



COMPARATIVE ANALYSIS OF GENDER RECOGNITION LAWS

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COMPARATIVE ANALYSIS OF
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RECOGNITION LAWS

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List of Acronyms and Abbreviations

APA	American Psychological Association
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CENESEX	National Center for Sex Education (in Cuba)
DSM	Diagnostic and Statistical Manual of Mental Disorders
IACHR	Inter-American Commission on Human Rights
ICD	International Classification of Diseases and Related Health Problems
LGBTIQ+	Lesbian, gay, bisexual, transgender, intersex, queer and other diverse identities
OHCHR	Office of the High Commissioner for Human Rights
SOC	Standards of Care
UN	United Nations
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
UNDP	United Nations Development Programme
WHO	World Health Organization
WPATH	World Professional Association for Transgender Health

Terminology

Gender affirming health services refers to various health services that can support part of the process of changing one's gender presentation to be more in line with one's gender identity when desired by the individual. They include, for example, access to counselling support, hormone therapy, voice and communication therapy, hair removal, and a range of surgeries.¹

Gender diverse refers to persons whose gender identity, including their gender expression, is different from what is perceived as being the gender norm in a particular context at a particular point in time.²

Gender dysphoria refers to discomfort or distress that is caused by a discrepancy between a person's gender identity and that person's sex assigned at birth (and the associated gender role and/or primary and secondary sex characteristics). Only some gender-nonconforming people experience gender dysphoria at some point in their lives.³

Gender expression refers to each person's external manifestation of gender, which may or may not correspond to culturally normative expectations of masculine or feminine appearance and behaviour. Gender expression is not necessarily an accurate reflection of gender identity.⁴

Gender identity refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned

at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical, or other means) and other gender expressions, including dress, speech and mannerisms.⁵

Gender incongruence is used in ICD-11 to refer to a condition characterised by a marked and persistent incongruence between an individual's experienced gender and the assigned sex.

Intersex is an umbrella term used to describe a wide range of innate bodily variations in sex characteristics, including sexual anatomy, reproductive organs, hormonal patterns, and/or chromosome patterns, that do not fit typical definitions for male or female bodies.⁶ There are more than 40 intersex variations and experts estimate that between 0.5 and 1.7 per cent of the world's population is born with intersex traits. An intersex person may identify with any gender identity and any sexual orientation.⁷

Legal gender recognition refers to the official recognition of a person's gender identity, including gender markers and names in public registries and other documents.⁸

Pathologisation refers to the processes whereby gender variance is assumed to be caused by mental illness.⁹ Pathologisation can take place through

1 UNHCR (2021); UNDP & APTN (2017).

2 A/73/152 (2018), para. 5

3 WPATH (2012).

4 UNHCR (2021).

5 The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity. (2006). P.6. Available at: http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf

6 OHCHR (2019).

7 UNHCR (2021).

8 International Commission of Jurists (2020); UNHCR (2021).

9 UNHCR (2021).

psycho-medical, legal, and cultural practices that identify a feature, an individual, or a population as intrinsically disordered.¹⁰

Real life experience refers to a period during which a transgender person is required to live full-time in their self-determined gender role with the engagement of a mental health professional. While real life experience used to be part of the eligibility criteria to access gender affirming hormone therapy or surgery under the WPATH Standards of Care (version 6), it has been removed in the current version 7.¹¹

Sex assigned at birth refers to the sex assigned to a person at birth, typically based on the infant's external anatomy.¹²

Sex characteristics refers to each person's physical features relating to sex, including chromosomes, gonads, sex hormones, genitals and secondary physical features emerging from puberty.¹³

Transition refers to the process of changing one's gender presentation to be more in line with one's gender identity. Transition typically occurs over a long period of time and includes some or all of the following personal, medical, and legal steps: telling one's family, friends and co-workers; using a different name, pronoun and/or title; dressing differently; changing one's name and/or sex on legal documents; and possibly undergoing surgical or hormone therapy or another type of treatment. The steps involved in transition vary from person to person.¹⁴

10 Kara (2017); Castro-Peraza et al. (2019).

11 Bockting (2008).

12 UNHCR (2021).

13 Ibid.

14 Ibid.

Trans/transgender refers to persons who identify with a different gender to the one assigned at birth.¹⁵ A transgender person may identify as a man, woman, transman, transwoman, as a non-binary person, and with other terms.¹⁶

Transphobia refers to prejudice directed at trans people because of their actual or perceived gender identity or expression. It can also have an impact on non-trans people who do not fit societal expectations for males or females.¹⁷

Transsexual is an adjective that has been often applied by the medical profession to describe individuals who seek to change or who have changed their primary and/or secondary sex characteristics through gender affirming medical interventions.¹⁸ Transsexualism is an outdated and pathologising term used in previous versions of ICD (9 and 10) which was associated with gender identity disorders.

15 A/73/152 (2018), para. 5.

16 United Nations Free & Equal (2017), factsheet on transgender. Available at: <https://www.unfe.org/learn-more/>

17 UNDP & Health Policy Project, Asia Pacific Transgender Network (2015).

18 WPATH (2012).

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CHAPTER 1

Introduction

1.1 Scope of the paper

This paper is commissioned by the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) and supplements the UN Recommendations on Viet Nam's Draft Gender Affirmation Law¹⁹ by providing a comparative legal analysis of four selected countries—Argentina, Norway, Pakistan, and Cuba. In Viet Nam, the Civil Code 2015 introduced a new provision (Article 37) for legal gender recognition,²⁰ although its implementation has been pending due to the lack of legislation which stipulates the process of legal gender recognition. In this context, the Ministry of Health has been leading the drafting process of the Gender Affirmation Law which will primarily impact transgender persons, gender diverse persons and persons with intersex characteristics in Viet Nam.

The purpose of the comparative analysis is to provide concrete examples of legal gender recognition processes adopted in different country contexts and to discuss them in light of relevant international standards on human rights. Ultimately, this paper is aimed at informing the development process of Viet Nam's Gender Affirmation Law, led by the Ministry of Health. In the following, Viet Nam's Gender Affirmation Law is referred to as the draft law, and a copy of the specific version analysed in this paper is included in the Appendix.

The contents of this paper are further enriched by information provided by other stakeholders in Viet Nam, such as the analysis of gender recognition laws by civil society organizations, It's T Time and iSEE, which captures regional and international trends.²¹

19 Available at: <https://vietnam.un.org/en/26018-uns-recommendations-viet-nams-draft-gender-affirmation-law>

20 Civil Code (2015), No. 91/2015/QH13. Article 37 Gender transformation: "Gender transformation is carried out in accordance with law. An individual whose gender has been transformed has the right and obligation to register civil status changes in accordance with the law on civil status; and has personal rights suitable to the transformed gender pursuant to provisions of this Code and other relevant laws." (Unofficial translation adopted from https://www.economica.vn/Content/files/LAW%20%26%20REG/91_2015_QH13%20Civil%20Code.pdf)

21 PLEASE ADD THE LINK HERE.

1.2 Methodology

The comparative legal analysis was conducted through a desk review. Sources of data include UN documents, government reports and websites, publications and reporting by international and national non-governmental organizations including transgender rights organizations, journal articles, books by academic scholars, and media coverage.

The decision to focus on the four selected countries was made in consultation with UN agencies, civil society organisations and transgender rights activists in Viet Nam. Several factors were taken into consideration for the selection, such as inclusion of best practices, countries with experience of repealing abusive requirements for gender recognition, countries sharing similar socio-economic and political backgrounds to Viet Nam, and experience in the provision of public gender affirming healthcare.

The draft version of the paper was presented at a technical consultation held on 4 November 2021 online, which was attended by the members of the Legal Drafting Committee from the Ministry of Health, transgender activists and civil society organizations in Viet Nam, diplomats from Argentina and UN agencies. Feedback received during and after the technical consultation, including the written input by the Ministry of Women, Gender and Diversities of Argentina, has been incorporated into this final version.

1.3 Use of terms

A transgender or trans person may identify as a man, woman, transman, transwoman, as a gender diverse or non-binary person, and with other terms such as hijra or third gender. In this paper, the term transgender is used to refer to any person who has a gender identity that is different from their sex assigned at birth. In some cases, other terms that are more dominantly used in specific country contexts—such as hijra in Pakistan and transsexual in Cuba—are also used together with an

explanation of the terms when the country contexts are introduced in Chapter 3.

1.4 Limitations

This paper has been written by analysing accessible information online with a primary focus on sources written in English. In some cases, Google Translate was used to translate websites and materials from another language, including documents written in Vietnamese. These factors could influence the accuracy of the information presented in this paper. At the same time, documentation concerning the situation of transgender persons in general is limited across different country contexts.

While the relevance of comparable socio-economic, political, and cultural circumstances to Viet Nam was considered for the selection of the four countries, fulfilling this was a great challenge as not all countries have a clear procedure for legal gender recognition. This was particularly the case in Southeast Asia.

1.5 Outline

In the following, Chapter 2 briefly introduces the developments in international human rights standards on legal gender recognition, including the progress on de-pathologisation of gender diverse identities which has been closely related to legal gender recognition procedures. In Chapter 3, an overview of the four countries is presented with some context around the development of the legal framework on gender recognition, its main features and status of implementation. Chapter 4 presents the main findings of the comparative analysis grouped by medical requirements, marital status, and minimum age. Finally, Chapter 5 offers recommendations to Viet Nam's gender affirmation law.



CHAPTER 2

Developments in International Human Rights Standards on Legal Gender Recognition

2.1 De-pathologisation of gender diverse Identities

Until recently, conditions related to people who identify as transgender and gender diverse has been mis-conceptualised as a form of mental or behavioural disorder under globally used medical guidance. The 11th revision of the International Classification of Diseases and Related Health Problems (ICD) published by the World Health Organization in 2019 has clarified that presenting diverse gender identities is not a form of mental health disorder.²² In fact, not being able to live according to one's self-identified gender is likely to be a source of distress, exacerbating other forms of physical and mental health.²³ The misperception of some forms of gender identity as pathologies has historically been, and continues to be, one of the root causes of human rights violations against persons who identify as transgender or gender diverse.²⁴

Between 2008 and 2020, there were 3664 reported killings of transgender and gender diverse persons across 75 countries and territories worldwide.²⁵ This is not an accurate figure of all transphobic murders however, as data is not systematically collected in most countries. Moreover, incidents of transphobic violence are grossly underreported due to discrimination against transgender and gender diverse persons. Therefore, the actual number of transphobic murders is certainly much higher.

Regional and international human rights mechanisms have drawn a direct link between discriminatory medical classifications and rights violations against transgender and gender diverse persons, including violence, stigma, criminalisation, and discrimination.²⁶ Rights violations can take

place in the healthcare setting when transgender persons practice their right to recognition before the law. Involuntary psychiatric evaluations, unwanted surgeries, sterilisation, or other coercive medical procedures that take place as part of a legal gender recognition process—often justified by discriminatory medical classifications—violate the rights to physical integrity and self-determination of individuals and amount to ill-treatment or torture.²⁷

In the past decade, there have been major developments to de-pathologise the medical classifications used in globally-influential guidance documents. As the medical conceptualization of transgender identities has been closely associated in the way procedural requirements for legal gender recognition was set up in many countries around the world, a brief overview of the progress for de-pathologisation is provided in the following.

In 2012, the World Professional Association for Transgender Health (WPATH) issued Version 7 of the Standards of Care (SOC) for the Health of Transsexual, Transgender, and Gender-Nonconforming People. It reflected the statement released by WPATH earlier in 2010 which called for de-psychopathologisation of gender nonconformity worldwide. The SOC 7 clarifies that there is no appropriate level of medical intervention for transgender people, as recognition of various gender identity and expressions may not necessitate psychological, hormonal, or surgical treatments.²⁸ As the American Psychiatric Association (APA) notes, people who are transgender may pursue multiple domains of gender affirmation, including social affirmation (e.g. changing one's name and pronouns), legal affirmation (e.g. changing gender markers on one's government-issued documents), medical affirmation (e.g. pubertal suppression or gender-

22 See <https://icd.who.int/en>

23 WHO. (2015). Sexual health, human rights and the law. Available at: https://www.who.int/reproductivehealth/publications/sexual_health/sexual-health-human-rights-law/en/

24 See <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24663&LangID=E>

25 See <https://transrespect.org/en/trans-murder-monitoring/tmm-resources/>

26 A/HRC/35/21 (2017).

27 A/73/152 (2018), paras. 28-29.

28 Dunne (2018); see also Norwegian Directorate of Health, (2015), pp. 36-37. While progress towards de-pathologisation was made in SOC-7, it also received criticism from activist networks for the continued use of an assessment model – i.e. requirement of living in a gender role that is congruent with one's gender identity for 12 continuous months.

affirming hormone therapy²⁹), and/or surgical affirmation (e.g. vaginoplasty, facial feminization surgery, breast augmentation³⁰, masculine chest reconstruction³¹, etc.). Making these decisions is a highly personal and individual matter and not all transgender persons desire gender affirmation in all domains listed above.³²

In 2013, the notion of “gender identity disorder” was removed from the Diagnostic and Statistical Manual of Mental Disorders (DSM) by the APA. While the DSM is primarily issued within the country context of the United States, the manual is also used in many other parts of the world. In the fifth edition, the DSM-5, a new chapter on “gender dysphoria” was introduced instead as a diagnostic classification. While the continued inclusion of trans-related categories in a manual for mental disorders was criticised by advocates,³³ the change in DSM-5 is explained by the APA that the diagnosis on gender dysphoria is a gender identity-related distress that some transgender people experience (and for which they may seek psychiatric, medical, and surgical treatments) rather than on transgender individuals or identities themselves. Therefore, the DSM-5 clarifies that gender non-conformity is not in itself a mental disorder. Furthermore, gender is no longer defined in binary terms under the DSM-5.³⁴

Under the ICD, gender identity disorders have been categorised as mental and behavioural disorders until the 11th revision was approved by the World Health Assembly in 2019. While ICD-11 will come into effect on 1 January 2022, it is already being used in national contexts as a reference for policy making (e.g. during the development of the Norwegian gender recognition law as discussed in

Chapter 3). In the ICD-11, the category of “gender incongruence” was introduced under the chapter of conditions related to sexual health, and is defined as below:

“Gender incongruence is characterized by a marked and persistent incongruence between an individual’s experienced gender and the assigned sex. Gender variant behaviour and preferences alone are not a basis for assigning the diagnoses in this group.”³⁵

With this, the category of “transsexualism” which was defined in binary terms (i.e. a desire to live and be accepted as a member of the opposite sex) was removed from the ICD-11. This was a significant development in the effort to de-pathologise transgender identities as the ICD is used globally as a reference for various purposes including legal gender recognition, access to specific healthcare such as gender affirming procedures, and other healthcare coverage.³⁶ It is important to note, however, that the use of ‘gender incongruence’ is considered to be a temporal and imperfect solution by transgender and gender diverse advocates who took part in the ICD reform process.³⁷ There is an ongoing debate among advocates and medical professionals about how best to avoid pathologisation while ensuring access to gender transition-related health care which, in some cases, rely on the diagnostic classifications provided under the ICD or DSM.³⁸

Another area of controversy is related to diagnostic classification of gender diversity in childhood. Due to children’s particular vulnerability to pathologisation, institutional violence, and non-consensual treatments, advocates have argued for the complete removal of the diagnostic categories for pre-

29 Gender affirming hormone therapy is also referred to as feminizing/masculinizing hormone therapy, cross-sex hormone therapy, hormone replacement therapy, hormone treatment, etc.

30 Also referred to as breast surgery.

31 Also referred to as chest surgery.

32 See <https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria>

33 Davy et al. (2018).

34 See <https://www.psychiatry.org/psychiatrists/cultural-competency/education/transgender-and-gender-nonconforming-patients/gender-dysphoria-diagnosis>

35 Description of “gender incongruence” provided in ICD-11.

36 See <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24663&LangID=E>

37 See <https://gate.ngo/icd-11-trans-process/>

38 Davy et al. (2018).

pubertal children.³⁹ Additional arguments in favour of removal highlight the lack of clinical utility and the conceptualization of gender diversity in childhood as a problem requiring medical intervention.⁴⁰ Currently, categories of “gender dysphoria” in children and “gender incongruence” in childhood remain respectively in the DSM-5 and the ICD-11. This unresolved issue is being considered by the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity in light of the rights of the child to gender identity and emerging autonomy.⁴¹

In parallel to the progress on de-pathologizing trans identities, specific challenges faced by people born with intersex characteristics has been gaining international recognition. The first UN Expert Meeting on ending human rights violations against intersex persons was held in 2015 and resulted in a call on governments to “prohibit forced and coercive surgeries and other medically unnecessary treatments on intersex children without their consent.”⁴² The call was made in response to the reality where intersex infants, children and adolescents around the world are subjected to medically unnecessary surgeries, hormonal treatment and other procedures in an attempt to forcibly modify their appearance or physical development to be in line with societal expectations about female and male bodies.⁴³ Such interventions, which are often irreversible, can cause harm and profound negative impacts which may amount to torture or ill-treatment when applied involuntarily.⁴⁴

39 Castro-Peraza et al. (2019).

40 Schwend (2020).

41 A/73/152 (2018), para. 16. See A/76/152 (2021) for recent developments.

42 OHCHR (2016). Public statement of UN and regional human rights experts, “End Violence and Harmful Medical Practices on Intersex Children and Adults, UN and Regional Experts Urge”. Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20739&LangID=E>

43 OHCHR. 2019. Background Note on Human Rights Violations against Intersex People. Available at: <https://www.ohchr.org/EN/Issues/LGBTI/Pages/IntersexPeople.aspx>

44 Special Rapporteur on the rights of persons with disabilities, “Rights of Persons with Disabilities” (A/73/161, 16 July 2018), para. 41.

2.2 The Right to Recognition of Gender Identity

The legal basis for the right to effective recognition of one’s gender identity is derived from the right to equal recognition before the law established in Article 6 of the Universal Declaration of Human Rights, Article 16 of the International Covenant on Civil and Political Rights, Article 15 of the Convention on the Elimination of All Forms of Discrimination Against Women, Article 8 of the Convention on the Rights of the Child and other universal human rights treaties and regional human rights instruments.⁴⁵

The Yogyakarta Principles Plus 10, based on the developments in international human rights law,⁴⁶ explicitly stipulates for the right to legal recognition (Principle 31):

“Everyone has the right to legal recognition without reference to, or requiring assignment or disclosure of, sex, gender, sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to obtain identity documents, including birth certificates, regardless of sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to change gendered information in such documents while gendered information is included in them.”

