

LICENSE TO BE YOURSELF:

# FORCED STERILIZATION



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# TABLE OF CONTENTS

<b>INTRODUCTION .....</b>	<b>2</b>
Overview .....	3
Terminology and scope .....	3
Using this resource .....	4
Reproductive autonomy and forced sterilization of intersex people .....	5
 <b>RESTRICTIONS ON STERILIZATION AS A REQUIREMENT FOR LEGAL GENDER RECOGNITION .....</b>	 <b>7</b>
International human rights obligations .....	8
Current Laws .....	9
 <b>SOME COMMON ARGUMENTS AND POSSIBLE RESPONSES .....</b>	 <b>11</b>
Sterilization ensures a person’s body and gender identity match .....	12
Sterilization requirements meet other policy or funding needs .....	15
 <b>CONCLUSION .....</b>	 <b>17</b>
 <b>ENDNOTES.....</b>	 <b>18</b>

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# INTRODUCTION

In 2014, the Open Society Foundations produced *License to Be Yourself*, a report on progressive gender recognition laws and policies for trans people, and the activist strategies behind them.<sup>1</sup>

This is one of four complementary resources for activists. Each brief summarizes key arguments made by those who oppose access to legal gender recognition. This resource focuses on situations where gender recognition is restricted to those who have undergone surgical or medical procedures which may result in sterilization. It provides counter-arguments that can be used by those advocating for rights-based gender recognition laws and policies.

Although this brief is written from a trans perspective, many of the issues it describes are relevant to people with intersex variations. In addition, it includes specific information about forced sterilization for people with intersex variations.

## OVERVIEW

The vast majority of trans people around the world cannot obtain official documents under their appropriate name and sex or gender marker that match their gender identity. Those who can obtain such documents typically face requirements that violate fundamental human rights. One such requirement is to undergo gender affirming surgeries or hormone treatment, which result in sterilization.<sup>2</sup> In many cases these requirements amount to forced or coerced castration.

Identification is required for most activities in daily life. Trans people face marginalization when they are required to use a birth certificate, passport, or other local or national identity verification documents that do not match their gender identity or expression. This may involve threats to a trans person's safety, ridicule, or exclusion from vital health services, housing, employment, education, insurance, legal protection, or social assistance. It is unacceptable to require trans people to choose between these human rights and the right to make decisions about their own bodies, including whether they will have children.

Forced sterilization and medical treatment are significant issues for people with intersex variations, regardless of whether or not they wish to obtain official documents under a name and sex that match their gender identity. This highlights the intersectionality between trans and intersex experiences which should be respected in work on gender recognition laws and policies. Similar issues of forced sterilization are also faced by people with disabilities.

## TERMINOLOGY AND SCOPE

This brief uses the umbrella term **trans** to describe children and young people whose gender identity and/or gender expression differs from their sex assigned at birth. This definition includes, for example, children and youth who identify as gender variant, gender non-conforming, transgender or transsexual, as well as trans boys who identify simply as male and trans girls who identify as female.

Trans is also used here to encompass terms which have developed and are best understood within their specific cultural context. These include, for example, *fa'afafine* / *fa'atama* (Samoa), *travesti* (Central and South America), *meme* (Namibia), *hijra* (India), *meti* (Nepal), *kathoey* (Thailand) and *transpinay* / *transpinoy* (Philippines).

**Gender Identity** refers to the way an individual perceives their own gender. This is an individual's deeply felt identification as male, female, or some other gender. This may or may not correspond to the sex they were assigned at birth.

**Gender expression** refers to how a person manifests or displays their gender identity and/or how this is perceived by others. For example, this may be seen in choices that a person makes about their clothes, voice, hairstyle, facial hair, use of makeup or mannerisms.

**Biological sex** refers to a range of biological characteristics including chromosomes, hormones, reproductive capacity, and external genitalia. Not everyone is born with characteristics that fit neatly into just two binary categories, either totally 'male' or totally 'female.'

It is unacceptable to require trans people to choose between these human rights and the right to make decisions about their own bodies, including whether they will have children.

The terms **sex** and **gender** are used inconsistently both within and between countries. They are considered to be identical terms in some legal systems or languages. In this document the distinction being made is between someone's assigned or recorded sex at birth and their affirmed or preferred *gender*.<sup>3</sup>

The term **intersex** is used in this document to refer to people born with variations in physical sex characteristics (such as chromosomes, gonads, and genitals) that are considered to be either male or female at the same time, only partially male or partially female, or neither male nor female. While some people with intersex variations also describe their sex or gender identity as non-binary, most are either male or female.

The term **legal gender recognition** describes how countries recognize a person's gender identity. The main focus of the Open Society briefs is how countries' laws and policies enable someone's sex details (or gender marker) to be amended to match their gender identity. The most obvious gender markers are binary categories such as male/female or Mr./Mrs./Ms./Miss. Less obvious binary gender markers include coded numbers which differentiate between males and females.

## USING THIS RESOURCE

This brief is primarily for those who advocate for progressive gender recognition laws or policies. It aims to bring the discussion back to objective facts and to untangle issues that are frequently conflated in debates about legal gender recognition. It also seeks to enable people to make conscious, strategic decisions about how best to frame their legal gender recognition advocacy.

Some of the arguments for requiring sterilization are common around the world, while others are specific to regions or even countries. Similarly, some responses will carry more weight than others within a given community.

