."⁶⁴

The right to security includes the right to protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual or group.⁶⁵ Yet the UN Special Rapporteur on violence against women has detailed allegations of *metis* in Nepal being beaten by police who demanded money and sex.⁶⁶ In 2011, the Special Rapporteur described how a trans woman in El Salvador was detained in a male-only prison, in a cell with gang members. The trans woman was raped more than 100 times, at times with the complicity of prison officials.⁶⁷

The UN Special Rapporteur on torture has reinforced concern that trans women placed within the general prison population are at risk of physical and sexual abuse.⁶⁸ A report of the Special Rapporteur details cases of trans women being intentionally beaten on their breasts and cheekbones by prison or police guards in order to burst implants and release toxins.⁶⁹ In the absence of State protection, many trans people will not report such human rights violations.

"Many trans sex workers cannot get access to justice just because they are trans sex workers. The police in many times do not accept their complaints, ill-treat them and many times file complaints against those trans sex workers who want to file complaints. So, no justice! Courts also discriminate due to these widespread prejudices."

—Kemal Ordek, Turkey⁷⁰

Few trans prisoners have access to hormones or other gender-affirming health services. They are particularly at risk of violence and exposure to HIV. Dedicated prison units for trans inmates, such as those that exist in Argentina, help prison officials and others focus on the specific needs of trans prisoners.⁷¹ However, there is a risk that trans prisoners who are segregated may be isolated, especially if their unit is located far from family or community support. International good practice recommends a holistic approach that gives trans prisoners the same access to safety, health, dignity and rehabilitation as other prisoners, wherever they are housed.⁷²

Without systematic data collection and monitoring it is impossible to identify and address current gaps, and to ensure trans prisoners' rights to dignity, health and life. In a March 2013 shadow report on the International Covenant on Civil and Political Rights, Hong Kong activists called on the Human Rights Committee "to ask the government to account for its failure to set up regulations for treating transgender prisoners with humanity and respect."⁷³

63 Balzer, C. and Dutta, J. (2012) p. 14.

64 A/56/156, para. 19.

65 Yogyakarta Principle 5, Universal Declaration of Human Rights (Article 3) and International Covenant on Civil and Political Rights (Article 9).

66 See E/CN.4/2006/61/Add.1, para. 131, and A/HRC/4/34/Add.1, paras. 448–454. *Meti* is a term used in Nepal to describe people who have been assigned a male gender at birth and who have a female gender identity/gender expression.

67 A/HRC/17/26/Add.2, para. 29.

68 A/56/156, para. 23.

69 A/56/156, para. 18.

70 Personal communication with Kemal Ordek, Red Umbrella Sexual Health and Human Rights Association (July 2013)

71 Hariga, F. (2011) *Report of the UN Office on Drugs and Crime Mission to Argentina, 25-29 July 2011*, para. 42.

72 United Kingdom Ministry of Justice (2011) *The Care and Management of Transsexual Prisoners*, accessed 4 October 2013 at: www.insidetime.org/resources/psi/psi_2011_07_care_management_transsexual_prisoners.pdf; United Nations Office on Drugs and Crime (2009) *Handbook on prisoners with special needs*. Chapter 5: LGBT prisoners, pp. 103-121, accessed 4 October 2013 at: <https://www.unodc.org/documents/justice-and-prison-reform/Prisoners-with-special-needs.pdf>

73 Submission by Chan Man Wai (Hong Kong).

CASE STUDY • Gender DynamiX and the South African Police Services

In 2013, Gender DynamiX, a South African non-governmental organization, announced changes to the South African Police Services' (SAPS) standard operating procedures. The new procedures, developed by Gender DynamiX and SAPS, are designed to ensure the safety, dignity and respect of trans people who are in conflict with the law.

The new standard operating procedures enable trans people to be searched according to the sex on their identity documents, regardless of whether they have had genital surgery. Under the new procedures, trans people will be detained in separate detention facilities and are encouraged to report any form of abuse, including removal of wigs and other gender-affirming prosthetics. The implementation of the standard operating procedures will be accompanied by sensitization workshops for police, to be piloted initially in Cape Town and Johannesburg.

From Gender DynamiX (2013), Know Your Rights—Changes to SAPS Standard Operating Procedures, accessed 28 August 2013 at: www.genderdynamix.org.za/know-your-rights-changes-to-saps-standard-operating-procedures/

ACTION

- ▶ Provide methodology tools to support trans people in documenting human rights violations.
- ▶ Include a focus on trans people in reports on gender-based violence and hate crimes.
- ▶ Create safe ways for trans people to report violence and hate crimes, including through social media.
- ▶ Meet with trans people when monitoring places of detention.
- ▶ When working with policymakers and law enforcers (police and prison staff) on issues related to democratic governance, rule of law and development, highlight the human rights issues of trans people, including action needed to mitigate the violence they face.

DISCRIMINATION

“Transgender and gender non-conforming people face injustice at every turn: in childhood homes, in school systems that promise to shelter and educate, in harsh and exclusionary workplaces, at the grocery store, the hotel front desk, in doctors’ offices and emergency rooms, before judges and at the hands of landlords, police officers, health care workers and other service providers.”⁷⁴

In many countries, there is no research on the ridicule, abuse and harassment trans people face. In countries where data does exist, it shows the compounding impact of discrimination and marginalization in all aspects of trans people’s lives. This section focuses on two areas that significantly impact a trans person’s life outcomes: the right to education and the right to work.

Trans people are particularly vulnerable to discrimination when their gender identity is visible to others, or when their previous sex details are known or easily accessible. Sex details are routinely collected on forms and listed in academic, medical and employment records, as well as on official identity documents. This means that even trans people who transitioned many years ago risk disclosure of their previous sex details.

Harassment of trans people is often targeted at their gender expression or clothes.⁷⁵ This may include prohibiting a trans woman from having long hair or making a trans man wear a skirt.⁷⁶ Derogatory comments may escalate to forcibly cutting a trans woman’s hair, removing a trans man’s binder so his chest is exposed, or stripping other clothes to reveal a trans person’s body.⁷⁷

Although many people rely on their families and communities for vital acceptance and support, trans people frequently face discrimination and rejection instead. This includes being excluded from their family home, prevented from attending school or forced to relinquish their children.⁷⁸ A study of Thailand and the Philippines found that 40 percent of Filipina trans women (*transpinay*) and 21 percent of Thai trans women (*phying kham phet*) reported paternal rejection when transitioning.⁷⁹

Sometimes discrimination is perpetrated in the name of cultural or traditional values. However, States cannot invoke tradition and culture to justify violating or limiting human rights. Instead, States are required to take action to address stereotypes and negative traditional practices that are inconsistent with human rights.⁸⁰

74 Grant, J. *et al.* (2011) p. 2.

75 There are links between the discrimination trans people face because of their gender identity and the sexual orientation discrimination experienced by lesbians, gay and bisexual people. These include assumptions made about someone’s sexual orientation or gender identity because of the clothes they wear, their speech, walk or other mannerisms. All these constitute part of someone’s gender expression.

76 Personal communications from Resitara Apa, Samoa, and Ines Angela, Indonesia (July 2013).

77 Balzer, C. and Hutta, J. (2012).

78 OHCHR (2011) para. 66.

79 Winter, S. (2009) ‘Lost in transition: transpeople, transprejudice and pathology in Asia’ in *The International Journal of Human Rights*, (13), p. 375.

80 OHCHR (17 June 2013) ‘Summary of information from States Members of the United Nations and other relevant stakeholders on best practices in the application of traditional values while promoting and protecting human rights and upholding human dignity’ in *Report of the United Nations High Commissioner for Human Rights to the Human Rights Council, 24th session, A/HRC/24/22*, accessed 28 August 2013 at: www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-22_en.pdf; ARC International (2013) ‘Submission to the OHCHR Compilation on best practices in the application of traditional values in promoting and protecting human rights’, accessed 28 August 2013 at: <http://www.ohchr.org/Documents/Issues/HRValues/ARCInternational.pdf>

RIGHT TO EDUCATION

“Discrimination in education makes many trans people quit before they finish their schooling, and they end up in sex work.”

—Kemal Ordek, Turkey⁸¹

Education is essential for the development of human potential and realization of other human rights. However, many trans children and young people are unable to realize these rights due to stigma and discrimination. Trans and gender-variant children and young people are particularly vulnerable at school, where teachers’ and students’ attitudes typically define whether the school will be a safe and inclusive environment. Conversely, supportive teachers and peers play a significant role in affirming a trans child’s gender identity, enabling that child to focus on learning.