Despite not being legally binding, the Yogyakarta Principles have been cited by various international and regional human rights bodies, State legislatures and courts in relation to the protection of human

45 See A/73/152 (2018), para. 20. As of November 2021, Viet Nam has ratified the International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Discrimination against Women; International Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Rights of the Child; Convention on the Rights of Persons with Disabilities; and, Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.

46 The legal basis for State recognition of gender identity is further elaborated in A/73/152 (2018).

rights of transgender and gender diverse persons.⁴⁷ It also explicitly recognises that a person's gender identity is not, in and of itself, a medical condition that requires treatment, curing or suppression.⁴⁸

Gender identity is one of the most intimate aspects of a person's life, and it is the individual person, not the State, who has "the legitimate authority to establish the exteriorization of their persona according to their most intimate convictions".⁴⁹ Its recognition cannot be restricted for concerns about the possibility of risk of abuse of a legal gender recognition process.⁵⁰ The right to self-determine one's gender is a fundamental part of a person's freedom and a cornerstone of the person's identity.⁵¹

Subsequently, the State has an obligation to provide access to gender recognition in a manner consistent with the rights to freedom from discrimination, equal protection of the law, privacy, identity, and freedom of expression.⁵² This means to refrain from adopting measures that create obstacles to legal recognition or that make it impossible in practice. In this light, the legal recognition process should:

- a. be based on self-determination by the applicant;
- b. be a simple administrative process;
- c. not require applicants to fulfil abusive requirements;
- d. acknowledge and recognise gender diverse identities; and,
- e. ensure that minors have access to recognition of their gender identity.⁵³

These five principles are further discussed in the following.

47 Cannoot (2019).

48 Yogyakarta Principle 18.

49 Inter-American Court of Human Rights. (2017). Advisory opinion OC-24/17, para. 91. See also A/73/152 (2018), para. 19; A/76/152 (2021).

50 A/HRC/47/27 (2021), para. 45.

51 A/HRC/47/27 Para. 36. See also A/76/152 (2021).

52 A/73/152 (2018), para. 21.

53 A/73/152 (2018), para. 39

a) Based on self-determination

The centrality of self-determination in the right to legal gender recognition has already been mentioned in the leading text. Importantly, this right cannot be restricted other than on grounds imposed by the rights of other persons.⁵⁴ Limiting the right to legal gender recognition for reasons of maintaining national cohesion, culture, and tradition is a form of repression against transgender and gender diverse persons.⁵⁵ In anticipation of fraudulent or abusive use of gender recognition procedures, diagnosis or assessment requirements have been adopted in a number of jurisdictions to ensure that only 'real' transgender persons utilise the gender recognition process. The rationale for such restrictions is based on unfounded concerns that are rooted in pathology, including the incorrect consideration that transgender persons could misjudge their own gender identity due to 'mental illness.' Any procedure intended to verify the gender identity of an applicant makes actors other than the applicant, such as medical professionals, act as gatekeepers and directly contradicts the principle of self-determination.⁵⁶

b) Simple administrative process

Judicial procedures may create significant additional barriers to accessing legal recognition of gender identity, unnecessarily prolonging the process and creating additional financial burdens, noting that they may constitute disproportionate and unnecessary intrusion into the exercise of individual rights, particularly where a judge is asked to determine the validity of a person's gender identity, which is a deeply personal and intimate matter.⁵⁷

c) No abusive requirements

Many States that do permit the modification of gender markers on identity documents

54 A/73/152 (2018), para. 19.

55 A/76/152 (2021), para. 30.

56 Dunne (2015).

57 A/73/152 (2018), para. 40.

impose abusive requirements. Examples of such requirements are:

- forced, coerced or otherwise involuntary sterilization;
- medical procedures related to transition, including surgeries and hormonal therapies;
- undergoing medical diagnosis, psychological appraisals or other medical procedures or treatment;
- third-party consent for adults;
- restrictions on marital status; and,
- age-of-offspring restrictions.⁵⁸

The requirements listed above discriminate against transgender and gender diverse persons and violate their rights to physical integrity, bodily autonomy, self-determination and family life.⁵⁹ Moreover, forced, coercive and otherwise involuntary treatments and procedures can lead to severe and life-long physical and mental pain and suffering and can violate the right to be free from torture and other cruel, inhuman or degrading treatment or punishment as articulated in the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.⁶⁰ Therefore, a number of countries have overturned abusive requirements in recent years. Furthermore, the Swedish Parliament made a landmark decision in 2018 to pay 225,000 Swedish Krona (equivalent to approx. 25,000 US Dollars) in compensation to transgender people who were coercively sterilised for legal gender recognition between 1972 and 2013.⁶¹ More recently, the Netherlands has publicly apologised to the Dutch transgender communities for imposing sterilization as part of their legal gender recognition process between 1985 and 2014 and decided to pay financial compensation up to 5,000 Euro.⁶²

58 A/73/152 (2018), para. 28.

59 A/HRC/31/57 (2016), paras. 49 and 31.

60 See, for example, CAT/C/CHN-HKG/CO/5 (2016), para. 29(a).

61 See A/73/152 (2018), para. 59.

62 See <https://tgeu.org/dutch-government-apologises-for-forced-sterilisation/>

d) Recognise gender diverse identities

The principles of freedom and autonomy directly contradict the idea that a person is born to play a certain role in society.⁶³ Today, States around the world are increasingly expanding male/female binary sex classifications to recognise non-binary identities. In fact, a quarter of the world's population lives in countries that recognise gender identities other than "man" or "woman" in law and in cultural traditions.⁶⁴ UN treaty bodies have called on States to educate and train medical and psychological professionals on the range of sexual and related biological and physical diversity, particularly in light of protecting the human rights of intersex people.⁶⁵

e) Recognise children's gender identity

States should take the best interests of the child as a primary consideration and respect the child's right to express views in accordance with the age and maturity of the child, in line with the Convention on the Rights of the Child.⁶⁶ Under the Convention, a child is defined as a person below the age of 18, and any safeguards for minors should not be excessive or discriminatory in relation to other safeguards that give recognition to the autonomy and decisional power of children of a certain age in other areas.⁶⁷ In practice, however, many States assume that children are not able to consent to gender recognition procedures and so they are excluded from gender recognition.⁶⁸ It is important to take note of the evolving scientific evidence that confirms children's ability to experience and

63 A/73/152 (2018), para. 21.

64 Those countries include Australia, Austria, Bangladesh, Canada, India, Malta, Nepal, New Zealand, and Pakistan. See Castro-Peraza et al. (2019); A/73/152 (2018), para. 3.

65 OHCHR. (2019). Background Note on Human Rights Violations against Intersex People. Available at: <https://www.ohchr.org/EN/Issues/LGBTI/Pages/IntersexPeople.aspx>

66 Articles. 3 (1) and 12; and Committee on the Rights of the Child, general comments No. 12 (2009) on the right of the child to be heard and No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration. The Convention on the Rights of the Child was ratified by Viet Nam in 1990.

67 A/73/152 (2018), para. 35. See also A/76/152 (2021), para. 57

68 A/73/152 (2018), para. 33.

externally express a stable gender identity from a very young age. Existing medical data suggests that many children form a gender identity as early as two- to three-years old, and they are able to communicate their gender identity by the age of four or five.⁶⁹ The Committee on the Rights of the Child has stressed that in determining best interests, “the child’s views should be taken into account, consistent with their evolving capacities and taking into consideration the child’s characteristics.”⁷⁰

69 Dunne (2017), pp. 304-305.

70 The Committee on the Rights of the Child. (2016). General Comment 20 (CRC/C/GC/20).



CHAPTER 3

Overview of Countries in Focus



This chapter provides information about the four selected countries—Argentina, Norway, Pakistan, and Cuba—that are analysed together in Chapter 4 in relation to the specific requirements for legal gender recognition. The following sections are aimed at contextualising the national legal frameworks for gender recognition in regards to how they were developed, what they feature, and their state of implementation. At the same time, the dimension of access to gender affirming

health services is also discussed in different country contexts. The table below provides an overview of the four countries with focus on the procedural requirements which will be addressed under Chapter 4. The discussion in this chapter primarily concerns adults as all four countries stipulate separate requirements for gender recognition of minors. The issue concerning children's legal gender recognition is addressed in Chapter 4 under 4.3 Minimum Age.

	Argentina	Norway	Pakistan	Cuba
Legislation year	2012	2016	2018	2008
Diagnosis	Not required	Not required	Not required	Required
Hormone therapy	Not required	Not required	Not required	Required
Surgery	Not required	Not required	Not required	Gender-affirming surgeries
Marital status	Not required	Not required	Not specified	Not required
Min. age	Under 18 require consent of legal representatives	6-16 require parental consent	18	18
Registration	Civil	Civil	Civil	Judicial
Medical costs	Covered by the State	Covered when diagnosed	Covered by the State	Covered by the State

3.1 Argentina

3.1.1 Country context and development of the legal framework for gender recognition

In Argentina, transgender persons are especially vulnerable and invisible in the society due to heteropatriarchal social norms, and their background is steeped in socio-economic deprivations and poverty which might press them into clandestine street life and occupations.⁷¹ Their precarious situation is exemplified by their life expectancy which was as low as 32-35 years⁷² compared to 75 years⁷³ among the general population before the Gender Identity Law was enacted. Today, it is estimated that the life

expectancy of transgender people in Argentina is 40 years.⁷⁴ Transphobia and homophobia compound the situation for a range of groups and persons, fuelling attacks on gay, lesbian, bisexual, transgender, and other gender diverse persons in various areas of the country.

In response to the above situation, the Ministry of Women, Gender and Diversities was created with the Undersecretariat for Diversity Policies, which is responsible for ensuring the rights of transgender and gender diverse persons among others.⁷⁵ While Argentina has ratified all core international human rights treaties, no domestic legislation explicitly prohibits discrimination on grounds of sexual orientation and/or gender identity.⁷⁶

71 See <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21343&LangID=E>

72 Trinity FLAC (2015).

73 See <https://data.worldbank.org/indicator/SP.DYN.LE00.IN?locations=AR>

74 According to data from the Undersecretariat of Diversity Policies.

75 According to the communication by the Ministry of Women, Gender and Diversities of Argentina, dated 18 November 2021.

76 See <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21343&LangID=E>

Prior to 2012, there was no legal framework for gender recognition in Argentina, although court decisions provided grounds for changing one's gender marker and name in identity documents in some cases. The development of the Gender Identity Law 2012 was largely led by civil society movements including direct participation of transgender people in congressional debates on the issue.⁷⁷ One of the motivations to adopt the new law was aimed at addressing the deeply rooted marginalization of transgender people through legislative change. When discussing self-determination as a basis for legal gender recognition, some commentators were concerned that not requiring medical statements could give rise to abuse of the law.⁷⁸ Nevertheless, the law was adopted by a large majority at the National Congress.⁷⁹ It is important to note that there is no evidence that supports the claim that simplifying legal gender recognition procedures leads to greater levels of fraud.⁸⁰

3.1.2 Key features of the Gender Identity Law 2012

Argentina's Gender Identity Law 2012 (Act No. 26.743)⁸¹ is a federal law that establishes a simple administrative process⁸² based on self-determination for the modification of first name, sex marker, and image on official documents through the civil registry, without any abusive requirements. It is the first national legislation for gender recognition which is based on a self-determination model, and it is therefore considered to be the best international practice to date.⁸³ The law also guarantees access to hormone treatment and gender-affirming surgical

interventions based on free and informed consent. Furthermore, the law establishes the State's obligation to cover gender-affirming health care (Article 11).

The law explicitly provides for an individual right to gender identity, which is defined in line with the Yogyakarta principles.⁸⁴

Article 1 - Right to gender identity.

All persons have the right,

- a) To the recognition of their gender identity;
- b) To the free development of their person according to their gender identity;
- c) To be treated according to their gender identity and, particularly, to be identified in that way in the documents proving their identity in terms of the first name/s, image and sex recorded there.

Article 2 - Definition.

Gender identity is understood as the internal and individual way in which gender is perceived by persons, that can correspond or not to the gender assigned at birth, including the personal experience of the body. This can involve modifying bodily appearance or functions through pharmacological, surgical or other means, provided it is freely chosen. It also includes other expressions of gender such as dress, ways of speaking and gestures.⁸⁵

Under Articles 6 and 9, the law provides for safeguards in terms of protection of the right to privacy, with restrictions on access to the original birth registration and the full confidentiality of the sex and name changes in the records.⁸⁶

There is no restriction on marital status of transgender persons under the Gender Identity Law 2012.

77 Rappole (2015).

78 Trinity FLAC (2015).

79 According to the communication by the Ministry of Women, Gender and Diversities of Argentina, dated 18 November 2021.

80 Open Society Foundations (2017).

81 See <https://www.boletinoficial.gob.ar/detalleAviso/primera/70106/20120524?busqueda=1>

82 Judicial authorization is required when a person asks to change back to their previous gender identity. See Aristegui et al. (2017).

83 A/73/152 (2018), para. 53.

84 Arrubia (2019).

85 Translation of the law provided in TGEU (2016).

86 A/73/152 (2018), para. 56.

3.1.3 Implementation

Within a year's time from the enactment of the Gender Identity Law, 3,000 new ID documents were issued,⁸⁷ and by November 2021, 10,817 people had requested to change their gender markers on their ID documents.⁸⁸ There were no reported cases of the law being used to commit fraud or perpetrate an assault.⁸⁹ Besides, Article 7 of the Gender Identity Law specifies that the legal recognition of preferred gender does not amend or terminate existing rights and duties owed to or by the individual. The serial number on a person's national identity card, rather than the specific name and gender markers, assumes priority for the purposes of identifying the individual.⁹⁰

In the healthcare setting, a cultural shift has been witnessed after the passage of the Gender Identity Law which brought the needs and the interests of transgender people to the forefront of care. It was a shift away from involving mental health professionals for the sake of liability management for doctors performing genital surgery and a diversion from standardised pattern of medical intervention which followed the steps of psychotherapy, hormone administration and genital surgery.⁹¹

In a national survey among 498 transgender people (452 transgender women and 46 transgender men) conducted one year after the Gender Identity Law was enacted, the findings pointed to a significant increase in consultations received by those who changed their IDs in line with their gender identity compared to those who did not. While 41.2% of the transgender women respondents and 58.2% of transgender men respondents avoided health care consultations out of fear of discrimination before

May 2012, the percentages reduced to 5.3% and 12.1% respectively a year after.⁹²

In another qualitative study among 20 transgender women which was also conducted one year after the Gender Identity Law was enacted, findings pointed to a positive impact of the law, including facilitating access to basic services and resources as well as reducing stigma and discrimination against transgender people.⁹³ Some of the limitations in terms of implementing the Gender Identity Law observed in the same study point to large geographical differences between the metropolitan area of Buenos Aires and the interior provinces in the ways public servants handled the administrative procedure for gender recognition. In addition, the lack of trained professionals to perform gender-affirmative procedures such as surgeries and hormonal treatment limited access to comprehensive healthcare for transgender people. Gaps in implementation of the law at the provincial level were also noted with concern by the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.⁹⁴

Nevertheless, positive changes after the enactment of the Gender Identity Law were observed in the overall decrease in violence and discrimination against transgender persons in Argentina.⁹⁵ It also underscored the importance of legal gender recognition for exercising other rights, including the rights to healthcare, education, work and housing.⁹⁶

Just recently, Decree 476/2021 which complies with the Gender Identity Law was adopted in July 2021, enabling people to choose a third gender

87 TGEU (2016).

88 Data provided by the Undersecretariat for Diversity Policies in Argentina.

89 Dunne (2015). This information was confirmed during the presentation made by Embassy of the Argentine Republic in Vietnam on 14 October 2021.

90 Giosa et al. (2015).

91 Arrubia (2019).

92 Fundación Huésped (2014).

93 Aristegui et al. (2017).

94 End of Mission Statement by the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Mr. Vitit Muntarbhorn, of his visit to Argentina. (2017). <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21343&LangID=E>

95 IACHR (2018).

96 Fundación Huésped (2014).

category.⁹⁷ The new category 'X' denotes "non-binary, undetermined, unspecified, undefined, not informed, self-perceived, not recorded; or another meaning with which the person who does not feel included in the masculine/feminine binary could identify" (Article 4).⁹⁸ This brings Argentina's Gender Identity Law further in line with the international standards on human rights as discussed in Chapter 2. As of November 2021, 107 people have already opted for the gender marker 'X'.⁹⁹ In a communication by the Ministry of Women, Gender and Diversities of Argentina, it was emphasised that even with the addition of 'X', gender markers cannot precisely reflect an individual's self-determined gender identity which could fall on a broader spectrum of identities. Therefore, the recognition of a person's gender identity should not depend on their ability to rectify their gender markers on official documents.¹⁰⁰

3.2 Norway

3.2.1 Country context and development of the legal framework for gender recognition

Norway, a socialist welfare state, is globally renowned as embodying a progressive approach towards issues of inequality, in particular regarding gender and sexuality. The government committed to the Yogyakarta Principles in 2008.¹⁰¹ Nevertheless, there has been a lack of similar support for transgender people in practice, and there has been very little public knowledge concerning their situation. Therefore, much of the discussion leading to the adoption of the Law on Changing Legal Gender in 2016 was based on

regional and international experiences.

While legal gender recognition has been possible in Norway since 1979 pursuant to the Population Register Regulations, the psychiatric diagnosis of 'transsexualism', a real-life experience, hormone treatment, and removal of reproductive organs were all required in order to change one's gender marker.¹⁰² In 2014, the Equality and Anti-Discrimination Ombud concluded that the practice at the time was discriminatory and found it in violation of the Act (No. 58 of 2013) prohibiting discrimination based on sexual orientation, gender identity and gender expression.¹⁰³

In response to growing criticism of the requirements for legal gender recognition, the Ministry of Health and Care Services commissioned the Norwegian Directorate of Health in 2013 to set up an expert group to review and propose changes to the procedure for changing one's legal gender.¹⁰⁴ The expert group consisted of 18 members with a diverse range of backgrounds including: medical and legal practitioners, scholars, and transgender activists.¹⁰⁵ The group published a report with their findings and recommendations in 2015 which formed the basis for the gender recognition law proposed by the Ministry of Health and Care Services.