Trans children and young people confront barriers to education when they are unable to attend school safely under their preferred name and gender identity. School records, uniforms, sports teams and facilities routinely fail to reasonably accommodate the needs of trans and gender-variant students and their families. This results in high levels of bullying, violence, truancy and exclusion from school.⁸²

High levels of harassment of trans students are related to increased absenteeism, as well as decreased educational aspirations and lower academic performance. A US study found that almost half of the trans students surveyed missed a class because they felt unsafe or uncomfortable, and nearly one in six faced harassment so severe that they were forced to leave school.⁸³ In Argentina, trans students reported that they stopped studying, either because they were bullied by other students or because they were denied entry by the school authorities. Of those surveyed, 45 percent dropped out of secondary school and only 2.3 percent completed college.⁸⁴

The United Nations Human Rights Committee; the Committee on Economic, Social and Cultural Rights; and the Committee on the Rights of the Child have all expressed concern about discrimination against trans students, and have called for measures to counter transphobic and homophobic attitudes in schools.⁸⁵

In 2006, the Department of Social Welfare in Tamil Nadu, India passed a landmark order protecting the rights of *aravanis* / *hijras* to attend schools and college.⁸⁶ In 2009, Pakistan’s Supreme Court held that *hijras* were citizens entitled to equal rights and protections under the national constitution, including financial support from the government for educational and employment opportunities, and voting and inheritance rights.⁸⁷

In 2013, legislators in the US state of California specified that protection against gender identity discrimination in schools should include trans students’ right to choose the most appropriate bathroom and sports team based on their gender identity.⁸⁸ A 2012 United Nations Educational, Scientific and Cultural Organization (UNESCO) resource includes a helpful example of a model school policy to support trans and gender non-conforming students.⁸⁹

81 Personal communication with Kemal Ordek, Red Umbrella Sexual Health and Human Rights Association (July 2013).

82 UNESCO (2012) *Education Sector Responses to Homophobic Bullying*, pp. 18-22; Personal communication with Kate Cordova, STRAP, Philippines (July 2013); New Zealand Human Rights Commission (2008) *To Be Who I Am: Report of the Inquiry into Discrimination Experienced by Transgender People*, accessed 28 August 2013 at: www.hrc.co.nz/hrc_new/hrc/cms/files/documents/15-Jan-2008_14-56-48_HRC_Transgender_FINAL.pdf; Whittle, S., Turner, L. and Al-Alami, M. (2007) *Engendered Penalties: Transgender and Transsexual People’s Experiences of Inequality and Discrimination*, accessed 28 August 2013 at: [hwww.pfc.org.uk/pdf/EngenderedPenalties.pdf](http://www.pfc.org.uk/pdf/EngenderedPenalties.pdf)

83 Greytak, E. et al. (2009) *Harsh Realities: The Experiences of Transgender Youth in Our Nation’s Schools*. New York: GLSEN.

84 Dubel, I. and Hielkema, A. (eds.) (2010) *Gay and Lesbian Rights are Human Rights*. The Hague: HIVOS.

85 See, for example the concluding observations of the Human Rights Committee on Mexico (CCPR/C/MEX/CO/5), para. 21; the concluding observations of the Committee on Economic, Social and Cultural Rights on Poland (E/C.12/POL/CO/5), paras. 12-13; and Committee on the Rights of the Child general comments No. 3 (CRC/GC/2003/3), para. 8; and No. 13 (CRC/C/GC/13), paras. 60 and 72 (g); and the Committee’s concluding observations on New Zealand (CRC/C/NZL/CO/3-4), para. 25; Slovakia (CRC/C/SVK/CO/2), paras. 27-28; and Malaysia (CRC/C/MYS/CO/1), para. 31

86 Harrington, M. (19 April 2008) “The rationing of rights” in *Tehelka Magazine*, 5 (15), accessed 28 August 2013 at: http://archive.tehelka.com/story_main38.asp?file-name=hub190408The_Rationing.asp

87 Redding, J. (2011) *From ‘She-Males’ to ‘Unix’: Transgender Rights in Pakistan and the Criminal Law Origins of a Constitutional Case*, accessed 28 August 2013 at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1905070. Cited in Global Commission on HIV and the Law (2012) p. 53.

88 Ring, T. (5 July 2013) ‘California Senate OK’s wide-ranging protections for transgender students’ in *The Advocate*, accessed 28 August 2013 at: www.advocate.com/politics/transgender/2013/07/05/california-senate-oks-wide-ranging-protections-transgender-students

89 UNESCO (2012) p. 33.

RIGHT TO WORK

Discrimination often prevents trans adults from finding or keeping a job. Trans people face high rates of unemployment and under-employment,⁹⁰ and are segregated in narrow, marginalized occupations. Work place harassment is common.

In some regions, most trans women are sex workers, with limited or no rights or legal protection.⁹¹ In a number of countries, young trans people who sell sex report very low levels of consistent condom use with clients.⁹²

Trans men typically grow up with the same restrictions on their access to education and career options that girls in their community face. In other words, they do not have the same opportunities as other boys and men. A recent US survey of 6,450 trans and gender non-conforming people found that a high proportion of trans men had engaged in sex work at some point in their lives. More than one in every seven trans women (15 percent) and one in every 15 trans men (7 percent) had engaged in sex work for income. This is significantly higher than the approximately 1 percent of all women in the United States who have engaged in sex work.⁹³ The survey, conducted in 2008 and published in 2011, found that trans and gender non-conforming people experienced double the national unemployment rate. In addition, 90 percent had experienced harassment, mistreatment or discrimination on the job, or hid their gender identity to avoid such treatment. Almost half had been fired, not hired or denied promotion because of their gender identity.⁹⁴

“Unemployment, lack of education, lack of higher learning, lack of housing, non-existence of policies or laws that recognize trans and intersex issues in all levels of economic, social, cultural and religious settings. In short, without a sustainable income, trans and intersex persons’ options are reduced almost to 0 percent.”

—Chan Mubanga, Zambia⁹⁵

In two recent court cases, the South African Labour Court upheld trans women’s employment rights, stating they had been unfairly dismissed because of their sex and gender.⁹⁶

To inform its work with governments, employers and trade unions, the International Labour Organization (ILO) is researching workplace discrimination against LGBT people in Argentina, Hungary, South Africa and Thailand. In Thailand, it has found that trans people face discrimination in the education system from an early age. They are subsequently excluded from many jobs because of their gender expression or required sex-segregated dress codes. In one case, the inability to change sex details in a passport resulted in a trans person being unable to make necessary work-related trips.⁹⁷

90 New Zealand Human Rights Commission (2008).

91 Balzer, C and Hutta J (2012).

92 See for example, *HIV Second Generation Surveillance in Pakistan, National Report 1, 2005*, accessed 5 October 2013 at: http://aidsdatahub.org/dmdocuments/Pakistan_2005_National_Surveillance_Report.pdf

93 Grant, J. et al. (2011) pp. 23 and 65.

94 *Ibid.*, p. 3.

95 Personal communication from Chan Mubanga, Transbantu Zambia (July 2013).

96 *Quinton Atkins v. Datacentrix (PTY) Ltd*, Case No. JS 02/07, Judgment of 2 December 2009 and *Christine Ehlers v. Bohler Uddeholm Africa (PTY) Ltd*, Case No. JS 296/09, Judgment of 13 August 2010. In ILO (2013) *HIV and AIDS and Labour Rights: A Handbook for Judges and Legal Professionals* (2013) pp. 103–104.

97 For more information about the Gender Identity and Sexual Orientation: Promoting Rights, Diversity and Equality in the World of Work (PRIDE) project see: www.ilo.org/gender/Projects/WCMS_184205/lang-en/index.htm

LEGAL PROTECTION

“Discrimination is rampant, unreported, socially sanctioned and further encouraged by the absence of any anti-discriminatory laws to prevent human rights violations against trans people.”

—*Satya Rai Nagpaul, India*⁹⁸

and others early in their transition have no protection from discrimination. In the Philippines and South Africa, trans people have questioned the extent to which the legal protections set out in their constitutions are effectively implemented or enforced in practice.¹⁰²

The UN High Commissioner for Human Rights has called for comprehensive anti-discrimination legislation that prohibits discrimination on the grounds of actual or perceived gender identity, as well as sexual orientation and sex.¹⁰³

UN treaty bodies have criticized laws that explicitly discriminate on the basis of gender identity, and laws that are selectively used against trans people. In parts of Asia, the Caribbean, the Pacific and Africa, ‘cross-dressing’ laws remain on the books from colonial times. In 2011, the United Nations Human Rights Committee expressed concern about Kuwait’s new criminal offence of ‘imitating members of the opposite sex’ and called for its repeal.¹⁰⁴

In Samoa, female impersonation or cross-dressing was an offence under section 58 of the Crimes Ordinance 1961. This law had not been enforced since the late 1980s and was finally repealed by the Crimes Act 2013 as part of wider reforms undertaken by the Samoa Law Reform Commission.¹⁰⁵

In parts of Asia, Africa, Latin America and Turkey, trans and gender-diverse people are targeted under general ‘public nuisance’ and loitering laws.¹⁰⁶ Trans sex workers are particularly vulnerable to prosecution under these provisions.