One of the findings of the group was that the requirements of medical interventions including sterilization as a condition for legal gender recognition violated key human rights, including the right to respect private and family life, prohibition of discrimination and prohibition against degrading and inhuman treatment under the European Convention on Human Rights. Subsequently, the expert group considered three different models for the proposed law which centred around reduction of the risk of unnecessary, intrusive, irreversible,

97 See <https://www.boletinoficial.gob.ar/detalleAviso/primera/247092/20210721>

98 Translation provided in <https://www.hrw.org/news/2021/07/22/argentina-recognizes-non-binary-identities>.

99 Data provided by the Undersecretariat for Diversity Policies in Argentina.

100 Communication by the Ministry of Women, Gender and Diversities of Argentina, dated 18 November 2021.

101 The Government's action plan for a better quality of life for lesbians, gays, bisexuals and transgender people 2009-2012 (Ministry of Children and Equality 2008). See also hartline (2019).

102 Sørli (2019).

103 Ministry of Health and Care Services, Prop. 74 L (2015-2016). <https://www.regjeringen.no/no/dokumenter/prop-74-l-20152016/id2479716/>

104 Ministry of Health and Care Services, Prop. 74 L (2015-2016); hartline (2019).

105 Norwegian Directorate of Health (2015).

costly and infringing measures to be taken as part of the legal recognition process:

1. the diagnostic model that requires a specific psychiatric diagnosis of applicants;
2. the assessment model that requires a psychological/medical professional assessment of applicants' desire and decision as well as the absence of health conditions that speaks against changing the legal gender; and
3. the declaration model which allows individuals who experience a mismatch between their own gender identity and their registered legal gender to request for changing their legal gender.

The final recommendation of the expert group called for the adoption of the declaration model.¹⁰⁶ In doing so, the group also considered whether a mandatory reflection period should be included from the time the request for a change of legal gender is submitted until it can be confirmed. Such a requirement is in place in Denmark, for example, and also considered in Viet Nam's policy impact assessment for the proposed law on gender affirmation. The majority of the expert group concluded that there should not be a reflection period mandated by law as changing one's legal gender in most cases will not be the result of a sudden impulse, but a well-considered and reflective decision, and therefore, such a requirement is patronizing and unnecessary. The group pointed out that the biggest external changes for transgender persons and their surroundings in most cases are changes in gender expression, use of first name and desired pronoun. These changes will usually take place before the person chooses to change their legal gender, and have a greater direct impact on social relationships, and the like, than the legal change of gender.¹⁰⁷

When proposing the law to Parliament, the Ministry

of Health and Care Services decided against the expert group's recommendation to explore a third alternative of legal gender, which was supported by Parliament.¹⁰⁸

3.2.2 Key features of the Law on Change of Legal Gender 2016

Like Argentina, Norway's Law on the Change of Legal Gender (Legislative Decision 71 (2015-2016)) establishes a gender recognition procedure based on self-determination of applicants utilizing a simple administrative process without any involvement of medical professionals or other third parties. The law explicitly provides for the right to change one's legal gender:

Article 2. Right to change legal gender

People who are residents of Norway and who experience that they belong to the other gender than the one the individual is registered with the population register have the right to change their legal gender. The Ministry may issue regulations stipulating that the Law shall apply to Norwegian citizens residing abroad.

Legal gender is defined in Article 1 as the gender registered with the Population Register. The entire law consists of 9 articles and specifically regulates the procedure for changing gender markers and not names which is already regulated by another law. As indicated by the term "other gender" used in Article 2, the law is based on a binary conception of gender, and it is not possible to choose a third gender category. While the law was proposed by the Ministry of Health and Care Services, it does not ensure a right to state-funded gender affirming healthcare.¹⁰⁹

There is no restriction on marital status of transgender persons under the Law on Change of Legal Gender 2016.

¹⁰⁶ Discussions concerning the diagnostic model and the assessment model are addressed in Chapter 4 under 4.1.2 Diagnosis and assessment.

¹⁰⁷ Norwegian Directorate of Health (2015).

¹⁰⁸ Monro & Van Der Ros (2018).

¹⁰⁹ Monro & van der Ros (2018); Sørli (2016).

3.2.3 Implementation

Within six months after the enactment of the law, 490 persons were granted a new legal gender¹¹⁰ as compared to around 30 annually before.¹¹¹ While the simplified procedure made it possible for significantly more people to change their legal gender, provision of gender affirming healthcare needed improvement in terms of access and quality in the following years after the law was adopted.¹¹² Since January 2020, being transgender was removed from the list of mental illnesses in the national clinical classification,¹¹³ and the Norwegian Directorate of Health published a national professional guideline for health care services for people with gender incongruence in the same year.¹¹⁴

Since the law came into effect, there have been several cases reported to the Equality and Anti-Discrimination Ombud and the Discrimination Tribunal concerning the issuance of diplomas and certificates or correction of historical information in accordance with the new gender, among other issues. In addition, the Police Directorate identified potential conflict with the Passport Act concerning the access to data about the gender change. Such issues, including the confidentiality of persons who changed their gender, were not addressed during the development of the law, and some argue that the law should give more clarity on its effect.¹¹⁵

3.3 Pakistan

3.3.1 Country context and development of the law

In Pakistan, there are a number of historical terms

for people who identify as transgender, such as khusra, murat, hijra, khwajasira, zenana, buggas, and khadra.¹¹⁶ The transgender community in Pakistan is commonly referred to as Hijra (or Khawaja Sira), although the term Hijra covers multiple identities and concepts (that are not necessarily transgender) – e.g. transgender women, eunuchs, intersex persons and people who identify as non-conforming or third gender.¹¹⁷ In 2009, in response to a constitutional petition, the Supreme Court made a landmark judgment recognizing the constitutional right of ‘eunuchs’¹¹⁸ to have national identity card as third gender.¹¹⁹

Despite diverse gender identities being an integral part of Pakistan’s history, transgender persons constitute one of the country’s most vulnerable and marginalised communities due to a multitude of inter-related socio-cultural, political, economic and legal hurdles.¹²⁰ It is reported that transgender persons are denied access to schools, hospitals, housing and their families do not recognise them as heirs, and they are often victims of physical and psychological violence.¹²¹ Between 2008 and 2012, for example, the country recorded the second-highest transphobic murder rate in Asia.¹²² Despite this concerning situation, there are no laws prohibiting discrimination on the basis of gender identity.¹²³

The development of the Transgender Persons (Protection of Rights) Act was largely influenced by the activism of Pakistan’s transgender communities, and the drafting of the legislation involved a diverse group of people including transgender activists, UN agencies, and human rights bodies among others.¹²⁴ It is important to

110 See <https://sykepleien.no/2017/01/490-har-endret-kjonn>

111 Norwegian Directorate of Health (2015).

112 hartline (2019).

113 OECD (2020).

114 See <https://www.helsedirektoratet.no/retningslinjer/kjonnsinkongruens>

115 See <https://juridika.no/innsikt/jussforskning-juridisk-kj%C3%B8nnskifte>

116 Awan (2019).

117 EASO (2015).

118 Eunuchs in Pakistan have been historically recognized in the society. During the Mughal empire rule, for example, they were assigned to safeguard the royal harem. See Ali & Ali (2019).

119 Ali & Ali (2019).

120 Ministry of Human Rights (n.d.).

121 EASO (2015).

122 Awan (2019).

123 UK Home Office (2019).

124 International Commission of Jurists (2020).

note that the first draft law was developed without consultation of transgender communities, and it imposed procedural requirements that included medical examinations. Subsequently, transgender communities and legal experts were consulted to revise the draft law and an amended version was submitted and adopted by the National Assembly in 2018.¹²⁵

3.3.2 Key features of the Transgender Persons (Protection of Rights) Act 2018

The Transgender Persons (Protection of Rights) Act 2018 is the first in Asia to embrace a legal gender recognition process based on self-determination. The act is closely aligned to what had been proposed by the transgender communities, including the hijra, transgender women who were not part of the hijra community, and transgender men who had been neglected in the past.¹²⁶

The right to recognition of identity is stipulated under Article 3:

Article 3. Recognition of identity of transgender person

(1) A transgender person shall have a right to be recognized as per his or her self-perceived gender identity, as such, in accordance with the provisions of this Act.

(2) A person recognized as transgender under sub-section (1) shall have a right to get himself or herself registered as per self-perceived gender identity with all government departments (...).¹²⁷

Although the language used in the article points to a binary conception of gender, "gender identity" is defined under Article 2(f) as, "a person's innermost

and individual sense of self as male, female or a blend of both or neither that can correspond or not to the sex assigned at birth". Furthermore, a "transgender person" could be "any person whose gender identity or gender expression differs from the social norms and cultural expectations based on the sex they were assigned at the time of their birth" (Article 2(1)(n)).

Article 2. Definitions

(1) In this Act, unless there is anything repugnant in the subject or context,--

(n) "transgender person" is a person who is--

(i) intersex (khusra) with mixture of male and female genital features or congenital ambiguities; or

(ii) eunuch assigned male at birth, but undergoes genital excision or castration; or

(iii) a transgender man, transgender woman, Khawaja Sira [the Urdu language equivalent of transgender] or any person whose gender identity or gender expression differs from the social norms and cultural expectations based on the sex they were assigned at the time of their birth.¹²⁸

With regards to the inclusion of intersex persons in the category of transgender people, the International Commission of Jurists cautions that it is erroneous and mischaracterizing as having intersex characteristics are distinct from a persons' gender identity. While intersex people are also in need of having their self-determined gender identity legally recognised, they face particular risks of being subjected to unnecessary and irreversible sex-determining surgeries at an early age. Therefore, the International Commission of Jurists calls for introducing specific legal protections for intersex people and resolving the conflation between transgender and intersex people in the Act.¹²⁹

Chapter III of the Act sets out prohibited acts

¹²⁵ Ali & Ali (2019).

¹²⁶ ILGA Asia. (2018). Statement in Response to the Transgender Persons (Protection of Rights) Act in Pakistan. <https://www.ilgaasia.org/news/2018/6/9/statement-in-response-to-the-transgender-persons-protection-of-rights-act-in-pakistan>

¹²⁷ English translation as shown in the Gazette of Pakistan, extra, May 24, 2018.

¹²⁸ Ibid.

¹²⁹ International Commission of Jurists (2020).

that discriminate against transgender persons in different settings such as in relation to education, employment, healthcare, housing and transportation (Article 4). Harassment against transgender persons is also explicitly prohibited “both within and outside the home, based on their sex, gender identity and gender expression” (Article 5).

Chapter IV sets out the obligations of the government in order to “secure full and effective participation of transgender persons and their inclusion in society” (Article 6). Nevertheless, some of the steps to be taken by the government raise concerns, such as the use of “rehabilitation” in Article 6(a) as it signals a negative connotation stemming from outdated disability discourse where transgender people are controlled by the State.¹³⁰

Another obligation of the government is to “establish separate prisons, jails, confinement cells, etc for the transgender persons involved in any kind of offence or offences” (Article 6(b)). According to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, segregating transgender persons in detention for their own “protection” constitutes an infringement on the prohibition of torture and ill-treatment.¹³¹ Instead, individuals’ gender identity and choice should be taken into account prior to placement and provide opportunities to appeal placement decisions.¹³²

Lastly, Chapter V recognises the fundamental rights of transgender people to inheritance (Article 7), education (Article 8), employment (Article 9), vote (Article 10), hold public office (Article 11), health (Article 12), assembly (Article 13), and to access public spaces (Article 14) and property (Article 15). Under the right to health, transgender persons are ensured “access to all necessary medical and psychological gender corrective treatment” (Article 12(c)), however the term “corrective” is

similarly pathologizing as in the use of the term “rehabilitation” in Article 6(a) as discussed above. There is no restriction on marital status of transgender persons under the Transgender Persons (Protection of Rights) Act 2018. In reality, however, marriage that involve a transgender person is perceived as a same-sex relationship which is criminalised in Pakistan. Therefore, the absence of restrictions on marital status does not mean transgender persons’ right to marriage is guaranteed.

3.3.3 Implementation

Although the act establishes the important principle of self-identification for legal gender recognition, it is unclear how this will be implemented particularly as separate provincial legislation is needed to enforce the law.¹³³ While the act provides that the government may, by notification, make rules to give effect to the purposes of the act (Article 20), the current lack of rules has impeded the implementation of the act in the years that have followed its enactment.¹³⁴ Nevertheless, according to the Ministry of Human Rights, the National Implementation Committee of the Transgender Act has been established to monitor implementation, and Rules have been developed after national consultations were held from October - December 2019. The Committee has developed Standard Operating Procedures for police and healthcare workers in their engagement/interaction with transgender persons.¹³⁵ It is reported that a government health insurance scheme was extended to transgender people in 2020, making them eligible for gender affirming healthcare.¹³⁶ Overall, there is very limited information available about the status of implementation of the act to date.

¹³⁰ International Commission of Jurists (2020).

¹³¹ A/HRC/31/57 (2016), para. 35.

¹³² Ibid., para. 72(s).

¹³³ Ali & Ali (2019).

¹³⁴ International Commission of Jurists (2020).

¹³⁵ Ministry of Human Rights Report, August 2018 - July 2020. https://portal.mohr.gov.pk/wp-content/uploads/2020/11/Progress-Report_email-ready.pdf

¹³⁶ See <https://www.reuters.com/article/us-pakistan-lgbt-healthcare-trfn-idUSKBN1Z21A4>

3.4 Cuba

3.4.1 Country context and the right to comprehensive public health care

Under Cuba's socialist government, support for transgender persons is integrated into the State structure, particularly through the provision of healthcare. Cuba's public health system, introduced in 1979, provides cost free access to medical services, and access to healthcare is considered a human right. Since 1989, the National Center for Sex Education (CENESEX) has been providing gender affirming services, specialised in medical and psychological assistance. CENESEX is a state entity under the Ministry of Health that addresses issues of sexual diversity with a view to promoting and protecting the rights of lesbian, gay, bisexual, transgender and intersex persons.¹³⁷ The way "sexuality" is used in the Cuban context encompasses the meaning of gender as well as sexuality, and therefore, differs from how gender and sexuality are conceptualised separately in international discourses.¹³⁸ Transgender persons are also referred to as transsexual persons. Depending on the context, the term is used in an inclusive way that acknowledges the diversity of transgender persons, while in other cases the term only refers to transgender persons who undergo medical gender transitions.¹³⁹

While the first successful gender affirmation surgery in Cuba was conducted in 1988, no surgeries took place in the following 20 years due to public backlash.¹⁴⁰ Between those years, a multidisciplinary team under CENESEX took legal initiatives to assist 13 individuals to change their first names and photos in identity cards. Changing the gender marker, however, was not possible as legal gender was determined in accordance with one's genitalia, and during that period no gender

affirming surgery was offered in Cuba.¹⁴¹

An important breakthrough was made when Resolution 126 was issued by the Ministry of Public Health in 2008. It mandated comprehensive health services for transsexual people in Cuba, including the establishment of a specialised clinic in the capital Havana to provide cost-free integrated clinical care such as psychological counselling, hormone therapy, and sex reassignment surgery on the basis of informed consent.¹⁴² The National Commission for Comprehensive Care for Transsexual People created under CENESEX was tasked with drafting, implementing and coordinating the national policy on comprehensive care for transsexual persons, approving gender reassignment surgery on a case-by-case basis, promoting research and advising the Ministry of Public Health on policy-making among other things.¹⁴³

In 2010, at the request of a state body, the Cuban Multidisciplinary Society for Sexuality Studies issued a Declaration on Depathologising Transsexuality, which argued that "[diagnostic] classifications of transsexuality perpetuate and deepen social discrimination against these persons, causing irreversible physical and psychological damage that can lead to suicide".¹⁴⁴ Cuba was the second country after France to depathologise transgender identities and the first in Latin America to incorporate transgender care into the national healthcare system.¹⁴⁵ Cuba's initiative to offer health care to transgender people has been commended by the Inter-American Commission on Human Rights.¹⁴⁶

Despite the positive developments, not all transgender persons can access comprehensive healthcare as patients at the specialised clinic must be 18 years and over, diagnosed for gender dysphoria and clinically observed for "real-life

137 IACHR (2015).

138 See <https://lgbtq.hkspublications.org/2013/10/21/respecting-trans-identities-recent-movements-for-the-legal-recognition-of-gender-identity-in-latin-america/2/>

139 See definition of transsexuality provided in SOC-7 as cited in Annex I Terminology, for example.

140 Espin (2018).

141 Báez & Soto-Lafontaine (2015).

142 Gorry (2010).

143 See <http://www.ipsnews.net/2008/06/health-cuba-free-sex-change-operations-approved/>

144 Roque & Rodríguez (2012).

145 Báez & Soto-Lafontaine (2015).

146 IACHR (2020b), para. 334.

experience” for over a year.¹⁴⁷ In fact, only a handful of transgender persons have received gender affirming surgeries by the Ministry of Health since 2007.¹⁴⁸ Contrary to the aforementioned declaration on depathologisation, the practice of Cuba’s healthcare, as well as the legal gender recognition process discussed below (3.5.2), still pathologises transgender identities.

3.4.2 Legal gender recognition

With Resolution 126 issued by the Ministry of Public Health in 2008, legal gender recognition also became possible under the conditions that applicants have undergone gender affirming surgery. The Resolution explicitly puts State authorities in charge of recognizing an applicant’s gender identity by assigning CENESEX to authorise professionals who can issue certification of gender identity of transsexual persons and clarifying that those certificates are the only documents that can be recognised in any legal processes. This is contrary to the way gender identity is defined as “the personal and private conviction that each person has” in the same Resolution, and therefore, recognising its self-determined nature (although, the definition rejects recognition of any gender identity that does not belong to being a woman or a man, which is a significant limitation).

Under Cuba’s civil registry legislation, a medical diagnosis is required to change one’s gender marker, and applicants must submit a petition to a local tribunal along with a medical certification confirming the completion of gender-affirming surgery.¹⁴⁹ The Inter American Commission of

Human Rights has called out this practice to be pathologising and recalled “the international duty that States have to adopt gender identity laws that recognise the right of transgender and gender-diverse persons to change their name, their image, and the “sex” or “gender” marker on birth certificates, identity documents, and other legal documents, without pathologising requirements, such as medical certifications or requiring surgical procedures”.¹⁵⁰

There is no restriction on marital status of transgender persons under Resolution 126.