98 Personal communication from Satya Rai Nagpaul, from the Indian NGO Sampoorna (July 2013).

99 Concluding observations of the Committee on the Rights of the Child on New Zealand (CRC/C/NZL/CO/3-4), at para. 25; Slovakia (CRC/C/SVK/CO/2), at para. 27; Malaysia (CRC/C/MYS/CO/1), at para. 31; China (CRC/C/CHN/CO/2), at para. 31; Isle of Man, United Kingdom (CRC/C/15/Add.134), at para. 22. Concluding observations of the Committee on the Elimination of Discrimination against Women on Panama (CEDAW/C/PAN/CO/7), at para. 22; see also, Germany (CEDAW/C/DEU/CO/6), at paras. 61-62; Argentina (CEDAW/C/ARG/CO/6), at paras. 43-44; South Africa (CEDAW/C/ZAF/CO/4), at paras.39-40; Kyrgyzstan (A/54/38, 20), at para. 128; Uganda (CEDAW/C/UGA/CO/7), at paras. 43–44.

100 Global Commission on HIV and the Law (2012) p. 53.

101 In most parts of the world such a diagnosis is typically required before trans people can medically transition. Depending on the manual used, the diagnosis may also be called ‘transsexualism’. These issues are discussed in more depth in the gender-affirming health services section of this paper.

102 Personal communications from Kate Cordova, the Philippines, and Gender DynamiX, South Africa.

103 OHCHR (2011) para. 84(e).

104 Concluding observations of the Human Rights Committee on Kuwait (CCPR/C/KWT/CO/2) para. 30.

105 In its submission to the Samoa Law Reform Commission, the Samoa Fa’afafine Association called for the decriminalization of laws prohibiting sodomy and homosexuality too. These laws are also not enforced in Samoa and their repeal was supported by organizations such as Samoa Family Health, the Samoa AIDS Foundation and the Samoa Victim Support Group. The Samoa Law Reform Commission accepted these submissions. However the Parliamentary Subcommittees chose to only decriminalize female impersonation. The homosexuality and sodomy offences remain offences under Samoa’s new Crimes Act 2013 (personal communication with Alex Su’a, Samoa, October 2013).

106 Balzer, C. and Hutta, J. (2011) pp. 73–75.

The UN Working Group on Arbitrary Detention has stated that detaining someone for offences relating to gender identity or sexual orientation, including offences related to physical appearance or so-called 'public scandal', breaches international law. It violates the rights to non-discrimination and equal protection of the law set out in Articles 2 and 26 of the International Covenant on Civil and Political Rights.¹⁰⁷

Trans people may also face discrimination as a group perceived to be at risk of HIV. The ILO's HIV and AIDS Recommendation, 2010 (No. 200) provides that there should be no discrimination against or stigmatization of workers on the grounds of their real or perceived HIV status.¹⁰⁸

On 20 October 2008 at 11 A.M. the police caught five hijras near a traffic signal in the Girinagar police station and took them to the police station. The Assistant Commissioner of Police, H.T Ramesh, beat one of them with his lathi, broke her bangles and made her bleed. Another hijra was forced to clean the floor of the police station. The police then charged them with false cases under section 341 [wrongful restraint] and 384 [extortion] of the Indian Penal Code...The police asked offensive questions and taunted the crisis intervention team who went to the police station to assist: "Take off all your clothes; let me see what you've got there? Are you a man or woman?"

—Sangama, India, Asia-Pacific Regional Dialogue (16–17 February 2011)¹⁰⁹

ACTION

- ▶ Train frontline staff so that your office is inclusive of and safe for trans people.
- ▶ Examine discrimination against trans people as part of the social development agenda.
- ▶ Provide methodology tools to support trans people in documenting discrimination.
- ▶ Develop and share good practice resources (including those produced by the ILO and UNESCO) on what the right to work and the right to education mean for trans people, and in the context of broader development objectives.
- ▶ Use the terms 'gender identity' and 'transphobia' (rather than 'sexual orientation' and 'homophobia') when speaking about the specific discrimination that trans people experience.

107 E/CN.4/2003/8/Add.1, opinion no. 7/2002 (Egypt) and see, for example opinions No. 22/2006 (Cameroon) (A/HRC/4/40/Add.1) and No. 42/2008 (Egypt) (A/HRC/13/30/Add.1)

108 ILO HIV and AIDS Recommendation, 2010 (No. 200), accessed 4 October 2013 at: www.ilo.org/ilc/ILCSessions/99thSession/texts/WCMS_142613/lang--en/index.htm

109 Global Commission on HIV and the Law (2012) p. 51.

GENERAL HEALTH SERVICES

Everyone has the right to enjoy the highest attainable standard of physical and mental health.¹¹⁰

Trans people have the same range of general health needs as other groups. Yet very few health surveys collect data about gender identity, severely limiting the capacity to identify health risks, protective factors or health outcomes for trans people. The cumulative impact of discrimination and relative deprivation is bound to impact negatively on trans people's health.

Trans people face systemic discrimination trying to access general health services.¹¹¹ This includes being treated with contempt and refused care. The UN Committee on the Elimination of Discrimination against Women has expressed concern about transgender, intersex, lesbian and bisexual women as "victims of abuses and mistreatment by health service providers."¹¹²

For the vast majority of trans people, a physical examination will disclose their gender identity. Health records also routinely disclose this information. This makes trans people highly vulnerable to ignorance or prejudice, including fear of violent reprisals if health professionals breach confidentiality.¹¹³

Many trans people cannot afford the procedures needed to medically transition. In other cases, the procedures may simply not be available where they live. Trans people who have not medically transitioned may experience significant distress when revealing their body to others. Health care professionals are often insensitive to this vulnerability. They may be ignorant of the specific health needs of trans people or lack the professional training required to meet their health needs.¹¹⁴ A large scale survey undertaken in the United Kingdom in 2007 found that 17 percent of trans people had been refused services by a doctor or nurse because of their gender identity. Even more (29 percent) felt that being trans adversely affected the way they were treated by health care professionals.¹¹⁵ Given these barriers, many trans people fail to seek or receive vital health services.

Trans people face many barriers to controlling their own sexual and reproductive lives. The prejudice or misinformation of individual health professionals is only one factor. As the next section of this paper notes, many trans people are required to undergo forced sterilization in order to gain legal recognition of their gender identity. This has a profound impact on their bodily autonomy and right to found a family.

Many trans people do not fit easily within the sex-segregated categories of women's and men's health conditions. For example, trans women may require prostate examinations and some trans men still require cervical smears. Trans people have died after being denied access to such services. After an American trans man died from ovarian cancer, the Feminist Women's Health Center in Atlanta extended its services to trans men. Its Trans Health Initiative, which opened in 2008, is a good example of a service that although initially developed for women, later adapted to be inclusive of trans men.¹¹⁶

Competency in working with trans patients includes being sensitive to the needs of those trans people who do not have a 'typical' male or female body, or whose identity documents do not match their preferred gender or how they present.

110 International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 12(1).

111 Open Society Foundations (2013).

112 Concluding observations on Costa Rica (CEDAW/C/CRI/CO/5-6), para. 40.

113 A/HRC/14/20, para. 21.

114 OHCHR (2011) para. 57; Hammarberg, T. (2009) *Gender Identity and Human Rights: Issue Paper*, Strasbourg: Council of Europe, para. 3.3.

115 Whittle, S., Turner, L. and Al-Alami, M. (2007) p. 16.

116 Bader, E.J. (2009) 'Trans health care is a life and death matter' in *On the Issue: A Magazine of Feminist, Progressive Thinking*, Summer 2009, accessed 18 August 2013 at: www.ontheissuesmagazine.com/2009summer/2009summer_Bader.php

HIV AND AIDS

As described above, violence, stigma, social exclusion and discrimination harm trans people's health and well-being.¹¹⁷ They also deter trans people from seeking HIV prevention, treatment, care and support services.¹¹⁸

“After my friend was raped by those men because she was discovered [to be trans] she came to me . . . we went to the clinic to get post HIV exposure prophylaxis. The nurse told her to go home, take off her women's clothes and come back. She was already so traumatized she could not return. I believe that is why she is HIV-positive today.”

—*Transgender Sex Workers Cape Town, South Africa, Regional Dialogue (3–4 August 2011)*¹¹⁹

There are significant gaps in data about HIV prevalence rates for trans women and very little data about trans men. Studies typically use the term ‘transgender people’ but focus solely on trans women (often as a subset of ‘men who have sex with men’). Age breakdowns in the data are extremely limited, compromising understanding of the HIV burden among young trans people.

A 2013 meta-analysis of HIV infection rates studies found that “transgender women are a very high burden population for HIV and are in urgent need of prevention, treatment, and care services.”¹²⁰ These findings were “remarkable for the severity and consistency of disease burdens” across all four regions where data was available (Latin America, Asia Pacific, Europe and the United States).¹²¹ It is of significant concern that there is no such data for other regions, including Africa and the Pacific.