In the past, there have been efforts to adopt a gender recognition law without requirements for gender affirming surgery, although none, as of yet, have been successful.¹⁵¹ Cuba continues to be a country where male chauvinism, homophobia and transphobia are dominant in popular culture.¹⁵² Like in many other countries, official data regarding transgender persons’ situation is lacking in Cuba.¹⁵³

One notable progress made in recent years with regard to the recognition of the rights of transgender and gender diverse persons is that the Constitution promulgated in 2019 recognises the equality of all persons before the law, without discrimination on the basis of sexual orientation, gender identity, or any other personal condition or circumstance that entails a distinction prejudicial to human dignity.¹⁵⁴

147 Gorry (2010). See also <https://www.lavanguardia.com/vida/20180629/45489548135/cirujanos-cubanos-practican-cambios-de-sexo-entrenados-por-espanoles.html>

148 It is reported that at least 39 sex reassignment surgeries were conducted. See IACHR (2020), para. 334.

149 IACHR (2020a), CHAPTER IV.B, para. 93; see also <https://bmcinthealthumrights.biomedcentral.com/articles/10.1186/>

s12914-019-0217-3

150 IACHR (2020a), CHAPTER IV.B, para. 93.

151 See Roque & Rodríguez (2012).

152 Báez & Soto-Lafontaine (2015).

153 IACHR (2020b), para. 335.

154 Article 42. See Official Gazette of the Republic of Cuba, No. 5 (Extraordinary), Constitution of the Republic of Cuba, April



CHAPTER 4

Comparative Analysis of Procedural Requirements



Based on the experiences of the selected countries, this chapter provides a comparative analysis of different procedural requirements with close attention to how they are spelled out in legal documents, implementation measures in place and identified good practices and challenges. Each section will provide some reflection on Viet Nam's context, although it is important to note that the following analysis of Viet Nam's draft Law on Gender Affirmation is based on a version before the most recent changes were made in October 2021 (see Appendix for the exact version referenced in this paper). Critical improvements were made in the latest version which no longer requires all applicants for legal gender recognition to undergo gender affirming hormone therapy or surgery. This is a major progress towards aligning Viet Nam's law with international human rights standards discussed in Chapter 2 of this paper. Clarifications for some of the concerns and recommendations that have already been addressed by the Legal Drafting Committee are provided in the footnotes.

4.1 Medical Requirements

Viet Nam's draft law on gender affirmation requires submission of a medical certificate confirming the completion of hormone therapy for two consecutive years or breast/chest and/or genital surgery (Articles 16-18) in order to change one's gender marker along with one's name(s) (Article 20).¹⁵⁵ While any medical requirements attached to the legal gender recognition process compromises the principle of self-determination and has the possibility to violate a number of human rights as discussed in Chapter 2, the law provides a legal framework for gender affirming health services, specifically hormone therapy (Article 6) and breast/chest and genital surgeries (Article 7). To access the services, however, a psychological examination which resembles the diagnosis for gender dysphoria under the DSM-5 must be conducted (Article 13).

Among the four countries examined in this paper, Argentina, Norway and Pakistan do not require any medical procedure as part of the legal gender recognition process, and Cuba requires gender affirming surgery. Diagnosis is also part of the requirements for legal gender recognition Cuba, while Norway requires diagnosis to access gender affirming health services. Argentina, on the other hand, provides such services on the basis of informed consent without diagnosis.

Gender transition is often a nonlinear process, and the choices about when and how to transition are complex and highly individualised.¹⁵⁶ Some people transition socially through a change of name, dress or other aspects of gender expression without any medical procedures. Health services related to gender transition also varies, including hormonal therapies, surgical procedures, psychological counselling, permanent hair removal and/or voice therapy. Depending on individual needs, transgender and gender diverse persons may require different transition-related services at different times in their lives.¹⁵⁷

Bearing in mind the diversity of transgender identities, the underlying issue at stake in the following discussion is the question of who is recognised as a transgender person. During the development of the Norwegian Law on Change of Legal Gender 2016, reference was made to the process of developing an anti-discrimination act in Norway which explicitly included gender identity and gender expression as grounds for discrimination. In particular, the assessment made by the Ministry of Children, Equality and Social Inclusion was cited in relation to the question of who should be protected under the law. The Ministry assessment pointed out that there are many reasons why a transgender person may not want to or may not have the opportunity to undergo medical procedures for transitioning. Therefore, to provide protection to only some transgender persons who have medically transitioned cannot

10, 2019.

155 The requirement of hormone therapy or surgery for legal gender recognition is no longer mandatory in a later version of the draft law than the one analysed in this paper.

156 Schulz (2018).

157 WHO (2015).

be sustained because all transgender persons can experience discrimination and harassment.¹⁵⁸

This is a relevant discussion for Viet Nam as the draft law prohibits stigmatization, discrimination and violence against transgender people (Article 5(1)). When the law defines a transgender person as a person who has medically transitioned (Article 2(4)), any other persons who identify with a different gender to the one assigned at birth are not protected under the law. Legal gender recognition is also connected to entitlements in relation to education, housing, access to social security and employment as they depend on the identification of an individual.¹⁵⁹ Therefore, imposing medical requirements as conditions for legal gender recognition could deny these entitlements to some individuals. The following sections will discuss the requirements for diagnosis and assessment (4.1.1) and gender affirming hormone therapy and surgeries (4.1.2) in light of the experiences of other countries.

4.1.1 Diagnosis and assessment

Viet Nam's draft law on gender affirmation proposes that all applicants who wish to change their legal gender undergo psychological examination which is also a precondition for receiving gender affirming hormone treatment (Article 6) or surgery (Article 7). The rationale for mandating psychological examination provided in the policy impact assessment report is that performing gender affirming medical interventions without psychological examination can lead to unfortunate consequences for transgender people including isolation and depression.¹⁶⁰ However, this argument is based on a study from 1986 which conducted a longitudinal study of 13 individuals who received male-to-female gender affirming surgery between 1954 and 1975.¹⁶¹

In the policy impact assessment report, regret about undergoing gender affirming surgery among 30% of those 13 individuals is highlighted from the study findings. It is noteworthy that this study specifically focused on the effect of gender affirming genital surgery, which is only one of many possibilities for transitioning, while there was no focus on the role of pre-surgery psychological examination or counselling in the study. Moreover, gender affirming surgeries carried out at that time had poor outcomes in which half of the cases were estimated to result in severe complications.¹⁶²

It is important to note that requiring medical diagnosis and psychological appraisals for legal gender recognition is considered to be abusive and discriminatory against trans and gender diverse persons as discussed in Chapter 2. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has specifically pointed out how mental health diagnoses have been misused to pathologise identities, including those of transgender persons.¹⁶³ The reason for mandating a psychological examination in Viet Nam's case may have been well intentioned in its perception that all transgender persons are in need of medical help to determine their true gender, as indicated in the policy impact assessment report (section 4.1.1). However, this is misguided, and potentially implies that being transgender constitutes a medical condition. In Cuba, one of the members of the National Commission for Comprehensive Care for Transsexual People was quoted in an article stating, "our job is to help transgender people, or people who are not clear about their gender identity, define that identity."¹⁶⁴ Such views classify transgender persons as (mentally) ill, or at best confused, and reinforce stigmatization, social exclusion and discrimination.¹⁶⁵ By contrast, Argentina adopted the National Mental Health Law in 2010, which

158 Ministry of Children and Family Affairs. (2013). Prop. 88 L (2012-2013), 16.5.2.1 Protection of all transgender people, available at: <https://www.regjeringen.no/no/dokumenter/prop-88-l-20122013/id718741/?ch=17>

159 A/73/152 (2018), para. 22.

160 Section 4.1.1 of the policy impact assessment report.

161 Lindemalm et al. (1986).

162 Ibid.

163 A/HRC/35/21 (2017), para. 48.

164 Gorry (2010).

165 Degner & Nomanni (2017).

prohibited establishing a diagnosis in the mental health field on the sole basis of 'sexual identity'.¹⁶⁶

In Pakistan, the practice of medical examination as a condition for legal gender recognition was repealed when the Transgender Persons (Protection of Rights) Act 2018 was adopted. When the initial draft of the Act required a certification of gender identity issued by district screening committees,¹⁶⁷ the transgender communities in Pakistan found this requirement to be a denial of the right to self-perceived identity and against the Yogyakarta Principles. Following consultations between the transgender communities and legal drafters, the requirement was removed.¹⁶⁸

In Norway, as noted in Chapter 3, diagnosis and medical assessment as conditions for legal gender recognition were considered in the expert group report. The expert group explained the two models in the following way:

- The diagnostic model means that one or more of the psychiatric diagnoses classified under Gender Identity Disorders in ICD-10 must be conditions for being able to request a change of legal gender. The applicant must have undergone a psychiatric examination and been diagnosed with transsexualism or equivalent.
- The assessment model means that those who want to change their legal gender must submit documentation from an expert, who confirms that the applicant is transsexual or similar, and that there are no health conditions, including mental illness, that speak against granting a new legal gender.

After considering the two models, the expert

¹⁶⁶ Article 3. National Mental Health Law, Law No. 26.657 of 2010. Available at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/175000-179999/175977/norma.htm>

¹⁶⁷ The proposed District Screening Committee comprised of the Chief Medical Officer, District Social Welfare Officer, a psychologist or psychiatrist, a representative of transgender community and an officer of the Government. Article 6 of the Private Members Bill, Transgender Protection 2017 as shown in Ali & Ali (2019).

¹⁶⁸ Ali & Ali (2019).

group concluded that a desire to change one's legal gender in itself should not give reasons to question a person's mental health, noting that in other similar civil matters, no prior control of an individual's legal capacity is carried out, even when a decision can have major consequences. The negative aspects of both models discussed by the group included prolonging time for legal gender recognition and restricting eligibility to a smaller group of people compared to a model based on self-declaration. In addition, the expert group considered the risk of forcing people to seek undesired and unnecessary medical treatment in order to meet certain expectations when medical assessments and diagnosis are made. As a result, the expert group unanimously recommended a model based on self-declaration without any medical requirements, noting that gender identity is a personal matter which few others have better insight into than the individuals themselves.¹⁶⁹

Following the reasoning in Norway, mandating a psychological examination may compromise the basic principle of Viet Nam's gender affirmation law as outlined in Article 3(2) which calls for medical procedures to be implemented on a voluntary basis. Moreover, making the participation in counselling and psycho-medical support an obligation for transgender people under Article 4(2a) also contradicts the voluntary nature of the procedures.

4.1.2 Gender affirming hormone therapy and surgery

In Viet Nam, the draft gender affirmation law requires people who seek legal gender recognition to either undergo hormone therapy for two consecutive years or breast/chest and/or genital surgery (Article 16).¹⁷⁰ Like the requirement for diagnosis, mandating transgender persons to undergo gender affirming hormone therapy or surgery for legal gender recognition is considered

¹⁶⁹ Norwegian Directorate of Health (2015).

¹⁷⁰ The requirement of hormone therapy or surgery for legal gender recognition is no longer mandatory in a later version of the draft law than the one analysed in this paper.

abusive and discriminatory under international human rights laws. De facto forced or otherwise involuntary gender reassignment surgery, sterilization or other coercive medical procedures may violate the rights to physical integrity and self-determination of individuals and amount to ill-treatment or torture.¹⁷¹

As discussed in Chapter 3, requirements for hormone therapy and surgery have been challenged at the national level in various country contexts. In Norway, the Equality and Anti-Discrimination Ombud found the requirement of hormonal treatment, diagnosis and surgery as conditions for changing the legal gender discriminatory and in violation of the law that prohibits discrimination based on sexual orientation, gender identity and gender expression.¹⁷² Until 2016, legal gender recognition in Norway was the final step of a lengthy gender affirmation process that followed the diagnosis of transsexualism, hormone therapy, real-life test, removal of reproductive organs, and genital surgery.¹⁷³

Even after the medical requirements were dropped from the legal gender recognition process in Norway, the condition for diagnosis to access gender affirming health services including hormone therapy and surgery remained. Such services are provided in a sequence that typically follows the order of psychiatric examinations, diagnosis, real-life experience, metabolic examinations, hormone therapy and surgery.¹⁷⁴ This resulted in only a relatively small number of people, those with a pronounced desire to remove their primary and secondary sex characteristics¹⁷⁵ and construct new ones, being offered gender affirming healthcare.¹⁷⁶

Similar to Norway's practice, Cuba requires mental

health assessment and a real-life test to access gender affirming health services, and surgery is a precondition for legal gender recognition. Members of CENESEX noted that such "normative, rigid and one-size fits all application forces transsexual persons to fit into them, in frank negation of the diversity of transsexual expression."¹⁷⁷ In 2010, for example, there were 37 individuals diagnosed for transsexualism in Cuba. Among them, seven individuals did not want gender affirmation surgeries for various reasons.¹⁷⁸ Viet Nam's policy impact assessment report also notes that a requirement for gender affirming surgery will limit the people who seek legal gender recognition (section 1.1). What is known about healthcare provision for transgender persons that relies on diagnosis or mental health assessment is that it often limits the opportunities for clients to truly explore the risks, benefits, side effects, and other potential consequences of gender-related medical treatments in fear of not meeting the requirements for accessing such treatments.

An emerging treatment paradigm on the other hand enables transgender persons to access desired healthcare with their informed consent without universal screening by mental health practitioners.¹⁷⁹ In this context, Argentina's Gender Identity Law guarantees access to gender affirming healthcare as a right, with free provision of health services including hormone therapy and surgery for the constitution of gender identity.¹⁸⁰

Article 11 – Right to free personal development.

All persons older than eighteen (18) years, according to Article 1 of the current law, and with the aim of ensuring the holistic enjoyment of their health, will be able to access total and partial surgical interventions and/or comprehensive hormonal treatments to adjust their bodies, including their genitalia, to their self-perceived gender identity, without

171 A/HRC/31/57 (2016), para. 49.

172 Act No. 58 of 2013. See Ministry of Health and Care Services. (2016). Prop. 74 L (2015-2016).

173 Sørli (2019).

174 Sørli (2019).

175 Primary sex characteristics are those that are present at birth, while secondary sex characteristics emerge at puberty. See also terminology of this paper.

176 Norwegian Directorate of Health (2015).

177 Roque & Rodríguez (2012).

178 Gorry (2010).

179 Schulz (2018).

180 Saldivia (2014).

requiring any judicial or administrative authorisation.

There will be no need to prove the will to have a total or partial reassignment surgery in order to access comprehensive hormonal treatment. The only requirement will be, in both cases, informed consent by the individual concerned.¹⁸¹

While research on gender affirming healthcare based on patients' informed consent is still limited, a study which surveyed 1,944 patients from 12 US-based health clinics that follow the informed consent model found only 17 known cases of regret across all clinics (prevalence = 0.8%), with three cases leading to reversal of gender transition (prevalence = 0.1%).¹⁸² In the same study, only four out of 12 clinics required any contact with a mental health provider prior to initiation of hormone therapy. The study findings indicate that the basic medical needs of transgender patients in some settings are being met without any diagnosis, assessment, or engagement with a mental health practitioner.¹⁸³

According to a Swedish report from 2015, enabling more transgender persons to access gender affirming healthcare has long-term socio-economic benefits.¹⁸⁴ On the other hand, placing diagnosis and mental health assessment requirements restricts transgender persons' access to gender affirming healthcare as exemplified by the experiences of the countries discussed in this paper. In this light, the conditions introduced in Viet Nam's gender affirmation law not only for legal gender recognition but also to access gender affirming hormone therapy and surgery are likely to result in only a very limited number of transgender persons being able to exercise their rights to recognition and health among others.

4.2 Marital Status

The Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity has urged States to "ensure that laws and regulations provide marriage equality to transgender people on an equal basis with other persons under the jurisdiction of the State".¹⁸⁵ The World Professional Association for Transgender Health similarly stated that "marital and parental status should not be barriers to recognition of gender change".¹⁸⁶ The fact that marriage of transgender persons has emerged in many different countries and cultural contexts, including through court cases, underlines the importance of this issue when developing a legal framework for gender recognition.¹⁸⁷

Viet Nam's draft gender affirmation law specifies that people who seek gender affirming hormone therapy or surgery must be single (Articles 6 and 7), and consequently, people who are married are denied legal gender recognition. At the same time however, Article 3(5) confirms that legal gender recognition does not affect the rights and obligations of a person, including those in relation to marriage and family life. In the policy impact assessment report, it notes that allowing married persons to seek legal gender recognition will create a conflict with Article 8(2) of the Law on Marriage and Family which does not recognise marriage between persons of the same sex (section 3.4.4). The following section will therefore address the legal status of same-sex marriage or union when discussing specific country contexts.

None of the four countries reviewed in this report explicitly restricts the right to legal gender recognition on grounds of marital status despite differences of the legal status of same-sex marriage or relationships. Same-sex marriage has been legal

181 Argentina's Gender Identity Law 2012 (Act No. 26.743).

182 Deutsch (2012).

183 Schulz (2018).

184 Sørli (2019).

185 A/73/152 (2018), para. 78(a).

186 The World Professional Association for Transgender Health, 2017. WPATH Identity Recognition Statement. Available at: <https://www.wpath.org/media/cms/Documents/Web%20Transfer/Policies/WPATH%20Identity%20Recognition%20Statement%2011.15.17.pdf>

187 See Open Society Foundations (2015a).

in Norway since 2009, and since 2010 in Argentina. Attempts to legalise same-sex marriage were made in Cuba, although without success to date. In Pakistan, same-sex relationships are criminalised.

In Argentina, the Gender Identity Law 2012 states that legal gender recognition will not change the existing rights of a person, including those under the family law. Therefore, families will not have to undergo major change or divorce as a consequence of a family member's legal gender recognition.¹⁸⁸

Article 7 - Effects¹⁸⁹

(...) The amendment in the records will not change the legal entitlements to rights and legal obligations that could have corresponded to the persons before the recording of the amendments, nor those derived from the relationships consecrated by family law at all levels and degrees, which will remain unchanged, including adoption.

In all cases, the number in the persons' national identity document will take precedence over the first name or morphological appearance of the persons, for identification purposes.

In Norway, the Law on Change of Legal Gender 2016 clarifies that the legal gender that became recognised takes precedence over the sex assigned at birth except for cases where parenthood and parental responsibility are of concern.

Article 6. Legal consequences of changing legal gender

(...) Người thay đổi giới tính pháp lý của mình
 (...) A person who changes his or her legal gender retains rights and obligations as a result of paternity, motherhood or co-motherhood.

Rules that apply if or to a woman who gives birth to a child apply in the same way to a person

who gives birth to a child after changing their legal gender.

In Pakistan, the Transgender Persons (Protection of Rights) Act 2018 lacks clarity on transgender persons' rights to marriage or to family life. This is a critical gap as same sex relationships are criminalised in Pakistan.¹⁹⁰ While the Penal Code does not specifically refer to homosexuality, "carnal intercourse against the order of nature", interpreted as prohibiting non-heterosexual sexual activity involving any form of penetration, is a punishable offence (Section 377).¹⁹¹ In 2016, a group of clerics passed a religious decree declaring marriage of transgender persons permissible in Islam, though stipulating that only transgender persons with 'visible signs' of being male or female (but not both) may marry someone of the opposite sex.¹⁹² In spite of this, the marriage of a transgender person is often perceived as a same-sex marriage. In 2020, for example, an arrest warrant was issued to a transgender man who married a cisgender woman, for what authorities viewed as a same sex marriage. Subsequently, the court ordered the transgender man to undergo a medical examination.¹⁹³ The incident reveals discriminatory treatment faced by transgender persons when exercising their right to marriage.