The Joint United Nations Programme on HIV/AIDS (UNAIDS) and the World Health Organization (WHO) have noted that trans women frequently experience HIV prevalence rates in excess of 60 percent.¹²² In Asia, data on other sexually transmitted infections shows very high rates of infection for trans women, with syphilis sometimes affecting more than 40 to 50 percent of the trans population.¹²³

“Transgender Africans . . . may or may not be inaccessible, but they are currently invisible in epidemiological research, and they are almost certainly being ignored.”¹²⁴

Current HIV monitoring and prevention interventions for trans people are inadequate.¹²⁵ Many trans people cannot access existing effective interventions. In addition, there are few programmes targeted specifically at trans women, trans men and other gender non-conforming individuals, and evidence of what works best for them is scant. Consistent access to competent prevention, treatment or care services is rare for trans people.¹²⁶ Services that are neither accessible nor acceptable for trans people undermine their right to health.

117 Whittle S., Turner, L. and Al-Alami, M. (2007).

118 Godwin, J. (2010) *Legal Environments, Human Rights and HIV Responses Among Men Who Have Sex with Men and Transgender People in Asia and the Pacific: An Agenda for Action*, Bangkok: United Nations Development Programme; Khan, S., Hussain, M., Parveen, S. et al. (2009) ‘Living on the extreme margin: social exclusion of the transgender population (hijra) in Bangladesh’ in *Journal of Health Population and Nutrition*; Volume 27, pp. 441–51; Global Commission on HIV and the Law (2012) p. 53.

119 Global Commission on HIV and the Law (2012) p. 52.

120 Baral, S., Poteat, T., Strömdahl, T., Wirtz, A., Guadamuz, T. and Beyrer, C. (2013) ‘Worldwide burden of HIV in transgender women: a systematic review and meta-analysis’ in *The Lancet Infectious Diseases* 13: p. 214.

121 *Ibid.*

122 UNAIDS / WHO (2011) *Technical Guidance for Global Fund HIV Proposals Round 11*, accessed 18 August 2013 at: www.unaids.org/en/media/unaids/contentassets/documents/programmes/programmeffectivenessandcountryssupportdepartment/gfresourcekit/20110909_Technical_Guidance_MSM_and_TG_people_en.pdf

123 WHO (2013) *Joint Technical Brief: HIV, Sexually Transmitted Infections and Other Health Needs among Transgender People in Asia and the Pacific*, accessed 11 October 2013 at: www.afao.org.au/___data/assets/pdf_file/0003/18363/Joint-technical-brief-on-TG-and-HIV.pdf

124 Jobson, G., Theron, L., Kaggwa, J. and Kim, H-J (2012) ‘Transgender in Africa: invisible, inaccessible, or ignored?’ in *SAHARA Journal of Social Aspects of HIV/AIDS Research Journal* 2012; Volume 9, pp. 160–63, accessed 11 October 2013 at: www.ncbi.nlm.nih.gov/pubmed/23237071

125 Baral, S. et al. (2013) p. 220.

126 Jobson, G., Theron, L., Kaggwa, J. and Kim, H-J (2012).

Inadequate country data compounds these problems. UNAIDS guidelines are designed to help countries collect data and report on their national HIV response as effectively as possible. Yet, unlike other key affected populations, there is no guidance on collecting and reporting data about trans people.¹²⁷

Structural risks for HIV infection, such as social exclusion, economic marginalization, and unmet health care needs, are likely to contribute to high HIV rates in trans women compared with other adults.¹²⁸ The downwards spiral of the 'stigma-sickness slope' pushes trans people to the outer margins of society, leaving them more vulnerable to risky situations. Marginalization impacts negatively on trans people's individual self-esteem and well-being, results in high rates of substance use,¹²⁹ and limits their negotiating power within an intimate relationship. It may lead trans people to settle for partners who are abusive or encourage risk-taking behaviours, such as illicit drug use or unsafe sex.

Extreme poverty and high levels of employment discrimination leave many trans women with no choice but to exchange sex for money or necessities.¹³⁰ Others may be sex workers by choice, perhaps because it is the only occupation where they are able to dress and be treated as female.¹³¹ Trans sex workers may face pressure to modify their bodies to attract clients. The dangerous practice of injecting industrial silicone, commonplace among *travesti* sex workers in Brazil, has been attributed to this pressure.¹³²

Sex work is associated with high risk of HIV infection. Typically trans sex workers are marginalized among other sex workers, forced to work in unsafe areas at night. They face the added risk that a client may react violently when he realizes a sex worker is trans.¹³³ A 2008 meta-analysis of HIV risk internationally found that trans women who were sex workers were significantly more likely to be living with HIV than male or other female sex workers.¹³⁴

Street-based sex work carries risk of extremely brutal and cruel forms of transphobic violence, including killings.¹³⁵ This includes harassment by police or vigilante groups.¹³⁶ Societal prejudice against sex workers compounds the stigma and violence against trans women generally. The assumption that trans women are sex workers can have a negative impact on trans women's access to safe sex generally. In countries where sex work is criminalized, carrying a condom can place any trans women at risk of being detained as a sex worker.

In the absence of data, trans men have been considered at low risk of HIV infection. Recent studies challenge this assumption and highlight the dangers of invisibility. While there is limited data on HIV risks for trans men, there are known anecdotal risk factors. For example, many trans men exclusively or predominantly have receptive anal sex, including with other men.¹³⁷ Between 2006 and 2010, 11 (6 percent) of the 183 newly

127 UNAIDS (2012) *Global AIDS Response Progress Reporting: Monitoring the 2011 Political Declaration on HIV/AIDS: Guidelines on Construction of Core Indicators: 2012 Reporting*, accessed 3 October 2013 at: www.unaids.org/en/media/unaids/contentassets/documents/document/2011/JC2215_Global_AIDS_Response_Progress_Reporting_en.pdf

128 Pinto, R.M., Melendez, R.M. and Spector, A.Y. (2008) 'Male-to-female transgender individuals building social support and capital from within a gender-focused network' in *Journal of Gay Lesbian Social Services*; Volume 10, pp. 203–20.

129 Nemoto, T., Iwamoto, M., Perngpan, U., Areesantichai, C., Kamitani, E. and Sakata, M. (2012) 'HIV-related risk behaviors among kathoey (male-to-female transgender) sex workers in Bangkok, Thailand' in *AIDS Care*, Volume 24, pp. 210–19; De Santis, J.P. (2009) 'HIV infection risk factors among male-to-female transgender persons: a review of the literature' in *Journal of The Association of Nurses in AIDS Care*, Volume 20, pp. 362–72; Collumbien, M., Chow, J., Qureshi, A.A., Rabbani, A. and Hawkes, S. (2008) 'Multiple risks among male and transgender sex workers in Pakistan' in *Journal of LGBT Health Research*, Volume 4, pp. 71–79; Baral, S. and Phaswana-Mafuya, N. (2012) 'Rewriting the narrative of the epidemiology of HIV in sub-Saharan Africa' in *SAHARA-Journal of Social Aspects of HIV/AIDS Research Alliance*, Volume 9, pp. 127–30, accessed 26 August 2013 at: www.tandfonline.com/doi/full/10.1080/17290376.2012.743787

130 Grant, J.M. et al (2011); Instituto Runa (2007) *Realidades Invisibles: Violencia contra Travestis, Transexuales y Transgeneros que Ejercen Comercio Sexual en la Ciudad de Lima*, Lima: Instituto Runa

131 Winter, S. (2012); New Zealand Human Rights Commission (2008); Balzer, C. and Hutta, J. (2012) p. 64.

132 Balzer, C. and Hutta, J. (2012) p. 48.

133 Baral, S.D., Beyrer, C. and Poteat, T. (2011) p. 6.

134 Operario, D., Soma, T. and Underhill, K. (2008) 'Sex work and HIV status among transgender women: systematic review and meta-analysis' in *Journal of AIDS*; Volume 48, pp. 97–103.

135 Balzer, C. and Hutta, J. (2012).

136 Global Commission on HIV and the Law (2012) p. 51.

137 Rowniak, S., Chesla, C., Rose, C.D. and Holzemer, W.L. (2011) 'Transmen: the HIV risk of gay identity' in *AIDS Education and Prevention*, Volume 23, pp. 508–20.

diagnosed HIV cases among trans people in New York City were in trans men.¹³⁸ In a retrospective analysis of people who attended sexual health clinics from 2006 to 2009 in San Francisco, HIV infection rates were similar for trans men (10 percent) and trans women (11 percent).¹³⁹ Recent US research suggests that another invisible risk factor for trans men is their participation in sex work.¹⁴⁰

“Throughout much of the history of the global HIV response, trans people have been invisibilised; in that they have seldom been properly recognised as a distinct population for purposes of confronting the HIV pandemic. Trans women attracted to males have often been subsumed, researched and reported as [men who have sex with men] . . . often in direct conflict with their own identities as female or third gender. It undermines their frequently voiced claims to be treated as female. It often conflicts with the identities of their partners as heterosexual, or ‘real men’. Trans men again have been completely left out of any kind of reporting; even trans men who have sex with men.”