In Cuba, legalization of same-sex marriage has been discussed by law makers in recent years, despite homosexuality being considered a social evil.¹⁹⁴ While same sex marriage or union is not yet legalised, the marriage of a transgender couple was registered in 2019. According to CENESEX, "this legal act does not violate what is established in the Cuban legal system because it is about two people whose legally registered gender is female and male".¹⁹⁵

In addition to the above examples, there are more

190 Redding (2019).

191 UK Home Office (2019).

192 UK Home Office (2019). See also <https://www.bbc.com/news/world-asia-36648141>

193 ILGA World (2020). See also <https://www.pinknews.co.uk/2020/08/28/lahore-high-court-pakistan-trans-homophobia-same-sex-marriage-ali-akash/>

194 *ibid.*

195 *ibid.*

188 Trinity FLAC (2015).

189 Argentina's Gender Identity Law 2012.

countries where marriage is defined as being between a man and a woman while no restrictions on marital status are imposed when one partner changes their legal gender marker, or such restrictions were challenged at court.

In the United States, no state has a law requiring a transgender person to be single or to divorce in order to obtain legal gender recognition. If someone in a legal marriage transitions and changes their gender marker, the marriage remains valid, even in states that do not recognise same-sex marriage.¹⁹⁶

In Switzerland, the St Gallen District Court ruled in 1996, long before same-sex marriage was legalised in 2021, that the marriage of a transgender woman who sought legal gender recognition should remain valid. Weighing the interests of the applicant, her spouse and the State, the Court held that such a marriage should be tolerated considering the importance of legal gender recognition and of protecting a functioning and existing marriage. The Court also noted that the solution will merely preserve a situation that had de facto already existed, even if it results in the recognition of same-sex marriage.¹⁹⁷

In Austria, the Constitutional Court ruled in 2006, before same-sex marriage was legalised in 2019, that denying legal gender recognition to a transgender woman because of her married status lacked any basis in Austrian law.¹⁹⁸

Similarly in Germany, the Constitutional Court ruled in 2008, before same-sex marriage was legalised in 2017, that Section 8(1)(2) of the federal Transsexual Law which required someone applying for legal gender recognition to be unmarried or divorced as invalid, emphasizing the unfairness of requiring individuals to choose between two fundamental rights—personal self-determination and marriage.¹⁹⁹

196 bid.

197 Mills, 2020.

198 Open Society Foundations (2014).

199 Ibid.

In France, the Rennes Court of Appeal found the divorce requirement for legal gender recognition a violation of the right to private life in 2012, before same-sex marriage was legalised in 2013. The Court reasoned that the validity of the marriage had to be determined at the time when it takes effect.²⁰⁰

In Italy, the Supreme Court ruled in 2015, before same-sex civil unions became legalised in 2016, that as long as there is no equivalent institution to a marriage guaranteeing substantially the same rights to the spouses, forcing divorce as a consequence of legal gender recognition is unconstitutional.²⁰¹

Lastly, the problem-solving goal of policy 3 in Viet Nam's policy impact assessment report states that gender transition should not disturb family relationships and protection of children's rights must be prioritised (Section 3.2). While there is no evidence that having transgender parents negatively impacts children, dissolving a marriage due to legal gender recognition has financial and emotional impact on children as well as parents.²⁰² In New Zealand, the Select Committee that considered the proposal for marriage equality legislation recommended to repeal forced divorce requirement for legal gender recognition, stating that the Committee is "aware of how distressing this [requirement] can be for transgender people in this position, and how disruptive it can be for their families".²⁰³

4.3 Minimum Age

While there are countries with no age restrictions to apply for gender recognition, such as Austria, Azerbaijan, Croatia, Estonia, Germany, Malta, Republic of Moldova and Switzerland, only a few

200 Mills (2020).

201 Ibid.

202 Stotzer et al. (2014).

203 Report of the Government Administration Committee on the Marriage (Definition of Marriage) Amendment Bill, 27 February 2013. Available at: http://www.parliament.nz/resource/en-NZ/50DBSCH_SCR5764_1/a2eb2bf39827f8f70203f4679349247d3044def2

countries allow children to change their legal gender to their self-determined gender and, when they do, a minimum age is normally set.²⁰⁴

Among the four countries reviewed in this paper, minors in Pakistan and Cuba cannot apply for legal gender recognition. Argentina and Norway have a minimum age to apply for legal gender recognition on the basis of self-declaration, but minors can also apply under certain conditions as discussed in the following.

Viet Nam's draft gender affirmation law proposes to set the minimum age to access gender affirming hormone therapy at 16 (Article 6(3)) and surgery at 18 (Article 7(2)). As the draft law makes medical transition a requirement for legal gender recognition,²⁰⁵ in which medical certification for hormone therapy is issued after two consecutive years of treatment, no one under the age of 18 will be able to change their legal gender. In the policy impact assessment report, the age for having full civil capacity is emphasised as the rationale for this threshold.²⁰⁶

In this regard, version 7 of the Standards of Care (SOC-7) by the World Professional Association for Transgender Health (WPATH) recommends the minimum age for irreversible genital surgery at the legal age of majority. In Cuba where surgical requirements are in place for legal gender recognition, the minimum age is set at the age of the majority, that is, 18.

SOC-7 also recommends that adolescents be eligible for hormone therapy, noting that 16 is the age for medical decision-making without parental

consent in many countries. At the same time, SOC-7 highlights the importance of making puberty suppression hormones available on the onset of puberty which could be as early as 9 years old. The most recent medical evidence concluded that, "those who received treatment with pubertal suppression, when compared with those who wanted pubertal suppression but did not receive it, had lower odds of lifetime suicidal ideation".²⁰⁷ Above all, WPATH opposes any medical requirements linked to a legal gender recognition procedure.²⁰⁸ While there is a need to understand and address children's interests and needs for gender affirming health services, it is important to consider the needs and procedure for children's legal gender recognition separately.

Argentina was the first country to recognise a child's right to recognition of gender identity through a landmark court decision in 2007. The judge based the decision on a section of Argentina's Civil Code that recognises the psychological capacity of minors to decide on matters affecting their body and Article 12, the right to be heard, of the Convention on the Rights of the Child.²⁰⁹ The Gender Identity Law 2012 also explicitly mentions the Convention on the Rights of the Child and is considered to be a good practice to ensure that the corpus juris on child rights is respected in the letter and application of the law.²¹⁰

Under Argentina's Gender Identity Law 2012, minors can apply for legal gender recognition through their legal representatives on the condition that the child gives consent and is assisted by their own lawyer.

Article 5 - Minors.

In relation to those persons younger than eighteen (18) years old, the request for the

204 A/73/152 (2018), paras. 33 and 57.

205 The requirement of hormone therapy or surgery for legal gender recognition is no longer mandatory in a later version of the draft law than the one analysed in this paper. Nevertheless, the minimum age to be recognized as a transgender person remains to be set at 16.

206 Viet Nam's Civil Code 2015 defines minors as persons who are under 18 years old (article 21(1)). While minors between 6 and 15 years old requires parental consent to perform civil transactions, article 21(3) gives exception to "civil transactions which are performed for the purpose of meeting the needs of daily life suitable for the age group". In addition, minors between 15 and 17 years old can perform civil transactions without parental consent unless the transactions concern real estate and other matters prescribed by law (article 21(4)).

207 Turban et al. (2020).

208 WPATH Identity Recognition Statement, November 15, 2017. Available at: <https://www.wpath.org/media/cms/Documents/Web%20Transfer/Policies/WPATH%20Identity%20Recognition%20Statement%2011.15.17.pdf>

209 A/73/152 (2018), para. 66.

210 A/73/152 (2018), para. 57.

procedure [of legal gender recognition] must be made through their legal representatives and with explicit agreement by the minor, taking into account the evolving capacities and best interests of the child as expressed in the Convention on the Rights of the Child (...) the minor must be assisted by a children's lawyer (...)

Application for gender recognition can be made through an administrative procedure when supported by legal representatives. This was the case in a successful application for a 10-year-old trans boy in 2014 who had the support of both parents.²¹¹ The second paragraph of Article 5 introduces a process for situations where a legal representative's consent is denied or impossible to obtain. This is important because many trans children experience lack of understanding and/or support from their own parents.²¹²

(...)When the consent of any of the minor's legal representatives is denied or it is impossible to obtain it, it will be possible to resort to summary proceedings such that the corresponding judges will decide, taking into account the evolving capacities and best interests of the child as expressed in the Convention on the Rights of the Child (...).

Under a separate article, children's' right to access gender affirming health services is stipulated.

Article 11 - Right to free personal development.

(...) In the case of minors, the informed consent will be obtained (...) Without prejudice to the former, when consent for total or partial surgical intervention is to be obtained, the competent judicial authorities for the jurisdiction must also express their agreement, taking into account the evolving capacities and best interests of the child as expressed in the Convention on the Rights of the Child (...)

Article 11 was partly amended when the Civil and Commercial Code 2015 was adopted, stating that "... from the age of sixteen the adolescent is considered as an adult for decisions regarding the care of his own body ..." (Article 26). Followingly, the Ministry of Health of Argentina issued Resolution No. 65/2015²¹³ which clarified the applicability of Article 26 of the Civil and Commercial Code 2015 to the Gender Identity Law 2012. Accordingly, from the age of 16, adolescents can access gender affirming health services in the same way as adults. Below the age of 16, authorization by legal representatives is required to access gender affirming hormone therapy and surgery (in addition, judicial authorization is required for surgery). For gender affirming health services that pose no serious risk to the health, life or integrity of the patient, children between 13 and 16 can also give autonomous consent.²¹⁴

While both Article 5 and Article 11 require consent of the child who seeks legal gender recognition or gender affirming health services, no minimum age is set as to when a child can give consent. Instead, the articles mandate that the evolving capacities and best interests of the child are taken into consideration. After the Gender Identity Law 2012 came into effect, a six-year-old who had been assigned male at birth, but who self-identified as female since the time she could speak, was able to change her birth certificate and national ID to reflect her gender identity in 2013.²¹⁵

A study which evaluated the health outcomes of twenty-one transgender children who received some form of gender affirming treatment after the passage of the Gender Identity Law 2012 reported that the median age to initiate puberty suppression hormones was 13.7 years.²¹⁶

In Norway, Article 4 of the Law on Change of Legal Gender 2016 stipulates the procedure for

213 Available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/255000-259999/257649/norma.htm>

214 Paragraph 4.4 of the Resolution No. 65/2015.

215 See https://www.huffpost.com/entry/argentina-child-transgender_n_4077466?view=print&comm_ref=false

216 Figueroa et al. (2018).

211 Open Society Foundations (2015b).

212 Sørlie (2015).

children's legal gender recognition by dividing them into three age groups.

Article 4. Change of legal gender for children

Children who have reached the age of 16 can apply for a change of legal gender themselves.

Children between the ages of 6 and 16 must apply for a change of legal gender together with the person or persons who have parental responsibility for the child. If the parents have joint parental responsibility, but the application is submitted together with only one of them, the legal gender can still be changed if this is in the child's best interest.

An application for a change of legal gender for children under the age of 6 is submitted by the person or persons who have parental responsibility for the child. Children who are able to form their own views on the matter must be informed and given the opportunity to express themselves before the application is submitted. It is a condition for change that the child has a congenitally uncertain somatic gender development [differences in sex development]. Applicants must submit documentation of the condition from health personnel.

Prior to the 2016 law, the requirement for sterilization had resulted in a de facto minimum age for legal gender recognition at 18.²¹⁷ Comparatively, the new law made drastic advancements to recognise children's right to gender recognition. The involvement of youth groups and non-governmental organizations in the law-making process played an important role.²¹⁸

Still, the law has been criticised for including a diagnostic requirement for children below six years while also limiting the eligibility for legal gender

recognition to children with intersex characteristics. Therefore, six is the minimum age for transgender children in Norway who can apply for legal gender recognition with parental consent. The Ministry of Health and Care Services explains that this age limit was set in connection with the beginning of primary school in order to ease transition for transgender children.²¹⁹

In case a child aged between 6 and 16 cannot get consent from both parents, there is a procedure to determine the best interest of the child.

Article 5. The processing of applications to change legal gender

(...) Applications from children between the ages of 6 and 16 who (...) are submitted together with only one of those who have parental responsibility, are processed by the State Administrator in Oslo and Viken. The state administrator's decision can be appealed to the National Appeals Body for the health service.

Lastly, when setting the 16-year-old threshold to apply for legal gender recognition without parental consent, the Ministry of Health and Care Services took note of how the processes of changing one's gender and names are often related. Subsequently, the minimum age to change names without parental consent was also lowered to 16 from 18 in line with the Law on Change of Legal Gender 2016.²²⁰ In this light, the Civil Code in Viet Nam stipulates that consent is required from a child who is nine or older in order to change family names (Article 27(2)) and given names (Article 28(2)). Aligning the requirements for name change and change of gender marker could be a potential entry point to open the discussion on children's gender recognition in Viet Nam.

219 Ministry of Health and Care Services. (2016). Prop. 74 L (2015-2016). <https://www.regjeringen.no/no/dokumenter/prop.-74-l-20152016/id2479716/>

220 Ibid.

217 Norwegian Directorate of Health (2015).

218 IGLYO (2019).

A close-up photograph of a person's hands holding a rainbow-colored ribbon. The ribbon is draped and folded, creating a loop. The background is a solid, deep purple color. The lighting is soft, highlighting the texture of the hands and the fabric of the ribbon.

CHƯƠNG 5

Recommendations for Viet Nam's Gender Affirmation Law

A horizontal bar at the bottom of the page, divided into six equal-width segments of different colors: red, orange, yellow, green, blue, and purple, from left to right.

Drawing on the experiences of the four countries discussed in this paper, and in light of the international human rights standards on legal gender recognition, this chapter offers recommendations for Viet Nam's gender affirmation law that is in the process of development. The recommendations are primarily concerned with the requirements in relation to medical diagnosis and treatments, marital status and minimum age, as discussed in Chapter 4.

5.1 Scope of the law

The draft law defines who a transgender person is, how to identify a transgender person and how to legally recognise the gender identity of a transgender person. At the same time, the law provides a legal framework for gender affirming health services, although limited to gender affirming hormone therapy, breast/chest surgery, genital surgery, and psychological counselling.

Requiring diagnosis, psychological assessment or certification of physical conditions for legal gender recognition are contrary to the principle of self-determination, and the experiences from the four countries indicate that recognizing a transgender person through those measures significantly limits who 'qualifies' as a transgender person. Consequently, persons who do not identify with the sex assigned at birth will not necessarily be eligible to access gender affirming health services or be able to change their gender markers and names on legal documents. While on the other hand, legal gender recognition based on transgender persons' self-declaration - as adopted in Argentina, Norway and Pakistan - ensures that everyone with a need to modify their legal gender marker and names can do so without the involvement of medical professionals or judges. No concerns about increased incidents of fraudulent or abusive use of the gender recognition procedure have been founded after simplifying the process.

The right to effective recognition of one's gender identity is fundamental to the enjoyment of other

human rights, including the right to be protected from discrimination and violence. When a transgender person can only be legally recognised after medically transitioning, all other persons who do not want to or cannot undergo gender affirming hormone therapy or surgery are denied their human rights. In particular, the current draft law does not extend any protection to transgender children. In Norway, it was concluded that such an exclusion and denial of a range of human rights cannot be justified. According to international law, the right to effective recognition of one's gender identity cannot be restricted other than on grounds imposed by the rights of other persons.²²¹

Lastly, the term "complete biological sex" used in the draft law raises concern because it not only pathologises intersex people by implying they are incomplete in some way, but also denies them the possibility to exercise their right to legal gender recognition under the proposed law. To indicate that somehow a biological sex can be "complete" is misleading and neglects the range of sexual and related biological and physical diversity.²²²

Recommendations

Consider revising the provisions to ensure that anyone's self-determined gender identity can be recognised before the law in line with international standards on human rights—e.g. without the involvement of medical professionals and judges—and be protected from discrimination as stipulated in Article 3(3) of the draft law, including through the following measures:

- Expand the definition of "gender affirmation/transition" to processes that do not involve medical treatments (Article 2(1)). At the same time, recognition of gender identity need not be influenced by the status or mode of transitioning which is a highly individualised and complex process.
- Remove any reference to "complete biological

²²¹ A/73/152 (2018), para. 19.

²²² DuBois & Shattuck-Heidorn (2021).

sex”, which not only pathologises persons with intersex characteristics but also may result in unnecessary physical examination of transgender persons, and replace it with “sex assigned at birth” (Article 2(2), Article 23(1a)).

- Define “gender identity” in a way that recognises gender identities other than those neatly fitting into a binary conception of a man and a woman (Article 2(3)).
- Define “a transgender person” as a person who identifies with a different gender to the one assigned at birth, without any reference to medical conditions and recognise that people born with intersex characteristics can also identify as transgender (Article 2(4))
- Ensure that the rights of a transgender person are protected regardless of medical transitioning and that no additional obligations are imposed on the grounds of gender identity (Article 4).
- Establish a simple administrative procedure for legal gender recognition, including by removing the involvement of the People’s Court (Article 20).

5.2 Medical requirements

Following the reasoning provided in the above Section 5.1, separating the involvement of medical procedures, including psychological examination, gender affirming hormone therapy and surgery, from the procedure of legal gender recognition ensures that all transgender persons who are in need of changing their gender and names can do so.

The experiences from Norway and Cuba demonstrate the ineffectiveness of providing gender affirming health services when access is conditioned by psychiatric diagnosis and little flexibility is offered in the way services are delivered. They also raised concerns about indirectly forcing transgender people to undergo unwanted and unnecessary medical treatment. Argentina, on the other hand, adopted a model of healthcare that is based on the informed consent of transgender

persons as stipulated in the provisions of the Gender Identity Law 2012.

Recommendations

Consider separating the procedure of legal gender recognition and provision of gender affirming healthcare. At the same time, guarantee transgender persons’ right to comprehensive healthcare, which includes access to gender affirming health services. In particular:

- Remove the requirement to submit a medical certificate, that could be issued only after undergoing a psychological examination and gender affirming hormone therapy and/or breast/chest or genital surgery, as a basis for changing one’s gender and names in legal documents (Article 20).²²³
- If documentation made by a council is required, ensure that the purpose of the council is to support applicants in making an informed decision by providing information regarding the legal consequences of the act.
- Recognise transgender persons’ right to access a range of affordable gender affirming healthcare on the basis of their informed consent (Chapter II).
- If the use of psychological examination is to remain, clarify that its use is to specifically identify clinically significant distress or impairment in social, occupational, or other important areas of functioning as a result of gender incongruence as specified in DSM-5, and that open-ended options for treatment will be explored with the transgender person, respecting their aforementioned human rights (Article 13).

5.3 Marital status

As discussed in Section 4.2, there are a number of examples where marriage is protected regardless of change of gender even when same-sex

²²³ The requirement of hormone therapy or surgery for legal gender recognition is no longer mandatory in a later version of the draft law than the one analysed in this paper.

marriage is not legalised in that country. Some of the reasonings adopted in those examples are that a marriage is valid as long as the gender of the couple on official documents belong to a man and a woman when the marriage is registered. Therefore, a change of gender during a legally recognised marriage should not affect that person's marital standing or relationship with their children. The right to marriage and family life, as well as the right to recognition before the law, are equally important. Restricting legal gender recognition on the basis of marital status could result in forcing a transgender person to choose between those fundamental rights and potentially destroy a functioning family. Moreover, under Viet Nam's draft law, transgender persons must be single, not only to change their legal gender marker but also to access gender affirming health services (Article 6(4), Article 7(1) and Article 8(1c)). The right to the highest attainable standard of health obliges States to make health services accessible without any discrimination.²²⁴

Recommendations

Consider removing the requirement that a transgender person must be single in order to access gender affirming health services, which consequently also prevent married persons from having their gender marker changed in legal documents. In particular:

- Explore ways of resolving potential conflicts with other laws when a marriage results in a de facto same-sex relationship. One way could be to legalise same-sex marriage. Alternatively, marriage should be recognised as long as the conditions for getting married as stipulated in Article 8 of the Law on Marriage and Family 2014 are met at the time of registration, even when one party changes their legal gender marker during a marriage.
- In case marital status as a condition for legal gender recognition is maintained, consider separating the requirement from the conditions

to access gender affirming health services (Article 6(4), Article 7(1) and Article 8(1c)).

5.4 Minimum age

While the practice to recognise children's self-determined gender greatly varies across countries, when there is a mechanism, children at a young age - such as the six-year-old in Argentina, as discussed in Section 4.3 - are benefitting from being able to change their registered gender. A growing body of medical and social science research indicates the positive effect of gender affirmation on physical and mental well-being of transgender children.²²⁵ Recognised best practices take children's best interest and their evolving capacities into consideration, as explicitly recognised in Argentina's Gender Identity Law 2012, with reference to the Convention on the Rights of the Child. Any safeguards established for children's legal gender recognition should not be excessive or discriminatory in relation to other matters where children's autonomy and decisional power are recognised.²²⁶ In this regard, Norway aligned the age for children's ability to change their names and gender marker as those changes are often made together. In Viet Nam, children's ability to consent for changing names is recognized from 9-year-old under the Civil Code 2015. Another consideration made in Norway was the age to start school, and the minimum age was lowered in order to ease the process of transition for transgender children.

Recommendations

Consider establishing a legal framework to recognise children's gender identity, including by:

- Introducing a simple application procedure for transgender persons under the age of 18 without any medical conditions or excessive and discriminatory safeguards.
- Recognising children's agency to express

²²⁴ Committee on Economic, Social and Cultural Rights, General Recommendation No. 14 (E/C.12/2000/4), para. 12(b).

²²⁵ Dunne (2017).

²²⁶ A/76/152 (2021), para. 35.

their gender identity and consent to changing their gender markers in accordance with their age and maturity.

- Providing an alternative procedure to weigh the child's best interest if parental consent is required.
- Recognising children's right to highest attainable standard of health; and make puberty suppression hormones available and accessible on the onset of puberty.

APPENDIX

I. Viet Nam's draft law on gender affirmation

This paper makes references to the following version of Viet Nam's draft law on gender affirmation.

NATIONAL ASSEMBLY

Law No. /202.../QH15

THE SOCIALIST REPUBLIC OF VIET NAM

Independence – Freedom – Happiness

DRAFT GENDER AFFIRMATION LAW

*Pursuant to the November 28, 2013 Constitution of the Socialist Republic of Vietnam;
The National Assembly enacts the Gender Affirmation Law (GAL)..*

CHAPTER I GENERAL PROVISIONS

Article 1. Governing scope

This Law prescribes rights and obligations of transgender people; eligibility conditions, applications and procedures for an applicant of medical interventions for gender affirmation; conditions, applications and procedures for organizations and individuals performing psychological assessment/examination and medical interventions for gender affirmation; recognition of a transgender person.

Article 2. Interpretation of terminology

In this Law, the following words and phrases are construed as follows:

1. Applicant for gender affirmation is a person that has a complete biological sex, whose gender identity is different from the existing biological sex, and who requests to be recognized by a competent authority as a transgender person.
2. Trans/transgender refers to the applicant of gender affirmation who has been recognized by a competent authority or who has undergone medical interventions for sex reassignment and has made a request to a competent authority to be recognized as a transgender person as prescribed under this Law.
3. Medical intervention for sex reassignment is a person's use of hormones and/or performance of a breast surgery

and/or genital surgery with the desire to reassign part or all of the body that has a mature/complete biological sex to another sex that matches or identifies with their gender identity.

4. Complete biological sex is a person's sex assigned at birth that has been determined as a male or a female based on completeness in both chromosomes, internal and external genitalia.

5. Gender identity refers to a person's self-perception of whether that person is male or female.

6. Gender dysphoria refers to discomfort or distress that is caused by a discrepancy between a person's gender identity and that person's sex assigned at birth.

7. Hormones are male hormones secreted by the testes (androgen) and female hormones are secreted by the ovaries (estrogen).

8. Single person is a person who is not currently in a marriage relationship as prescribed by law.

Article 3. Basic principles of gender affirmation

1. Ensure that people who wish to affirm their gender can live a life true to their desired gender.

2. Carry out medical interventions for sex reassignment on a voluntary or freely chosen basis of the gender affirming applicant.

3. No stigma or discrimination against transgender people and their families.

4. Respect and ensure the exercise of transgender people's rights

5. The correction of a transgender person's civil status information after being recognized with a new gender marker will not change the civil rights and obligations that the person hold before the information is corrected, as well as the rights and obligations from marriage and family relations, including child adoption.

Article 4. Rights and obligations of a transgender person

1. Rights of a transgender person

a) To be recognized as a transgender person without compulsorily undergoing medical interventions for sex reassignment; the performance of gender affirming medical interventions is completely voluntary or freely chosen;

b) To keep intact the parent-child relationship as well as the rights and obligations from the marriage-family relationship, including child adoption;

c) To keep the name unchanged on the signed papers/documents, property rights before changing gender marker and information on documentation;

d) To participate in sports competitions in conformity with legislation on physical training and sports;

dd) To receive psychological and medical counselling and support before, during and after gender-affirming medical interventions;

e) To be respected and protected regarding honour, dignity, prestige, private life, personal secrets, family secrets and other privacy rights of transgender people;

g) To register for change of information on civil status papers/documents after being recognized as a transgender person;

h) To study, work and integrate into the family and society after the gender-affirming medical interventions has been performed;

i) Sterilization is not obliged during genital surgery, except in voluntary/freely chosen cases;

k) To get married in alignment with the new gender after being recognized as a transgender person;

l) To be guaranteed with other rights as enshrined under the Constitution and legislation.

2. Obligations of a transgender person

a) To perform military service in sync with the new gender as prescribed in laws on military service;

b) To participate in psycho-medical counseling and support before, during and after performing gender-affirming medical interventions;

- c) To actively and proactively study, work, integrate into family and the society after performing gender-affirming medical interventions;
- c) To fulfill other obligations as enshrined under the Constitution and legislation.

Article 5. Prohibited acts

1. Stigmatize, discriminate against, insult the honour and dignity of, perpetrate violence against the people who desire to affirm their genders, transgender people.
2. Obstruct or hinder gender-affirming medical interventions.
3. Take advantages of transgender people for human trafficking, labour exploitation, sexual abuse or other illegal acts.
4. Perform sterilization during genital surgery without the person's consent.
5. Force transgender people to leave school or work because of gender marker change.
6. Disclose information, private life, personal secrets, family secrets of without the consent of the transgender person.
7. Carry out gender-affirming medical interventions regardless of the ineligibilities of the individual or organization
8. Take advantages of the gender marker change to evade legal obligations.

CHAPTER III

CONDITIONS, APPLICATIONS, PROCEDURES FOR APPLICANTS TO GENDER-AFFIRMING MEDICAL INTERVENTIONS

Article 6. Conditions for applicants to be eligible for hormonal therapy for sex reassignment

1. Have a complete biological sex.
2. Have a gender identity that is different from the existing biological sex.
3. Be full 16 years old or older, have full civil act capacity.
4. Be single.
5. Be mentally and physically healthy, with no contraindication to hormone therapy.

Article 7. Conditions for the applicants for gender-affirming breast surgery or genital surgery

1. Satisfy the conditions specified in Clauses 1, 2, and 4 in Article 6 of this Law.
2. Be full 18 years old or older, have full civil act capacity.
3. Have received on-going hormone therapy for 01 year, except for the cases of female-to-male breast surgery.
4. Be mentally and physically fit, with no contraindications to breast or genital surgeries.

Article 8. Applications for gender-affirming hormone therapy

1. Applications for gender-affirming hormone therapy include:
 - a) An application for gender-affirming hormone therapy.
 - b) A certified copy or a copy attached with the original copy to be presented for comparison of the following papers/documents: passport, identity card, chip-based citizen identity card or provision of personal identification number.
 - c) A Certificate of marital status as prescribed by law
2. Procedure for applying gender-affirming hormone therapy:
 - a) The applicant for gender-affirming hormone therapy shall submit 01 (one) set of applications as prescribed in Clause 1 of this Article at the Hospital which has been licensed for gender-affirming hormone therapies.
 - b) After receiving the full set of applications specified in Clause 1 of this Article, the Hospital shall set up a Gender

Determination Council to determine that the gender-affirming applicant has a gender identity which is different from that person's existing gender, shall perform a health check to determine that the person has a biological complete sex, is mentally and physically healthy, and has no contraindications to hormone therapy.

c) After determining that the applicant for hormone therapy fully meets the conditions specified in Point b of this Clause, the Hospital shall provide hormone therapy or treatment to the applicant. In cases where the hormone treatment is not possible for the applicant, the Hospital must reply in writing and clearly state the reasons.

3. The Minister of Health shall prescribe the Application Form as specified in Point a, Clause 1 of this Article..

Article 9. Applications and procedures for gender-affirming breast surgery or genital surgery

1. Applications for gender-affirming breast surgery or genital surgery include:

- a) Application for gender-affirming breast surgery or genital surgery;
- b) The documents specified in Points b and c, Clause 1 in Article 8 of this Law, except for the cases where gender-affirming hormone therapy has been provided as prescribed in Point c of this Clause;
- c) A certificate of having undergone hormone therapy for a consecutive period of 01 year issued by the hospital that provided the hormone therapy, except for female-to-male breast surgery.

2. Procedures to apply for gender-affirming breast or genital surgery:

a) The applicant for gender-affirming breast surgery or genital surgery shall submit 01 (one) set of applications as prescribed in Clause 1 of this Article at the Hospital which has been licensed for gender-affirming breast surgery or genital surgery.

b) After receiving the full set of applications specified in Clause 1 of this Article, the Hospital shall set up a Gender Determination Council to determine that the gender-affirming applicant has a gender identity which is different from that person's existing gender, shall perform a health check to determine that the person has a biological complete sex, is mentally and physically healthy, and has no contraindications to breast surgery or genital surgery.

c) After determining that the applicant fully meets the conditions specified in Point b of this Clause, the Hospital shall perform the surgery on that person. In cases where the surgery is not possible, the Hospital must reply in writing and clearly state the reasons.

3. The Minister of Health shall prescribe the Application Form as specified in Point a, Clause 1 of this Article.

CHAPTER III

CONDITIONS, APPLICATIONS, PROCEDURES FOR ORGANIZATIONS AND INDIVIDUALS PERFORMING PSYCHOLOGICAL ASSESSMENT, MEDICAL INTERVENTIONS FOR SEX REASSIGNMENT

Article 10. Conditions for hospitals that are permitted to provide gender-affirming hormone therapy

1. Be a hospital specializing in internal medicine, endocrinology, obstetrics or andrology; a general hospital with specialized wards in internal medicine, endocrinology, obstetrics or andrology; a pediatric hospital that has been granted with operating license in line with laws on medical examination and treatment.

2. Have doctors who possess medical examination and treatment practicing certificates related to hormone treatment and have undergone training in gender-affirming hormone therapy.

Article 11. Conditions for hospitals that are permitted to provide gender-affirming surgeries

1. Hospitals are permitted to perform gender-affirming breast surgeries once they have fully met the following conditions:

- a) Be a hospital specializing in cosmetology; a general hospital with a department/ward in reconstructive plastic

surgery or plastic surgery that has been granted with an operating license as prescribed by laws on medical examination and treatment.

b) Have doctors who have medical examination and treatment certificates in reconstructive plastic surgery or plastic surgery and have undergone training on gender-affirming breast surgery.

2. Hospitals are permitted to perform gender-affirming genital surgeries once they have fully met the following conditions:

a) Being a hospital with departments/wards in plastic surgery, urology or endocrinology, obstetrics or andrology that has been granted with an operating license as prescribed by laws on medical examination and treatment.

c) Have doctors that who possess medical examination and treatment practicing certificates in reconstructive plastic surgery or plastic surgery and have undergone training in gender-affirming genital surgery.

Article 12. Applications and procedures for permitting a Hospital to perform gender-affirming medical interventions

Supplement the technical list as per the regulations of the Minister of Health on decentralization of technical service delivery.

Article 13. Professional regulations on identifying the gender that is different from the complete biological sex

1. For a person aged full 16 years or older who has at least 02 of the following existing psychological signs for a person who identifies with a different gender to the existing one:

a) The characterized or typical discrepancies between gender experience, gender expression, and primary (genital part) or secondary (other non-genital parts) sexual characteristics;

b) Strong desire to escape/get out of the gender characteristics;

c) Strong desire for characteristics of another sex;

d) Strong desire to be treated like a person of another sex;

g) Strong beliefs in typical feelings and reactions of another sex;

h) Experience of gender dysphoria due to the person's gender identity that is different from their current biological sex.

2. The hospitals that are authorized to perform gender-affirming medical interventions must establish a Gender Determination Council to identify an gender-affirming applicant whose gender is different from the existing completed biological sex. The Council is composed of at least 03 people, including a clinician, a psychiatrist, a psychologist. In addition, experts can be invited with at least 05 years' experience working in the field related to transsexual people.

The Council must ensure that it is capable of conducting health checks to determine that the applicant for gender affirmation is a person with a biologically complete sex, and is mentally and physically healthy for transitioning.

3. The Gender Determination Council conducts psychological assessment of the gender-affirming applicant and monitors that person for a period of 06 months, certifying that the gender-affirming applicant identifies with a different gender to the existing complete biological sex or not.

4. After 06 months, the Hospital permitted to provide gender-affirming hormone therapy shall verify that the gender-affirming applicant identifies with a different gender to the completed biological sex on grounds of conclusions made by the Gender Determination Council.

5. The Minister of Health shall detail the Gender Determination Council; content of psychological assessment to verify that the gender-affirming applicant identifies with a different gender identity to the existing sex before undergoing any gender-affirming medical intervention; psychological counseling before, during and after such gender-affirming medical intervention.

Article 14. Professional regulations on gender-affirming hormone therapy

1. The gender-affirming hormone therapy must be fully performed in sync with the following steps:

- a) Discuss with the gender-affirming applicant about the goals they want to achieve, the health history of that person.
- b) Carry out clinical and para-clinical examinations to determine that the gender-affirming applicant is healthy and

has no contraindications to gender-affirming hormone therapy.

c) Advise the gender-affirming individual about positive and negative changes during the treatment process, especially in reproductive health; possible risks during treatment; guide the selection of a treatment protocol suitable to the health and wishes of the gender-affirming individual.

d) Prepare treatment records for continuous monitoring of health through periodical visits and tests to evaluate effectiveness and track side effects.

dd) Discuss with psychologists and surgeons about the hormone therapy being used on the gender-affirming applicant to properly adjust the dose accordingly.

2. The doctor indicates hormone therapy for the gender-affirming applicant depending on the health status and ability to respond to hormones of the person under treatment. The prescribed hormone must be granted under the certificate of drug circulation in line with regulations of legislation on pharmacy. The treatment is provided under professional guidelines issued by the Minister of Health.

3. Once every 3 months or conforming to the appointments scheduled by the treating doctor, the gender-affirming applicant must revisit the hospital providing the hormone therapy to ensure that the physical body responds and make progress with the on-going treatment. The hospital must fully record the treatment times and results in the medical records as prescribed in Point d Clause 1 of this Article.

5. The Minister of Health shall detail the implementation of Clauses 1, 2 and 3 of this Article..

Article 15. Specialized regulation of breast surgery or genital surgery for sex reassignment

1. Gender-affirming breast surgery or genital surgery must be performed with the following steps:

a) Explain to the gender-affirming applicant about surgical methods, advantages and disadvantages of each method; effectiveness, associated risks and complications of each method;

b) Making medical records, treatment plan, follow-up examination and periodic follow-up in the future;

c) Clinical and para-clinical examination to determine that the sex change applicant is healthy enough to warrant surgery and is contraindicated to surgery;

d) In cases of male to female transitioning: be provided with hormone therapy for 01 (one) year, then performance of a breast surgery through breast implants or autologous fat transplant; genital surgery: penile removal, orchiectomy, vaginal, clitoris, vulva reconstruction;

dd) In cases of female to male transitioning: Breast surgery will be performed through breast removal, male breast shaping; genitourinary surgery: removal of the uterus, ovaries and fallopian tubes, urethral reconstruction combined with penile enlargement, vaginectomy, scrotal reconstruction, artificial tissue implantation for erection or artificial testicles.

2. The Minister of Health shall detail Clause 1 of this Article.

Article 16. Health care for transsexual people after gender-affirming medical interventions

1. The hospital that has performed gender-affirming medical interventions for transsexual people or psychologists who meet the conditions specified in this Law shall provide psychological counseling for transsexual people.

2. Persons who have undergone gender-affirming medical interventions shall have periodic re-examination of health to track and monitor the results of surgery, general health, specialized care in urology and obstetrics and gynecology, screening of cancer if needed.