—Sam Winter (2012)¹⁴¹

entity disorder’ in the Diagnostic and Statistical Manual of Mental Disorders (DSM) and in the WHO’s International Classification of Diseases (ICD). The DSM has recently moved to a new term, ‘gender dysphoria’, and the ICD is currently being revised.¹⁴⁴

Many trans people do not wish their identity to be pathologized as a disorder or dysphoria. Instead they seek access to gender-affirming health services based on a model of informed consent.¹⁴⁵ Therefore many trans people have welcomed the WHO’s proposals to remove diagnoses currently in the ‘mental and behavioural disorders’ chapter of the ICD.

Sam Winter recommends a comprehensive research programme to address such glaring gaps. Notably, he proposes going beyond risk factors for trans people and recommends looking at protective factors and personal qualities that result in resilience against the effects of stigma discrimination, abuse and consequent marginalization.

Similarly, others have highlighted the need for trans people to be involved as active partners in the design and implementation of health research studies about their communities.¹⁴² Such research is necessary to inform responses to HIV and AIDS that meet the needs of trans people. It is also essential to address the other pressing health issues that trans people face. The following section focuses on the health challenges for trans people who wish to medically transition.

GENDER-AFFIRMING HEALTH SERVICES

Gender-affirming health services are medical or surgical interventions that many, but not all, trans people seek in order to change parts of their body to affirm their gender identity. These procedures include, for example, hormone treatment, electrolysis, surgeries to create or remove breasts, hysterectomies, and a range of genital reconstruction surgeries.¹⁴³

Diagnosis

For many, but not all, trans people it is distressing to have a body that does not match their sense of self. This mismatch has been termed ‘gender identity disorder’ in the Diagnostic and Statistical Manual of Mental Disorders (DSM) and in the WHO’s International Classification of Diseases (ICD). The DSM has recently moved to a new term, ‘gender dysphoria’, and the ICD is currently being revised.¹⁴⁴

138 New York City Department of Health and Mental Hygiene (2012) *New York City HIV/AIDS surveillance slide sets, 2010* (updated March 2012).

139 Stephens, S.C., Bernstein, K.T. and Philip, S.S. (2011) ‘Male to female and female to male transgender persons have different sexual risk behaviors yet similar rates of STDs and HIV’ in *AIDS and Behavior*, Volume 15, pp. 683–86.

140 Grant, J. *et al.* (2011) p. 65.

141 Winter, S. (2012) p.3.

142 Baral, S. *et al.* (2013).

143 The term ‘sex reassignment surgery’ focuses more narrowly on surgical interventions, and often is assumed to refer solely to genital reconstruction. It is commonly abbreviated as ‘SRS’. The phrase ‘gender affirming’ is preferred by many trans people due to the breadth of interventions it encompasses and its positive focus on affirming someone’s gender identity.

144 Drescher, J., Cohen-Kettenis, P. and Winter, S. (2012) ‘Minding the body: Situating gender identity diagnoses in the ICD-11’ in *International Review of Psychiatry*, December 2012, Volume 24(6), pp. 568–577.

145 Open Society Foundations (2013).

There is a proposal to create a 'gender incongruence in childhood' diagnosis within the ICD. Many trans people and health professionals consider the proposed diagnosis inappropriate as it could stigmatize rather than support children who are exploring issues of gender identity and expression.¹⁴⁶ Such a diagnosis is also inconsistent with the WHO's proposals related to individuals exploring issues of sexual identity and expression. Given these concerns, opposing a child diagnosis was chosen as the theme for the 2013 International Day of Action against Trans Pathologization.¹⁴⁷

Hormone treatment

Hormone treatment is a pivotal health procedure for many trans people. This is because hormones affect secondary sex characteristics such as body shape and body hair, as well as the masculinization of vocal chords. These bodily features, along with the absence or presence of breasts or an Adam's apple, are often subconsciously noted by others as 'gender markers', and used to support assumptions about someone's sex. They have a significant impact on whether a person is recognized as male, female or neither/other.

Testosterone is a particularly powerful hormone and many of its effects are irreversible. These include hair growth, male pattern baldness, and thickened vocal chords that produce a lower voice. Trans men who take testosterone to transition typically desire these changes. Conversely, many trans woman who transitioned after puberty seek to reduce these effects. Hormone replacement therapy for trans women will soften the skin and change the body shape, but it does not remove body hair. For many, this requires extensive, costly and painful laser treatment or electrolysis.

Surgery

While many trans people do not need surgery to be comfortable in their gender identity, role and expression, the World Professional Association for Transgender Health (WPATH) standards of care note that "for many others surgery is essential and medically necessary."¹⁴⁸ For trans men, often the most pressing surgery is a mastectomy to create a male chest. For trans women, the most important initial surgical procedures may be those that feminize outward appearances, such as breast augmentation, facial feminization or contouring the hips and buttocks. While genital reconstructive surgery is vital for some trans people, others may not find it as important for their daily lives. There is robust clinical evidence that hormone treatment and gender-affirming surgeries improve trans people's well-being and psychosocial outcomes.¹⁴⁹

The WPATH standards of care are a voluntary, best practice consensus document. Unfortunately they are far ahead of current practice in many countries around the world.¹⁵⁰ The right to health requires health services that are accessible, available, acceptable and of good quality. States are required to progressively achieve the full realization of the right to health, to the maximum of their available resources.¹⁵¹ The reality for trans people around the world routinely falls far short of these requirements.¹⁵²

The vast majority of trans people worldwide have no access to gender-affirming health services. Hormones or some surgeries may be available in the public health system for other medical reasons (such as contraception or cancer treatment) but not for trans people wishing to transition. This denial of treatment is typically based on the unfounded assumption that gender-affirming health services are cosmetic procedures or are not medically necessary. Where they are available, it is usually only through private health providers and they are prohibitively expensive, particularly for surgeries required by trans men. Insurance coverage often excludes any gender-affirming procedures, despite the fact that there is virtually no added cost per insured person in a large enough insurance pool.¹⁵³

146 These concerns were raised at a WPATH Consensus meeting in San Francisco in February 2013 and at a meeting of experts convened by GATE (Global Action for Trans* Equality) in April 2013 in Buenos Aires.

147 See the Stop Trans Pathologization website at: www.stp2012.info/old/en

148 Coleman, E. *et al.* (2011) 'The standards of care for the health of transsexual, transgender, and gender nonconforming people' in *International Journal of Transgenderism*, Volume 13, p. 199, accessed 3 October 2013 at: www.wpath.org/uploaded_files/140/files/IJT%20SOC,%20V7.pdf

149 *Ibid*, Appendix D, pp. 229–230.

150 Personal communication with Sam Winter (July 2013).

151 ICESCR, Article 2(1).

152 Open Society Foundations (2013).

153 OHCHR (2011) para. 57; State of California, Department of Insurance (13 April 2012) *Economic Impact Assessment: Gender non-discrimination in health insurance*, accessed 3 October 2013 at: <http://transgenderlawcenter.org/wp-content/uploads/2013/04/Economic-Impact-Assessment-Gender-Nondiscrimination-In-Health-Insurance.pdf>

In the absence of public health provisions, trans people are forced into unsafe alternative measures to change their bodies to match their gender identity. In many countries, this includes the unregulated use of hormones and the dangerous practice of injecting silicon or industrial oil by non-medical providers (particularly in Latin America).

ACTION

- ▶ Ask trans people, including those who identify as a third gender, about their specific health needs.
- ▶ Be sensitive to the terms trans people use to describe their gender identity and their bodies, and the individual choices they make about whether to seek hormones, surgeries or other medical treatments to modify their body.
- ▶ Enable trans people to access gender-affirming health services through models of informed consent, without requiring a mental health diagnosis.
- ▶ Notice gaps in data about trans health needs (including HIV-related information and services) and work in partnership with trans people to fill them.
- ▶ Understand the health needs of trans women, separate from those of men who have sex with men, including in the context of HIV.
- ▶ Be aware of health issues specific to trans men, including how gay and bisexual trans men might be included within the category of men who have sex with men.
- ▶ Recognize that effective, sustainable responses to HIV should address human rights violations against trans people and enable access to gender-affirming health services.



“In many countries from Mexico to Malaysia, by law or by practice, transgender persons are denied acknowledgment as legal persons. A basic part of their identity—gender—is unrecognised.”

—Global Commission on HIV and the Law (2012)¹⁵⁴

Often trans people are able to change some documents but not others. This means an individual will have conflicting documents, reflecting different thresholds for changing various forms of identification. As a result, trans people can have great difficulty establishing a coherent personal history and therefore risk being suspected of identity fraud.

“Department of Home Affairs messes up with trans-people’s ID application after gender reassignment. Life becomes impossible if one doesn’t own an identity document that reflects who the person is. Therefore trans people can’t access jobs because of prejudice. On a daily basis trans-people are accused of fraud, humiliated and are arrested at road blocks. With no ID one can’t open accounts at retail stores, one can’t vote, one can’t travel.”