3. Transsexual people will be entitled to maintain the hormone therapy after sex reassignment at the hospitals

permitted to provide gender-affirming hormone therapies.

CHAPTER IV

RECOGNITION OF TRANSGENDER PEOPLE FOR CHANGES IN CIVIL STATUS PAPERS

Article 17. Conditions for recognition of a transgender person in cases where gender-affirming medical intervention has not been performed

A gender-affirming applicant shall be recognized as a transgender person in the event that gender-affirming medical intervention has not been performed and the following conditions are met:

1. Have a complete biological sex;
2. Be full 18 years old or older, have full civil act capacity;
3. Be single;
4. Have been certified by the Gender Determination Council to identify with a different gender to the existing complete biological sex..

Article 18. Conditions to be recognized as a transgender person

1. A gender-affirming applicant who does not undergo any gender-affirming medical intervention and is confirmed by the Gender Determination Council to have a gender identity different from the existing completed biological sex.

2. A gender-affirming applicant who has received gender-affirming hormone therapies for full 02 (two) consecutive years and has applied for being recognized as a transgender person.

3. A gender-affirming applicant who has completed breast surgery or genital surgery or completed breast and genital surgery and has applied for being recognized as a transgender person at the Hospital performing such gender-affirming medical interventions.

4. A gender-affirming applicant who has not undergone any gender-affirming medical intervention at the Hospital requests for recognition and has applied for being recognized as a transgender person, including the cases where breast surgery and genital surgery have been performed, before the entry into force of this Law.

5. A gender-affirming applicant who has never been recognized as a transgender person

Article 19. Applications and procedures for recognition of transgender people

1. The applications for transgender person recognition in cases where gender-affirming medical interventions have not been performed are composed of:

- a) An application for transgender person recognition;
- b) Papers/documents certifying that the applicant has a complete biological sex;
- c) A copy of the paper-based identity card or chip-based citizens' identity card of the applicant.

2. The applications for transgender person recognition in cases where gender-affirming medical interventions have been performed are composed of:

- a) An application for transgender person recognition;
- b) Papers/documents certifying that the applicant has undergone gender-affirming medical interventions, with regard to the cases specified in Clause 4, Article 17 of this Law (except for the person who has undergone gender-affirming surgeries before the effective date of this Law).

3. Procedures for recognition of transgender people:

a) A gender-affirming applicant shall submit 01 (one) set of applications as prescribed in Clause 1 of this Article to the Hospital that is authorized to perform gender-affirming medical interventions, or the Hospital that has provided hormone therapy for this person, or the hospital that has performed gender-affirming breast surgery or genital surgery to

the applicant (hereinafter referred to as the Hospital).

b) The Hospital shall receive the applications from the applicant and checks the validity of the applications within 03 working days.

c) In cases of the gender-affirming applicant specified in Clause 1, Article 17 of this Law: The Hospital shall establish a Gender Determination Council to determine that the gender-affirming applicant identifies with a different gender to the applicant's existing completed biological sex and shall continuously follow-up for 6 months. After 6 months, the Hospital shall issue a Certificate of Transgender Person Recognition to the applicant on grounds of the conclusions made by the Gender Determination Council. In cases where a certificate of Transgender Person Recognition is not issued, the Hospital must reply in writing to the applicant, clearly stating the reason why.

d) In cases of the gender-affirming applicant specified in Clauses 2 and 3, Article 17 of this Law: The Hospital shall base on the application and the applicant's records on gender-affirming medical intervention performance to issue a Certificate of Recognition as a transsexual person for the applicant within 01 working day. In cases where a certificate of recognition as a transsexual person is not issued, the Hospital must reply in writing to the applicant, clearly stating the reason why.

dd) In cases of the gender-affirming applicants specified in Clause 4, Article 17 of this Law: Immediately after receiving the applicant's valid/eligible applications, the Hospital shall conduct a re-examination to determine whether the applicant has or has not undergone gender-affirming medical interventions. On grounds of the results of re-examining and verifying that the applicant has undergone gender-affirming medical interventions, the Hospital shall issue a Certificate of recognition as a transsexual person to the applicant within 03 working days as from the date of obtaining the results confirming that the applicant has performed gender-affirming medical interventions. In cases where a Certificate of Transgender Person Recognition is not issued, the Hospital must reply in writing to the applicant, clearly stating the reason why.

3. The Minister of Health shall detail the Application Form for Recognition and the form for the Certificate of Transgender Person Recognition as specified in Clauses 1 and 2 of this Article.

Article 20. Civil status registration and gender marker change on relevant legal documents for transgender people

1. A certificate of Transgender Person Recognition is the basis for the transgender person to request the civil status agency to change the gender marker information on civil status papers.

2. The Minister of Justice shall specify the competence, documentation and procedures for gender marker change in civil status papers for transgender people.

3. The change of relevant legal papers/documents shall comply with provisions of law.

Article 21. Implementation roadmap

1. By 2025, at the latest, the content of psychological training on transgender people will have been incorporated in teaching curriculums at educational institutions with codes on psychological training.

2. The Minister of Health shall detail this Article.

CHAPTER V IMPLEMENTATION CLAUSE

Article 22. Effectiveness

This Law shall take effect as from 202....

Article 23. Implementation responsibilities

1. Responsibilities of health facilities performing gender-affirming medical interventions:

- a) Establish a Gender Determination Council to verify that individuals identify with identities different from their completed biological sex and take responsibility for the content of psychological confirmation.
- b) Issue the Certificate of Transgender Person Recognition and take responsibility for the issuance of the Certificate of Transgender Person Recognition issued by their respective health facilities.
- c) Ensure the transgender people's rights to be free from stigma and discrimination, to keep their privacy confidential and to have other lawful rights and interests as prescribed in this Law

2. Responsibilities of the Ministry of Health:

- a) Submit to the Government, the Prime Minister and enact, in pursuant to its competence, legal documents and policies on medical support for transgender people;
- b) Organize inspection and examination of health facilities with the permission to perform gender-affirming medical interventions;
- c) Organize and provide accurate and scientific information on the contents related to transitioning and transgender people in order to avoid stigma and discrimination. Ensure transgender people have access to medical services and information appropriate to their health conditions.
- d) Formulate plans to support and train a team of psychologists to support in psychological counseling for gender-affirming applicants and deliver safe sex programs for transgender people.

3. Responsibilities of the Ministry of Justice: Coordinate with the Ministry of Health and relevant ministries in formulating guiding documents on the registration for civil status changes for transgender people and direct the inspection and examination over the execution of civil status change registration for transgender people.

4. Responsibilities of the Ministry of Education and Training, the Ministry of Labour, Invalids and Social Affairs: Coordinate with the Ministry of Health and relevant ministries in formulating policies to ensure that transgender people are free from stigma and discrimination in education, employment and are not forced to quit jobs or to drop out of school on grounds of transitioning.

5. Ministries and ministerial-level agencies shall, within the ambit of their tasks and powers, be responsible for coordinating with the Ministry of Health in performing the state management on gender affirmation related issues.

Article 24. Details provision and implementation instructions

The Ministers of line ministries shall detail the articles and clauses assigned under the Law and execution measures.

This Law has been passed by the National Assembly of the Socialist Republic of Viet Nam, Legislature XIV, Session ... in 202..

CHAIR PERSON OF THE NATIONAL ASSEMBLY

Vương Đình Huệ

II. Legislations on legal gender recognition

a. Argentina

Law 26,743

Establishes the right to gender identity of people.

Sanctioned: May 9, 2012 Promulgated: May 23, 2012

ARTICLE 1 - Right to gender identity.

Everyone has the right:

- a) To the recognition of their gender identity;
- b) To the free development of their person according to their gender identity;
- c) To be treated according to their gender identity and, in particular, to be identified in this way in the instruments that prove their identity with respect to the first name (s), image and sex with which they are registered there.

ARTICLE 2 - Definition.

Gender identity is understood as the internal and individual experience of gender as each person feels it, which may or may not correspond to the sex assigned at birth, including the personal experience of the body. This may involve the modification of bodily appearance or function through pharmacological, surgical or other means, provided that this is freely chosen. It also includes other gender expressions, such as dress, speech, and manners.

ARTICLE 3 - Exercise.

Any person may request the registration rectification of sex, and the change of first name and image, when they do not coincide with their self-perceived gender identity.

ARTICLE 4 - Requirements.

Any person who requests the registration rectification of sex, change of first name and image, by virtue of this law, must observe the following requirements:

1. Prove the minimum age of eighteen (18) years of age, with the exception of what is established in article 5 of this law.
2. Submit to the National Registry of Persons or its corresponding sectional offices, an application stating that it is covered by this law, requiring the registration rectification of the birth certificate and the new corresponding national identity document, keeping the original number.
3. Express the new chosen first name with which you are requesting to register.

In no case will it be a requirement to prove surgical intervention for total or partial genital reassignment, or to accredit hormonal therapies or other psychological or medical treatment.

ARTICLE 5 - Minors.

In relation to persons under eighteen (18) years of age, the request for the procedure referred to in article 4 must be made through their legal representatives and with the express consent of the minor, taking into account the principles of progressive capacity and interest. superior of the child in accordance with the provisions of the Convention on the Rights

of the Child and Law 26.061 for the comprehensive protection of the rights of girls, boys and adolescents. Likewise, the minor must have the assistance of the child's lawyer provided for in article 27 of Law 26,061.

When for any reason it is denied or it is impossible to obtain the consent of any of the legal representatives of the minor, a summary procedure may be used so that the corresponding judges resolve, taking into account the principles progressive capacity and best interests of the child in accordance with the provisions of the Convention on the Rights of the Child and Law 26.061 for the comprehensive protection of the rights of girls, boys and adolescents.

ARTICLE 6 - Procedure.

Once the requirements established in articles 4 and 5 have been fulfilled, the public official will proceed, without the need for any judicial or administrative procedure, to notify ex officio the rectification of sex and change of first name to the Civil Registry of the jurisdiction where The birth certificate was established so that it can proceed to issue a new birth certificate adjusting it to said changes, and to issue a new national identity document that reflects the registration rectification of the sex and the new first name. Any reference to this law is prohibited in the rectified birth certificate and in the national identity document issued by virtue of it.

The procedures for the registration rectification provided for in this law are free, personal and the intermediation of any manager or lawyer will not be necessary.

ARTICLE 7 - Effects.

The effects of the rectification of the sex and the first name (s), carried out by virtue of this law, will be enforceable against third parties from the moment of their registration in the registry (s).

The registry rectification will not alter the ownership of the legal rights and obligations that may correspond to the person prior to the registration of the registry change, nor those from the relationships of family law in all its orders and degrees, which will be maintained unchangeable, including adoption.

In all cases, the person's national identity document number will be relevant, over the person's first name or morphological appearance.

ARTICLE 8 - The registration rectification in accordance with this law, once carried out, may only be modified again with judicial authorization.

ARTICLE 9 - Confidentiality.

Only those who have the authorization of the original birth certificate or with a written and well-founded court order will have access to the original birth certificate.

The registration rectification of sex and change of first name will not be publicized in any case, except with the authorization of the owner of the data. Publication in the newspapers referred to in article 17 of Law 18,248 will be omitted.

ARTICLE 10. - Notifications.

The National Registry of Persons will inform the change of national identity document to the National Recidivism Registry, to the corresponding Electoral Registry Secretariat for the correction of the electoral roll and to the bodies that are determined by regulation, including those that may have information on measures existing precautions in the name of the interested party.

ARTICLE 11. - Right to free personal development.

All persons over eighteen (18) years of age may, in accordance with article 1 of this law and in order to guarantee the enjoyment of their integral health, access total and partial surgical interventions and / or integral hormonal treatments to adapt their body, including their genitality, to their self-perceived gender identity, without requiring judicial or administrative authorization.

For access to comprehensive hormonal treatments, it will not be necessary to prove the will in the surgical intervention of total or partial genital reassignment. In both cases, only the informed consent of the person will be required. In the case of minors, the principles and requirements established in Article 5 for obtaining informed consent shall govern. Notwithstanding this, in the case of obtaining the same with respect to the total or partial surgical intervention, it must also have the consent of the competent judicial authority of each jurisdiction, who must ensure the principles of progressive capacity and interest superior of the child in accordance with the provisions of the Convention on the Rights of the Child and in Law 26. 061 of comprehensive protection of the rights of girls, boys and adolescents. The judicial authority must be issued within a period of no more than sixty (60) days from the request for conformity.

The effectors of the public health system, whether state, private or of the subsystem of social works, must permanently guarantee the rights that this law recognizes.

All the health benefits contemplated in this article are included in the Mandatory Medical Plan, or the one that replaces it, in accordance with the applicable authority regulations.

ARTICLE 12. – Decent treatment.

The gender identity adopted by people, especially girls, boys and adolescents, who use a first name other than the one recorded on their national identity document must be respected. At its sole request, the first name adopted must be used for the summons, registration, file, call and any other management or service, both in the public and private spheres.

When the nature of the management makes it necessary to record the data in the national identity document, a system that combines the initials of the name, the full surname, day and year of birth and the document number will be used and the first name will be added. chosen for reasons of gender identity at the request of the interested party.

In those circumstances in which the person must be named in public, only the first name of choice that respects the gender identity adopted should be used.

ARTICLE 13. - Application.

All norms, regulations or procedures must respect the human right to a person's gender identity. No rule, regulation or procedure may limit, restrict, exclude or suppress the exercise of the right to gender identity of people, and the rules must always be interpreted and applied in favor of access to it.

SECTION 14. - Paragraph 4 of article 19 of Law 17.132 is repealed.**ARTICLE 15. - Communicate to the National Executive Power.**

GIVEN IN THE SESSION ROOM OF THE ARGENTINE CONGRESS, IN BUENOS AIRES, ON THE NINE DAYS OF THE MONTH OF MAY OF THE YEAR TWO THOUSAND TWELVE.

- REGISTERED UNDER NO. 26,743 -

AMADO BOUDOU. - JULIANA A. DOMINGUEZ. - Gervasio Bozzano. - Juan H. Estrada.

b. Na Uy

Legislative Decision 71 (2015-2016)

§ 1 Definition

Legal gender refers to the gender a person is registered with in the population register.

§ 2 Right to change legal gender

People who are residents of Norway and who experience that they belong to the other gender than the one the individual is registered with in the population register have the right to change their legal gender.

§ 3 Change of legal gender for persons under legal guardianship

A person who is under guardianship as designated by the guardianship law can themselves seek to change their legal gender.

§ 4 Change of legal gender for children.

Children who have reached the age of 16 can apply for a change of legal gender themselves.

Children between the ages of 6 and 16 must apply for a change of legal gender together with the person or persons who have parental responsibility for the child. If the parents have joint parental responsibility, but the application is submitted together with only one of them, the legal gender can still be changed if this is in the child's best interests.

An application for a change of legal gender for children under the age of 6 is submitted by the person or persons who have parental responsibility for the child. Children who are able to form their own views on the matter must be informed and given the opportunity to express themselves before the application is submitted. It is a condition for change that the child has a disorder of sex development. Applicants must submit documentation of the condition from health personnel.

§ 5 The processing of applications for the change of legal gender

Applications for a change of legal gender are handled by the tax office (the population register authority). The tax office's decision on the case for the change of legal gender can be disputed to the county governor in Oslo and Akershus. Applications from children between 6 and 16 years who are as described in § 4, second paragraph, second point, should be submitted together with at least one of the parents who has parental responsibility, and is handled by the county governor in Oslo and Akershus. The county governor's decision can be appealed to the National Appeals Body for the Healthcare System.

§ 6 Legal consequences of changing legal gender

The legal gender shall be the basis for application of other laws and regulations. The birth gender shall however be the basis if there is a need to establish paternity and parental responsibility under the Children's Law. A person who changes their legal gender maintains the rights and responsibilities that come with fatherhood, motherhood, or shared motherhood. Rules that apply about or for a woman who gives birth to a child apply in the same way for a person who gives birth to a child after having their legal gender changed.

§ 7 Regulations

The department can give regulations on the completion and implementations of the decisions in the law.

§ 8 Entry into force

The law is in effect from the time the King decides upon. The king can enter into force the individual decisions at different times.

§ 9 Changes to other laws

From the time the law is out into force, the following changes to the law on the 7th of June, 2002 nr. 19 on the personal name: § 10, second paragraph, first point, shall read: People over 16 years cannot take, change or annul the first name or last name more than one time every tenth year. § 12 shall read: § 12 Notification on the name for children. Notification on taking, changing or annulling the name of someone who is not yet 16 shall be put forth by the one or those who have parental responsibility, or these must have consented to the notification. When it comes to the notification for children over 12 years of age, the child must also have consented. Even if consent isn't present as in the first or second point, the notification can be approved if there are special grounds for the decision.

When it comes to the notification that a person has changed their legal gender under the law for the change of legal gender, § 4, second paragraph, second point, consent from one of those who has parental responsibility is sufficient.

Olemic Thommessen, president

C. Pakistan

Act No. XIII of 2018

AN ACT

To provide for protection, relief and rehabilitation of rights of the transgender persons and their welfare and far matters connected therewith and incidental thereto

WHEREAS it is expedient to provide for protection, relief and rehabilitation of rights of the transgender persons and their welfare and for matters connected therewith and incidental thereto;

It is hereby enacted as follows: -

CHAPTER I PRELIMINARY

1. Short title, extent and commencement. - (1) This Act may be called the Transgender Persons (Protection of Rights) Act, 2018.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. Definitions.- (1) In this Act, unless there is anything repugnant in the subject or context,-

(a) "Act" means the transgender persons (protection of Rights) Act, 2018;

- (b) "CNIC" means Computerized National Identity Card;
- (c) "Complainant" means a transgender person who has made a complaint on being aggrieved by an act of harassment;
- (d) "CRC" means Child Registration Certificate or B-Form;
- (e) "Gender expression" refers to a person's presentation of his gender identity, and/or the one that is perceived by others;
- (f) "Gender identity" means a person's innermost and individual sense of self as male, female or a blend of both or neither; that can correspond or not to the sex assigned at birth;
- (S) "Government" means the Federal Government;
- (h) "Harassment" includes sexual, physical, mental and psychological harassment which means any aggressive pressure or intimidation intended to coerce, unwelcome sexual advance, request for sexual favors or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, causing interference with living, mobility or work performance or creating an intimidating, hostile or offensive work or living environment including the attempt to punish the complainant for refusal to comply with such requests or to bring forth the complaint;
- (i) "NADRA" means the National Database and Registration Authority;
- (j) "Notification" means a notification published in the Gazette;
- (k) "PMDC" means Pakistan Medical and Dental Council made under the PMDC Ordinance, 1962;
- (t) "Prescribed" means prescribed by rules made by the Government under this Act;
- (m) "Rules" means the rules made under this Act; and
- (n) "Transgender Person" is a person who is:-
- (i) Intersex (Khusra) with mixture of male and female genital features or congenital ambiguities, or
 - (ii) Eunuch assigned male at birth, but undergoes genital excision or castration; or
 - (iii) a transgender man, transgender woman, KhawajaSira or any person whose gender identity and/or gender expression differs from the social norms and cultural expectations based on the sex they were assigned at the time of their birth.
- (2) A word or expression not defined in the Act shall have the same meaning as assigned to it in the Code of Criminal procedure, 1B9B or Pakistan Penal Code, 1860 (XLV of 1860).