—Sibusiso Kheswa, South Africa¹⁵⁶

The vast majority of trans people around the world cannot obtain official documents under their appropriate name and sex, to match their gender identity. Without accurate official documents, trans people are denied access to basic rights and are vulnerable to discrimination and violence.

Identification is required for most life activities—from entering into a phone contract to traveling across borders, from starting a new job to being called in the doctor’s waiting room. Trans people face daily challenges and risks if their official identification or records differ from their outward appearance. They may also be denied basic citizenship rights, including access to state rations or employment.¹⁵⁵

In situations of heightened security, inaccurate identification documentation can be life-threatening. This includes interactions with disaster relief agencies and hospitals’ emergency departments, as well as with border control and law enforcement officers. Inaccurate documentation can mean the difference between accessing life-saving services or being excluded from them.¹⁵⁷

Official documents not only define an individual, but also their relationship to others. A trans woman who is not recognized as female is typically unable to be recorded as her partner’s wife. A trans man usually cannot be listed as the father of his children on their birth certificates.

Trans people are vulnerable to discrimination when their previous name or sex details are revealed to others, disclosing that they are trans. An individual’s right to change sex details on identity documents protects their privacy. It prevents discrimination and stigma based on someone’s gender identity or because they have transitioned. For this reason, countries that have gender recognition laws typically prevent disclosure of previous name or sex details without the trans person’s explicit consent.¹⁵⁸

154 Global Commission on HIV and the Law (2012) p. 51.

155 Bochenek, M. and Knight, K. (2012) ‘Establishing a third gender category in Nepal: Process and prognosis’ in *Emory International Law Review*, Volume 26, pp. 11–41

156 Kheswa, S. (2013) *Pride and Protest*. Presentation for HUMA’s ‘Pride & Protest’ Public Discussion in Langa, South Africa, February 21, 2013, accessed 16 August 2013 at: www.genderdynamix.org.za/wp-content/uploads/2013/04/Pride-and-Protest-Kheswa.pdf

157 International Gay and Lesbian Human Rights Commission and SEROvie (2011) *The Impact of the Earthquake and Relief and Recovery Programs on Haitian LGBT People*, accessed 28 August 2013 at: www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/504-1.pdf; The Express Tribune (22 October 2011) *In Pakistan’s Floods, Transgender People “Languishing Silently in Pain”*, accessed 28 August 2013 at: <http://madikazemi.blogspot.com/2011/10/in-pakistans-floods-transgender-people.html>; Pincha, C. (2008) *Indian Ocean Tsunami Through the Gender Lens: Insights from Tamil Nadu, India*, accessed 28 August 2013 at: www.gdnonline.org/resources/Pincha_IndianOceanTsunamiThroughtheGender%20Lens.pdf

158 See for example the United Kingdom’s Gender Recognition Act 2004, accessed 3 October 2013 at: www.legislation.gov.uk/ukpga/2004/7/contents; and Argentina’s Gender Identity and Health Comprehensive Care for Transgender People Act 2012, English translation accessed 3 October 2013 at: <http://globaltransaction.files.wordpress.com/2012/05/argentina-gender-identity-law.pdf>

This desire for privacy about being trans is sometimes referred to as 'being stealth.' Often it reflects a positive decision to claim a new female or male identity.

RIGHT TO RECOGNITION BEFORE THE LAW

The right to recognition before the law is set out in core human rights treaties.¹⁵⁹ The UN Human Rights Committee has urged States to "recognize the right of transgender persons to a change of gender by permitting the issuance of new birth certificates," citing the rights to privacy, equality and recognition before the law.¹⁶⁰ The UN High Commissioner for Human Rights has recommended that States "facilitate legal recognition of the preferred gender of transgender persons and establish arrangements to permit relevant identity documents to be reissued reflecting preferred gender and name, without infringements of other human rights."¹⁶¹

In countries where legal gender recognition is possible, many trans people are explicitly excluded because they are married or have children.¹⁶² The requirement to be unmarried implies mandatory divorce in cases where a trans person was married before transitioning. The German Constitutional Court has struck down such requirements.¹⁶³ It found the requirement to be unmarried created a conflict between a person's right to marry and their privacy, which includes their self-determined sexual and gender identity.

The minority of trans people internationally who do have access to legal gender recognition still typically face significant challenges. In all but a handful of countries, they must obtain a diagnosis of gender identity disorder or gender dysphoria, and/or provide evidence of having undergone a medical transition. Most countries stipulate this entails 'gender reassignment surgery'. Yet many trans people do not want such medical treatment, or cannot access it for medical, financial or other reasons. Such requirements place decisions about a trans person's identity in the hands of medical experts. Trans people in many countries have critiqued this gatekeeping role, questioning why legal gender recognition is linked in any way to medical transition.

FORCED STERILIZATION

Trans people are routinely forced to choose between their gender identity and their ability to have a child. In some countries, gender recognition laws and policies specifically require evidence of medical procedures that result in sterilization. WPATH has stated that "[n]o person should have to undergo surgery or accept sterilization as a condition of identity recognition."¹⁶⁴ Such requirements also violate fundamental human rights.

In 2012, the Swedish Administrative Court of Appeals ruled that a forced sterilization requirement intrudes on a person's physical integrity and cannot be considered voluntary.¹⁶⁵ In 2011, Germany's Constitutional Court recognized that gender-affirming surgery as a requirement for legal gender recognition is incompatible with the right to sexual self-determination and physical integrity.¹⁶⁶ In 2009, the Austrian Administrative High Court held that it was unlawful to require such procedures as a mandatory condition for legal recognition of gender identity.¹⁶⁷

159 UDHR, Art. 6; ICCPR, Art. 16; CEDAW, Art. 15; CRC, Art. 8; American Convention, Art. 3; and African Charter, Art. 5.

160 Human Rights Committee, Concluding Observations (Ireland), UN Doc. CCPR/C/IRL/CO/3, 30 July 2008, para. 8. The Committee cited articles 2, 16, 17 and 26 and also article 23 in terms of the ability of trans people to marry as their self-defined sex / gender identity

161 OHCHR (2011) para. 84.

162 OHCHR (2011) para. 72.

163 *1 BvL 10/05*, Federal Constitutional Court of Germany (27 May 2008).

164 Identity recognition statement issued by the Board of Directors of the World Professional Association of Transgender Health (WPATH), 16 June 2010, accessed 15 August 2013 at: www.wpath.org/uploaded_files/140/files/Identity%20Recognition%20Statement%206-6-10%20on%20letterhead.pdf

165 Mål nr 1968-12, Kammarrätten i Stockholm, Avdelning 03, accessed 19 August 2013 at: http://du2.pentagonvillan.se/images/stories/Kammarrttens_dom_-_121219.pdf, p. 4.

166 *1 BVR 3295/07*, Federal Constitutional Court of Germany (11 January 2011).

167 Administrative High Court, No. 2008/17/0054, judgement of 27 February 2009.

The UN Special Rapporteur on torture has highlighted the importance of safeguarding informed consent of sexual and gender minorities.¹⁶⁸ In February 2013, he called on all States to outlaw forced or coerced sterilization of trans and intersex people.¹⁶⁹

In many parts of the world trans people are challenging the requirement that they undergo gender-affirming surgeries before their sex details will be changed on official documents. In Kenya, this challenge is being mounted through individual applications and court cases, as well as through dialogue with the government.¹⁷⁰ In Hong Kong, a campaign is pushing for a gender recognition ordinance that would enable legal gender recognition without the need for any specific medical procedures.¹⁷¹

In a June 2013 submission to the UN Human Rights Committee, civil society groups critiqued Ukraine's legal gender recognition process, which is denied to trans people with children and requires forced sterilisation and up to 45 days' assessment in a psychiatric institution.¹⁷² In response, the UN Human Rights Committee spoke out against compulsory confinement and non-consensual medical treatments, and called for Ukraine to repeal "any abusive or disproportionate requirements" for legal gender recognition.¹⁷³

PROGRESSIVE GENDER RECOGNITION LAWS

Principle 3 of the Yogyakarta Principles states that "each person's self-defined gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom" and "no one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity."¹⁷⁴ Increasingly, countries are responding to calls from trans people, health professionals and human rights bodies to implement human rights-based gender recognition laws.

The Argentinean Gender Identity Law was approved on 8 May 2012 and came into force in July 2012. It is the most progressive gender recognition law in the world. The law is ground-breaking because it is framed in terms of human rights, including the right to one's gender identity.¹⁷⁵ The case study at the end of this section discusses the law in more detail.