CHAPTER II

RECOGNITION OF IDENTITY OF TRANSGENDER PERSON

3. Recognition of identity of transgender person. - (1) A transgender person shall have a right to be recognized as per his or her self-perceived gender identity, as such, in accordance with the provisions of this Act.
- (2) A person recognized as transgender under sub-section (1) shall have a right to get himself or herself registered as per self-perceived gender identity with all government departments including, but not limited to NADRA.
- (3) Every transgender person, being the citizen of Pakistan, who has attained the age of eighteen years shall have the right to get himself or herself registered according to self-perceived gender identity with NADRA on the CNIC, CRC, Driving Licence and passport in accordance with the provisions of the NADRA Ordinance, 2000 or any other relevant laws.
- (4) A transgender person already issued CNIC by NADRA shall be allowed to change the name and gender according to his or her self perceived identity on the CNIC, CRC, Driving Licence and passport in accordance with the provisions of the NADRA Ordinance, 2000.

CHAPTER III

PROHIBITION OF CERTAIN ACTS

4. Prohibition against discrimination. - No person shall discriminate against a transgender person on any of the following grounds, namely:-

- (a) the denial of, or discontinuation of, or unfair treatment in, educational institutions and services thereof;
 - (b) the unfair treatment in, or in relation to, employment, trade or occupation;
 - (c) the denial of, or termination from, employment or occupation;
 - (d) the denial of, or discontinuation of, or unfair treatment in healthcare services;
 - (e) the denial of, or discontinuation of, or unfair treatment with regard to, access to, or provision or enjoyment of use of any goods, accommodation, service/ facility, benefit, privilege or opportunity dedicated to the use of general public or customarily available to the public;
 - (f) the denial of, or discontinuation of, or unfair treatment with regard to right to movement, safe travel, and use of public facilities of transportation;
 - (g) the denial of, or discontinuation of, or unfair treatment with regard to the right to reside, sale/purchase, rent or otherwise occupy, inherit any movable and immovable property;
 - (h) the denial of, or discontinuation of, or unfair treatment in, the opportunity to stand for or hold public or private office; or
 - (i) the denial of access to, removal from, or unfair treatment in, government or private establishment, organizations, institutions, departments, centers in whose care, custody or employment a transgender person may be.
5. prohibition against Harassment. - Harassment of transgender persons, as defined in this Act, both within and outside the home, based on their sex, gender identity and/or gender expression is prohibited.

CHAPTER IV

OBLIGATIONS BY THE GOVERNMENT

6. Obligations of the government, - The Government shall take steps to secure full and effective participation of transgender persons and their inclusion in society, namely: -
- (a) Establish Protection Centers and Safe Houses to ensure the rescue, protection and rehabilitation of transgender persons in addition to providing medical facilities, psychological care, counseling and adult education to the transgender persons;
 - (b) Establish separate prisons, jails, confinement cells, etc for the transgender persons involved in any kind of offence or offences;
 - (c) Institute mechanisms for the periodic sensitization and awareness of the public servants, in particular, but not limited to, law enforcement agencies and medical institutions, relating to the issues involving the transgender Persons and the requirement of protection and relief of such persons;
 - (d) Formulate special vocational training programmes to facilitate, promote and support livelihood for transgender Persons;
 - (e) Encourage transgender Persons to start small business by providing incentives, easy loan schemes and grants; and
 - (f) Take any other necessary measures to accomplish the objective of this Act.

CHAPTER V

PROTECTION OF RIGHTS OF TRANSGENDER PERSONS

7. Right to inherit. – (1) There shall be no discrimination against transgender persons in acquiring the rightful share of property as prescribed under the law of inheritance.
- (2) The share of transgender persons shall be determined as per the gender declared on CNIC in accordance with the law of inheritance in Pakistan.
- (3) The share of inheritance for transgender persons will be as follows:-
- (i) For transgender male, the share of inheritance will be that of man;
 - (ii) For transgender female, the share of inheritance will be that of woman;
 - (iii) For person who has both male and female or ambiguous characteristics, such as their state is difficult to determine upon birth, following shall apply:-

(a) Upon reaching the age of eighteen years, if the person's self-perceived gender identity is transgender male, the share of inheritance will be that of man;

(b) Upon reaching the age of eighteen years, if the person's self-perceived gender identity is transgender female, the share of inheritance will be that of woman;

(c) Upon reaching the age of eighteen years, if the person's self-perceived gender identity is neither transgender man nor transgender woman, the share of inheritance will be an average of two separate distributions for a man and a woman; and

(d) Below the age of eighteen years, the gender as, determined by medical officer on the basis of predominant male or female features.

8. Right to Education. (1) There shall be no discrimination against transgender persons in acquiring admission in any educational institutions, public or private, subject to fulfilment of the prescribed requirements.

(2) All educational institutions shall provide education and opportunities for sports, recreation and leisure activities without any discrimination, and on an equal basis with others,

(3) The Government shall take steps to provide free and compulsory education to transgender persons as guaranteed under Article 25A of the Constitution of the Islamic Republic of Pakistan.

(4) It is unlawful for an institution, whether private or public, to discriminate against a person on the ground of person's sex, gender identity and gender expression, including but not limited to,-

(a) in determining who should be offered admission; or

(b) in the terms or conditions on which admission is offered; or

(c) by denying the person's access, or limiting the person's access, to opportunities, training or to any other positive externalities associated with the education; or

(d) by denying access to appropriate student facilities based on a person's sex, gender identity and expression.

9. Right to employment.- (1) The Government must ensure the right to enter into any lawful profession or occupation and to conduct any lawful trade or business for the transgender persons as guaranteed under Article 18 of the Constitution of the Islamic Republic of Pakistan.

(2) No establishment, institution, department, organization, shall discriminate against any transgender person in any matter relating to employment including, but not limited to, recruitment, promotion, appointment, transfer and other related issues.

(3) It shall be unlawful for an employer to discriminate against an employee on the ground of his sex, gender identity or gender expression,-

(a) in determining who should be offered employment; or

(b) in the terms or conditions on which employment is offered; or

(c) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training or to any other benefits associated with employment; or

(d) by dismissing the employee; or

(e) by subjecting the employee to any other detriment.

10. Right to vote.-No transgender person shall be deprived of his right to cast a vote during national, provincial and local government elections:

Provided that the access to polling stations shall be determined according to the gender declared on the CNIC of a transgender person.

11. Right to hold public office.---(1) There shall be no discrimination on the basis of sex, gender identity and gender expression for transgender persons if they wish to contest election to hold public office.

12. Right to health.-The Government shall take the following measures to ensure non-discrimination in relation to transgender persons, namely:-

(a) to review medical curriculum and improve research for doctors and nursing staff to address specific health issues of transgender persons in cooperation with PMDC;

(b) to facilitate access by providing an enabling and safe environment for transgender persons in hospitals and other

healthcare institutions and centers;

(c) to ensure transgender persons access to all necessary medical and psychological gender corrective treatment.

13. Right to assembly. (1) The Government must ensure the freedom of assembly for transgender persons in accordance with Article 16 of the Constitution of the Islamic Republic of Pakistan.

(2) The Government must take steps to ensure appropriate safety measures for transgender persons.

(3) No discrimination shall be made on the basis of person's sex, gender identity and gender expression subject to reasonable restrictions imposed by law in the interest of public order.

14. Right of access to public places. (1) No transgender person shall be denied access to public places, places of entertainment or places intended for religious purpose solely on the basis of his sex, gender identity or gender expression.

(2) The Government must ensure transgender persons' access to public places in view of Article 26 of the Constitution of the Islamic Republic of Pakistan.

(3) It shall be unlawful to prevent transgender persons to access facilities available for access of general public and public places mentioned in sub-section (1).

15. Right to property.- (1) No transgender person shall be denied right to purchase, sell, rent or lease property, household or tenancy on the basis of sex, gender identity or gender expression.

(2) It shall be unlawful to discriminate any transgender person with regards to renting, subletting or tenancy on the basis of his sex, gender identity or gender expression.

16. Guarantee of fundamental rights. (1) In addition to rights mentioned in this Chapter, fundamental rights mentioned in Part II of Chapter I of the Constitution of the Islamic Republic of Pakistan shall be available unequivocally for every transgender Person.

(2) It shall be the duty of the Government to ensure that the fundamental rights mentioned in sub-section (1) are protected and there shall be no discrimination for any person on the basis of sex, gender identity or gender expression.

17. Offences and penalties.- (1) Whoever employs, compels or uses any transgender person for begging shall be punishable with imprisonment which may extend to six months or with fine which may extend to fifty thousand rupees or with both.

CHAPTER VI ENFORCEMENT MECHANISM

18. Enforcement mechanism.- In addition to the remedies available under the Constitution or The Pakistan Penal Code 1860 (Act XLV of 1860), the Code of Criminal Procedure, 1898 (Act V of 1898) or the Code of Civil Procedure 1908 (Act V of 1908), the aggrieved transgender person shall have a right to move a complaint to the Federal Ombudsman, National Commission for Status of Women and National Commission of Human Rights (NCHR) if any of the rights guaranteed herein are denied to him or her.

CHAPTER VII MISCELLANEOUS

19. Act having over-riding effect to any other law.- The provisions of this Act shall have an over-riding effect on any other law for the time being in force.

20. Power of Government to make rules.- The Government may, by notification, make rules for carrying out the purposes of this Act

21. Power to remove difficulties.- If any difficulty arises in giving effect to the provisions of this Act, the Government may make such order or give such directions, by order published in the official Gazette, or make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.

d. Cuba

REPUBLIC OF CUBA
MINISTRY OF PUBLIC HEALTH
MINISTERIAL RESOLUTION NO. 126

WHEREAS: Law No. 41 "On Public Health", of July 13, 1983, in Article 3 of Chapter I "General Provisions", establishes that the Ministry of Public Health is in charge of the governing methodological, technical and scientific, in the provision of services and regulates the practice of medicine and related activities, setting the conditions, requirements and limitations thereof; and the organization of public health and the provision of services corresponding to it in our socialist society is based, as provided, in paragraph a) of article 4, on the recognition and guarantee of the Right of the entire population to have their health cared for and adequately protected anywhere in the national territory.

WHEREAS: Likewise, Law No. 41 "On Public Health", in its article 5 defines the National Health System as the set of administrative, service, production, teaching and research units, responsible for the care n comprehensive health of the population and in its article 17 establishes that the prevention, diagnosis and treatment methods used in the National Health System are approved by the Ministry of Public Health.

WHEREAS: Agreement No. 2840, of November 25, 1994, of the Executive Committee of the Council of Ministers, approved in its second provision, among the specific functions and attributions of the Ministry of Public Health, in its numeral 8 " Organize preventive and curative health care services for the entire population ”.

WHEREAS: The Agreement for administrative control, number 2817, of the Executive Committee of the Council of Ministers, of November 25, 1994, adopted in accordance with the Sixth and Seventh Final Provisions of Decree - Law No. 147 "On the Reorganization of the Bodies of the Central State Administration, of April 21, 1994, establishes the duties, attributions and common functions of the Bodies of the Central State Administration, corresponding to their heads, in accordance with the provisions of the numeral 4, of the Third section "To dictate in the limit of his faculties and competence, regulations, resolutions and other dispositions of obligatory fulfillment for the system of the organism; and where appropriate, for the other organizations, the local organs of popular power, state entities, the cooperative, mixed, private sector and the population. "

WHEREAS: Through Ministerial Resolution No. 235, of December 28, 1988, issued by the Minister of Public Health, the National Center for Sex Education (CENESEX) is created as a teaching, research and guidance institution. to the population, subordinate to the Ministry of Public Health.

WHEREAS: Ministerial Resolution No. 1, of January 9, 2007, approves and puts into force the General Hospital Regulations, which establishes the structure and operation of all hospital units and research institutes that have beds, which they are part of the National Health System.

WHEREAS: Taking into account that since 2005 the National Center for Sexual Education (CENESEX) has coordinated the National Strategy for comprehensive care for transgender people, developing a comprehensive health care and treatment model for transsexual people, in correspondence with the characteristics of the National Health System and with international standards of care, it is necessary to create a National Commission for comprehensive care for transgender people, directed by the National Center for Sex Education (CENESEX), which coordinates the work of the Center of Attention to the Integral Health of Transsexual People, and establish its functions.

WHEREAS: The procedures that correspond to the study, diagnosis, treatment and specialized follow-up of

transsexual people have so far been provided by the National Center for Sexual Education (CENESEX), this center being responsible for carrying out the corresponding coordination for the provision of required medical services in different health institutions, not achieving all the expected results, taking into account that hospital units, in the absence of regulations, have not been able to respond according to the requirements of quality established by the Ministry of Public Health, being demonstrated from incomplete or lacking medical treatments.

WHEREAS: Considering the importance of raising the quality of the specialized service provided to Cuban transsexuals, it is necessary to create a Comprehensive Health Care Center for transsexuals, with the objective of unifying, organizing and guaranteeing the required services, and establish their functions.

WHEREAS: By Agreement of the Council of State, dated May 27, 2004, the decision maker is appointed Minister of Public Health.

THEREFORE: In the exercise of the powers conferred on me,

RESOLVED:

FIRST: Create the National Commission for comprehensive care for transgender people, directed by the National Center for Sex Education (CENESEX).

SECOND: Create the Comprehensive Health Care Center for transsexual people, as the only institution of the National Health System, authorized to carry out total or partial medical treatments for sexual reassignment.

THIRD: The Integral Health Care Center for transsexual people is integrated into the structure and operation established in the General Hospital Regulations.

FOURTH: The functions of the National Commission for Comprehensive Care for transsexual people, directed by the National Center for Sex Education (CENESEX):

- a) develop, implement and coordinate the national policy of comprehensive care for transgender people.
- b) promote comprehensive care for transsexual people.
- c) Propose, to the Ministry of Public Health, the specialists who will be part of the health care team for transsexual people.
- d) approve, according to the eligibility and availability criteria contained in the treatment protocols, the relevance or not of the sexual reassignment surgery.
- e) methodologically direct the operation of the Center for the integral health care of transsexual people.
- f) promote research that contributes to the development of multidisciplinary scientific knowledge on transsexuality.
- g) advise the Minister of Public Health on the conception of policies on transsexuality.

FIFTH: The functions of the Center for Integral Health Care for Transsexual People are to :

- a) provide comprehensive health services, which include the study, diagnosis, treatment, healthcare research and monitoring of transsexual people.
- b) Carry out, according to the medical protocols of action, the treatment that each transsexual person requires.
- c) Coordinate with the Assistance Unit of the National Public Health System, headquarters of the center, other care procedures required by transgender people during their comprehensive care at the Center for comprehensive health care for transsexual people.

SIXTH: For the purposes of the best interpretation of what is hereby provided, a glossary of terms is attached, which forms an integral part of this Resolution.

SEVENTH: The Director of the National Center for Sex Education (CENESEX), is empowered to designate, by Resolution, the professionals authorized to issue the certification on gender identity to transsexual persons, whose document is the only one officially recognized by the Ministry of Public Health and that its presentation is authorized in any legal procedure or process.

EIGHTH: The Vice Minister of the Agency, who attends to the Medical and Social Assistance, is empowered to propose, before being approved by the one who decides, the Assistance Unit of the National Health System, where the headquarters of the Comprehensive Care Center should be transsexual people.

NINTH: The Vice Minister who attends to the Medical and Social Assistance, in the Ministry of Public Health, issues the indications so that, taking into account the regulations of this Resolution, the availability of the personnel who work permanently in the Comprehensive Health Care Center for transsexuals and the organization and provision of the health services required in the healthcare unit, as well as prior advice from the National Commission for Comprehensive Care for Transsexual People, directed by the National Center for Sex Education (CENESEX), the procedures indicated in the Protocols of professional care for transsexuals are followed.

TENTH: The Vice Minister who attends Medical and Social Assistance is empowered to issue the instructions that are necessary for the best compliance with the provisions of this Resolution.

ELEVENTH: The Vice Minister who attends to the Medical and Social Assistance and the Director of the National Center for Sexual Education (CENESEX), are in charge of the fulfillment of what is hereby provided, in what corresponds to each.

NOTIFY the Vice Minister who attends to Medical and Social Assistance and the Director of the National Center for Sex Education (CENESEX).

COMMUNICATE to as many natural and legal persons should know about it.

FILE the original in the Legal Directorate of the organization.

GIVEN at the Ministry of Public Health, in the City of Havana, on June 4, 2008.

Dr. Jos R. Balaguer Cabrera
MINISTER OF PUBLIC HEALTH

Lic. Tania Maria Garc a Cabello
LEGAL DIRECTOR

I CERTIFY: That it is a true copy of the original that is in the archives of this Legal Department. June 4, 2008.

ANNEX TO MINISTERIAL RESOLUTION NO. 126/08
GLOSSARY OF TERMS:

Sex: Set of anatomical-morphological characteristics that define human beings as female or male.

Assigned sex: It is the sex assigned by the health professional to the newborn according to the characteristics of the external genitalia.

Gender: Sociocultural and historical construction referring to the psychological, social and cultural traits that each society attributes to the person according to the assigned sex.

Gender Identity: Gender identity is the personal and private conviction that each person has of belonging to one or the other gender (woman or man).

Transsexual person: Designates those people, who generally, from early childhood and throughout their lives, demonstrate their indissoluble feeling of belonging to a gender (female or male) that does not correspond to the sex assigned at birth.

Eligibility criteria: These are the objective and specific criteria that establish the procedures for the care of transsexual people at different times: study, diagnosis and treatment until sexual reassignment.

Availability criteria: Objective and specific criteria that affirm the subsequent consolidation of gender identity or better than of mental health during real life experience.

Sex reassignment surgery: Medical, surgical and psychological, masculinizing or feminizing procedures that try to correct the characteristics of sex to the gender identity of the transsexual person. The use of at least one of these procedures for these purposes is considered partial treatment.

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