Since publishing its legal recognition statement in 2010, the WPATH Board has advised courts and governments in Ireland; Ontario, Canada; and South Korea. It has argued for legal gender recognition without requiring a diagnosis, medical treatments or that a trans person has lived for a defined period in their preferred gender role. The WPATH Board's June 2013 letter to the Irish government explicitly supported the Argentinian gender recognition law.¹⁷⁶

RECOGNIZING THIRD GENDER OPTIONS

Some trans people do not identify as male or female, but as a third gender. Countries in Asia and Oceania are leading the way in legally recognizing a third, or 'other', gender option.¹⁷⁷

168 Méndez, J.E. (2013) *Report of the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment*. Report to the Human Rights Council, 22nd session, 1 February 2013, A/HRC/22/53 para. 38.

169 *Ibid.*, para. 88.

170 Personal communication with Audrey Mbugua, Transgender Education and Advocacy, Kenya (September 2013).

171 Information about the Gender Recognition Ordinance's *GRO Now* campaign can be found on its Facebook page: www.facebook.com/GRONowHK#/GRONowHK

172 Human Rights Watch (2013) Submission on Ukraine to the UN Human Rights Committee, 20 June 2013, accessed 25 September 2013 at: www.hrw.org/news/2013/06/20/submission-ukraine-un-human-rights-committee

173 Human Rights Committee (2013) *Concluding Observations on the seventh periodic report of Ukraine* (CCPR/C/UPR/CO/7), para. 10, accessed 25 September 2013 at: www2.ohchr.org/english/bodies/hrc/docs/co/CCPR-C-UKR-CO-7_en.doc

174 International Commission of Jurists (2007) pp. 11–12.

175 The Gender Identity and Health Comprehensive Care for Transgender People Act, Article 1.

176 WPATH President's August 2013 Monthly Note, accessed 4 October 2013 at: www.wpath.org/uploaded_files/140/files/8-5-13.docx

177 In some countries' laws, policies and practices, this is described as a third sex rather than a third gender.

Nepal issues a citizenship card to adult men and women that provides access to many entitlements.¹⁷⁸ With rare exceptions, this card had been denied to *metis* who wished to register as a third gender rather than male or female.¹⁷⁹ That policy was challenged and struck down in a 2007 Supreme Court case.¹⁸⁰ The court legally established a 'third gender' category (*teshro Lingi*) and ordered the government to scrap all "arbitrary, unreasonable and discriminatory" laws that restricted the rights of *metis*.¹⁸¹ This included ordering the repeal of penalties against cross-dressing, which the court considered protected by the right to freedom of expression.¹⁸²

Progress implementing the court's decision has been slow. It was only in 2013 that the first *metis* received citizenship cards with their gender marked as 'other'. Barriers remain, as only *metis* who do not already have a citizenship card are eligible to be recorded as 'third gender'. Those who had already been issued a male or female card, based on assigned sex at birth, are not eligible. The Blue Diamond Society is advocating for all gender minorities to have the right to record their gender as 'other' and for a third gender option on passports.¹⁸³

Research conducted in July 2013 suggests legal reform in Nepal has been progressive in promoting gender and sexuality diversity as natural. However *metis* and other gender and sexual minorities still "suffer from explicit prejudice, lack of economic opportunity and familial rejection [and] other forms of marginalisation."¹⁸⁴

"We are empowered and aware of rights but we are hungry. . . . Education and awareness alone do not make our life better. We need to be economically empowered."

—Manisha Dhakal, Blue Diamond Society¹⁸⁵

In 2008, Tamil Nadu became the first Indian state to recognize 'transgender' on official documents, as an option for aravani on ration cards.¹⁸⁶ This was important because ration cards are also used as identification, for example to open a bank account or apply for a passport. Subsequently Tamil Nadu formed a Transgender Welfare Board and introduced education, health, employment and housing policies for aravani.¹⁸⁷

Nationally, India now uses a third gender category in several administrative documents. In 2005, the option of identifying as eunuch (denoted by an 'E') was included in India's online passport application form.¹⁸⁸ In 2009, the 'E' option was added to electoral lists and voter identification cards.¹⁸⁹ In 2011, India's new ID numbering system introduced 'transgender' as a third gender option.¹⁹⁰ As of late 2013, the Indian Supreme Court was considering whether to direct India's central and state governments to include transgender as a third category on passports, voter ID cards, driver licences, ration cards and educational admission forms.¹⁹¹

178 Bhardwaj, K. and Divan, V. (2011) *Sexual Health and Human Rights: A Legal and Jurisprudential Review of Select Countries in SEARO*, p. 22, accessed 28 August 2013 at: www.ichrp.org/files/papers/182/140_searo_divan_bhardwaj_2011.pdf

179 International Gay and Lesbian Human Rights Commission (2007) *Nepal Supreme Court Case on Relief for Sexual and Gender Minorities: Observers' Report*, accessed 28 August 2013 at: www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/111-1.pdf

180 *Sunil Babu Pant v. Government of Nepal*. Writ No. 917 of the year 2064 BS (2007 AD), Supreme Court Division Bench, 2007.

181 *Pant*, Writ No. 917, at 282.

182 Global Commission on HIV and the Law (2012) p. 53.

183 Personal communication with Manisha Dhakal from Blue Diamond Society, Nepal (September 2013)

184 Boyce, P. and Coyle, D. (July 2013) 'Development, Discourse and Law: Transgender and Same-Sex Sexualities in Nepal', *Evidence Report No. 13: Sexuality, Policy and Law*, Institute of Development Studies, p. 4, accessed 28 August 2013 at: <http://opendocs.ids.ac.uk/opendocs/bitstream/handle/123456789/2839/ER13%20Final%20Online.pdf;jsessionid=856E9378ED0AC218DCA620FB6416B329?sequence=1>

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186 Harrington, M. (2008)

187 Govindan, P. (April 2009) 'Interrogating aravani activism in Tamil Nadu' in *InfoChange News and Features*, accessed 28 August 2013 at: <http://infochangeindia.org/human-rights/the-body-politic/interrogating-aravani-activism-in-tamil-nadu.html>

188 N.A. (10 March, 2005) 'Third Sex' Finds a Place on Indian Passport Forms' in *The Telegraph*, accessed 28 August 2013 at: <http://infochangeindia.org/human-rights/news/-third-sex-finds-a-place-on-indian-passport-forms.html>

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191 N.A. (2 October 2012) 'Court notice to Centre, States on transgender issue' in *The Hindu*, accessed 28 August 2013 at: www.thehindu.com/news/national/court-notice-to-centre-states-on-transgender-issue/article3956185.ece

In 2009, Pakistan's Supreme Court issued a decision requiring identity registration sheets to include a third column for eunuchs / hijra. Once registered, all eunuchs or hijra were to be entered on to voter lists.¹⁹² The Court noted problems experienced by hijras in the areas of inheritance, registration of identity, voting, employment, and schooling.

Australia changed its passport policy in 2011 to allow a trans or intersex person to record their sex as male (M), female (F), or indeterminate / unspecified / intersex (X). A supporting letter is required from a medical practitioner confirming that the person is transitioning or is intersex. However, the passport applicant is not required to be on hormones or to have had sex reassignment surgery. The Australian Government stated this policy was part of "commitment to remove discrimination on the grounds of sexual orientation or sex and gender identity."¹⁹³ In July 2013, the Australian Government published guidelines for the consistent collection of sex and gender information across all government departments and agencies.¹⁹⁴

For more than a decade, it has been possible for trans persons in New Zealand who have started transitioning to list their sex on their passport as 'indeterminate'. This statutory declaration process was simplified and extended in November 2012. Now any New Zealand citizen is able to choose if they want M, F or X on their passport.¹⁹⁵ In June 2012, New Zealand extended this approach to driver's licenses.¹⁹⁶ No medical or other evidence is required for either process.¹⁹⁷

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Argentina's Gender Identity Law enables trans people to change their name and sex details without requiring a medical diagnosis or specific medical interventions (including those that would result in infertility). In doing so, it recognizes that identity does not depend on medical transition. In addition, the law guarantees access to trans-related health care on the basis of informed consent, with the costs covered by the national Mandatory Medical Plan.¹⁹⁸

The Gender Identity Law respects the self determination of all trans people and applies to everyone, including married people and minors. It considers issues related to trans children and young people from the perspective of the UN Convention on the Rights of the Child, focusing on the evolving capacities and best interests of the child.¹⁹⁹ In late September 2013, the administration of Buenos Aires Province officially recognized a six-year-old trans girl, who was supported by her family.²⁰⁰

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192 *Khaki v. Rawalpindi*, Supreme Court of Pakistan (12 December 2009), accessed 4 October 2013 at: www.icj.org/sogicasebook/khaki-v-rawalpindi-supreme-court-of-pakistan-12-december-2009/

193 Australian Passport Office, Sex and Gender Diverse Passport Applicants, Revised Policy, accessed 28 August 2013 at: <https://passports.gov.au/Web/SexGenderApplicants.aspx>

194 Australian Government (2013) *Australian Government Guidelines on the Recognition of Sex and Gender*, accessed 4 October 2013 at: www.ag.gov.au/genderrecognition.

195 The New Zealand Department of Internal Affairs' website: www.passports.govt.nz/Transgender-applicants

196 New Zealand Human Rights Commission (13 June 2013) *NZTA changes gender identity policy for driver licenses*, accessed 28 August 2013 at: www.hrc.co.nz/2013/nzta-changes-gender-identity-policy-for-driver-licences The policy itself is accessible online at: www.nzta.govt.nz/licence/renewing-replacing/replacing-changing.html

197 In Australia and New Zealand, the legal threshold for changing sex details on a birth certificate is higher than for passports. The Human Rights Commissions in both countries have recommended that these processes should be simplified. Australian Human Rights Commission (2009) *Sex Files: The legal recognition of sex in documents and government records*, accessed 28 August 2013 at: www.humanrights.gov.au/sex-files-legal-recognition-concluding-paper-sex-and-gender-2009; New Zealand Human Rights Commission (2008).

198 Argentinean Gender Identity Law, Article 11.

199 *Ibid.*, Article 5.

200 Brydum, S. (2013) 'Trans Six-Year-Old is Argentina's Youngest to Amend Gender on Birth Certificate' in *The Advocate*, 28 September 2013, accessed 14 October 2013 at: www.advocate.com/politics/transgender/2013/09/28/trans-six-year-old-argentinasyoungest-amend-gender-birth or the original article is available in Spanish at: www.lanacion.com.ar/1623497-luana-la-primera-nena-trans-que-logro-la-rectificacion-del-nombre-en-su-dni

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Under the law, trans people's right to privacy is protected by confidentiality provisions that prohibit disclosure of their former name or sex.²⁰¹ The law recognizes that trans people's right to dignified treatment requires others to use a trans person's adopted name and gender identity.²⁰²

The law's administrative procedures for changing names and sex details are accessible and timely. There is no cost and it does not require a lawyer.²⁰³ In the law's first year of operation, more than 3,000 trans people applied to change their sex entry and name.²⁰⁴ The process is simple and takes two to three weeks to complete.²⁰⁵ Recent media reports highlight the impact of the law on enabling trans people to vote; only half of those who have changed their details under the law were able to vote in the 2008 election, which preceded the law.²⁰⁶

There is growing international interest in the Argentinean approach across civil law, common law and pluralistic legal traditions. A similar bill was tabled in parliament by the Maltese government in late 2010 and is expected to be debated shortly.²⁰⁷ The German Green Party developed a similar proposal, as did the French Socialist Party in 2011 (bill number 4127) before it came into government.²⁰⁸ Two 2013 private members' bills in Ireland adapted the Argentinean law to Ireland's common law system.²⁰⁹

ACTION

- ▶ Respect trans people's chosen name and sex, regardless of their legal documentation.
- ▶ If previous name or sex details must be used to verify someone's identity, guarantee they will be kept confidential.
- ▶ Before asking for sex / gender information, consider whether that information is necessary.
- ▶ Build awareness about the importance of the right to legal gender recognition, including its links to other rights.
- ▶ Understand the importance of separating legal gender recognition from the process of medical transition.

201 Argentinean Gender Identity Law, Article 9.

202 *Ibid.*, Article 12.

203 *Ibid.*, Article 6.

204 Accessed 4 October 2013 at: www.lanacion.com.ar/1580129-a-un-ano-de-la-ley-de-identidad-de-genero-3000-personas-se-cambiaron-el-nombre

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208 The German Green Party's 2009 draft law on the change of first names and the determination of sex (ÄVFGG), accessed 4 October 2013 at: http://tgeu.org/Germany_Draft_Law_Greens_2009

209 Legal Recognition of Gender Bill 2013, a private Member's Bill sponsored by Senator Katherine Zappone, accessed 28 August 2013 at: www.oireachtas.ie/viewdoc.aspx?DocID=23950&&CatID=59; Sinn Fein's Gender Recognition Bill 2013 can be read at: www.oireachtas.ie/documents/bills28/bills/2013/5613/b5613d.pdf

CONCLUSION: TRANS SOCIAL INCLUSION

“We are not victims . . . trans people in the region face enormous challenges. From extreme poverty to police brutality, in a context of social and institutional violence against us, but . . . trans activism is strong, well-articulated, and able to create and develop its own political agenda . . . we must be included in all consultative and decision-making processes concerning us.”

—Mauro Cabral, Argentina²¹⁰

Realizing the right to development for trans people, like other marginalized groups, is about core development issues such as poverty reduction, mitigating negative health and HIV consequences, the protection and exercise of human rights and combating gender-based violence. It requires trans people's inclusion in society on an equal basis with others.²¹¹

The evidence in this discussion paper demonstrates the compounding impact that denial of rights in one area has on other aspects of a trans person's life. Freedom from violence and discrimination, the right to health and legal gender recognition are inextricably linked.

It is impossible to be included within a community and society if one's very existence is denied. Yet such exclusion is routinely experienced by trans people when there are only two, binary sex options (male or female), and



Photo Credit: Robert Bourgoing

210 Personal communication with Mauro Cabral, Argentina, co-director Global Action for Trans* Equality (GATE) (July 2013).

211 Samelius, L. and Wågberg, E. (2005) *Sexual Orientation and Gender Identity Issues in Development: A study of policy and administration*. Stockholm: Swedish International Development Cooperation Agency, accessed 28 August 2013 at: www.sida.se/Global/Nyheter/SIDA4948en_Sexual_Orientation_web%5b1%5d.pdf

no legal ability to move between the two. Those who work with undocumented migrants are familiar with the devastating impact when people have no legal status. Many trans people around the world share that experience in their own country of birth.

The vast majority of trans people who wish to transition cannot access medically necessary health services. They fill that gaping void with self-medication, unregulated hormone use, potentially lethal injections and in some cases, self-mutilation. Where health services are available, most trans people are required to accept a mental health diagnosis. Social inclusion requires moving beyond a medical model that defines gender diversity as a mental health disorder and trans people solely by their physical bodies or the medical interventions they seek.

In contrast, progressive laws and policies recognize trans people's right to self-determination, enabling name and sex details to be changed based solely on a trans person's self-defined gender identity. In doing so, they separate the right to recognition before the law from the process of medical transition. Medical practitioners no longer sit in judgement on a trans person's identity.

Social exclusion is compounded by other forms of legal exclusion. Most trans people are not protected by anti-discrimination laws in their own country. In a climate where gender diversity is ridiculed, many trans people are left unprotected, exposed to the severe impact of HIV and AIDS, and forced to survive at the margins of society.

With limited data it is impossible to know how many lose that struggle. The research that does exist is a resounding call to action. Trans people are being murdered at alarming rates and have some of the highest HIV infection rates for any population group.

This grim picture makes a compelling case for ensuring that countries abide by international human rights obligations that entitle all people to equality, dignity and security.

Trans people must continue to be at the centre of responses to these challenges. Social inclusion is about supporting trans people to actively and meaningfully participate in decisions about their lives and their communities. As the former Council of Europe Commissioner for Human Rights, Thomas Hammarberg, recommended in 2009, countries must "involve and consult transgender persons and their organisations when developing and implementing policy and legal measures which concern them."²¹²

ACTION

- ▶ Build capacity on trans human rights within UN offices and with trans groups in order to fulfil the United Nation's primary mandate on human rights.
- ▶ Inform UNDP's work on HIV, health, democratic governance and sustainable development by engaging on issues of trans health and human rights. For example:
 - Influence policy and institutional reforms that increase access to social protection schemes, targeting the poor and other at-risk groups, including national development plans to address poverty and inequality.
 - Support proposals for anti-discrimination legal reform that address marginalized minorities, and policy frameworks to prevent and respond to sexual and gender-based violence.
- ▶ Conduct sensitivity training for staff on gender identity issues, ideally developed in partnership with local trans communities. Include issues covered in this paper in in-reach training on key populations and HIV for UN staff.
- ▶ Mainstream trans human rights issues to improve public awareness, and increase trans people's ability to realize those rights.
- ▶ Hold trans-specific consultations to build internal awareness of current legal and policy barriers, identify priorities within local communities, and document human rights violations.
- ▶ Facilitate dialogue between trans groups and government agencies (including around processes such as the Universal Periodic Review and Treaty Body reporting).

212 Hammarberg, T. (2009) Recommendation 8.

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SOME REGIONAL NGO WEBSITES

Transitioning Africa: www.transitioningafrica.org/

RedLacTrans (Red Latinoamericano y del Caribe de Personas Trans / Latin-American and Caribbean Network of Trans Persons): <http://redlac-trans.org.ar>

Transgender Philippines: www.philippine-transgender-movement.com/

Transgender Asia Research Centre: <http://transgenderasia.org>

Pacific Sexual Diversity Network: <http://psdnetwork.org/>

Trans Coalition across post-Soviet states: Contact: trans.eeca@gmail.com

Transgender Europe: <http://tgeu.org/>

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For more information: <http://www.undp.org/content/undp/en/home/ourwork/hiv-aids/overview.html>

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