Lobbying for legal gender recognition does not occur within in a vacuum. *License to Be Yourself* talks about various strategies activists have used. Typically these have included building a greater shared understanding about the impact of current laws and policies on people's lives. Often this requires supporting trans people and their families to speak out. Other approaches have involved strategic litigation, using human rights monitoring processes, creating an evidence base for change, and working closely with governments on specific proposals, public education, and building broad alliances.

There is much to learn from other groups facing challenges to their own reproductive rights and bodily autonomy. Examples include intersex people, women (including those living with HIV, or from ethnic minorities), people with disabilities, and indigenous people. Their struggles have been influential in starting to build greater awareness across the health sector about these human rights issues.

In 2014, the World Health Organization published an interagency statement on eliminating all forced, coercive, and otherwise involuntary sterilization. This highlighted that requiring trans people to undergo unwanted sterilization surgeries in order to change their gender marker runs counter to respect for bodily integrity, self-determination and human dignity, and can cause and perpetuate discrimination.<sup>4</sup>

This brief is primarily for those who advocate for progressive gender recognition laws or policies.

In January 2015, the World Professional Association for Transgender Health (WPATH) updated its unequivocal 2010 statement that “no person should have to undergo surgery or accept sterilization as a condition of identity recognition.”<sup>5</sup> The 2015 version clearly identifies that legal gender recognition should be entirely separate from, and not require, any medical diagnosis or treatment:

“WPATH continues to oppose surgery or sterilization requirements to change legal sex or gender markers. No particular medical, surgical, or mental health treatment or diagnosis is an adequate marker for anyone’s gender identity, so these should not be requirements for legal gender change.”<sup>6</sup>

## REPRODUCTIVE AUTONOMY AND FORCED STERILIZATION OF INTERSEX PEOPLE

Birth registration is not the only issue that requires intersex people to undergo forced or coerced sterilization. Cosmetic and other non-medically necessary surgeries are performed on the physical sex characteristics of intersex children simply because they are born with variations that are considered to not be solely male or female. Typically such medical interventions are done without a child’s informed consent, or that of their parents.<sup>7</sup> These surgeries may have significant, irreversible impacts on an intersex person’s reproductive capacity, as well as on their wider physical or mental health.<sup>8</sup>

Intersex people may also be required to meet sterilization requirements if they wish to amend sex or gender details on official documents. Reform of birth registration laws offers an opportunity to remove such requirements and to question any link between medical interventions and legal recognition of a person’s sex or gender identity. Intersex activist Morgan Carpenter observed:

“Medical treatment needs to be completely decoupled from legal descriptions of sex for all of us . . . [L]egislation should be making it illegal to conduct clinical treatment for the purposes of making a registration or re-registration of sex. This should not mean that people would not be able to seek and obtain medical treatment for the purposes of confirming their gender, it would simply mean that it would be prohibited as a requirement for obtaining a certificate.”<sup>9</sup>

The United Nations Special Rapporteur against Torture has called on all countries to outlaw forced or coerced sterilization and provide special protection to marginalized groups. This includes calling for “all States to repeal any law allowing intrusive and irreversible treatments, including forced genital-normalizing surgery [or] involuntary sterilization . . . when enforced or administered without the free and informed consent of the person concerned.”<sup>10</sup>

The United Nations Special Rapporteur against Torture has called on all countries to outlaw forced or coerced sterilization and provide special protection to marginalized groups.

Progressive gender recognition laws should not require sterilization explicitly or any medical interventions that result in sterilization.<sup>11</sup> Ideally they would incorporate provisions recognizing the added vulnerability of intersex people to forced or coerced sterilization. This could be achieved, for example, by:

- Ensuring that all medical interventions resulting in sterilization or modifications to sex characteristics require evidence that the person receiving treatment has given full, free, and prior informed consent.
- Clarifying that, except in life-threatening situations, any such medical interventions on a child should be deferred until the child has the legal capacity to give such consent.
- Creating a positive right to bodily integrity and physical autonomy for all persons. For example, by explicitly articulating and granting this right in law.

In addition, progressive gender recognition laws should explicitly prohibit genital-normalizing surgeries on intersex infants, babies, or children. The first example of such an approach is the *Gender Identity, Gender Expression and Sex Characteristics Act* passed in **Malta** in April 2015. It introduces a right to bodily integrity and physical autonomy for all Maltese citizens and residents. The Act makes it unlawful to “conduct any sex assignment treatment, or surgical intervention on the sex characteristics of a minor” that can be deferred until the person being treated is able to give informed consent.<sup>13</sup>

The Maltese law includes a mechanism for allowing such treatment before a child is able to give informed consent, in exceptional circumstances. However this requires agreement from an Interdisciplinary Team established under the Act and expressly excludes “medical interventions . . . driven by social factors without the consent of the individual.”<sup>14</sup>

In addition, progressive gender recognition laws should explicitly prohibit genital-normalizing surgeries on intersex infants, babies, or children.

# RESTRICTIONS ON STERILIZATION AS A REQUIREMENT FOR LEGAL GENDER RECOGNITION



## INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

The Yogyakarta Principles collate obligations under existing international human rights law, clarifying how these apply to human rights violations based on a person's gender identity or sexual orientation. Principle 3 focuses on the right to recognition before the law:

“No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilization or hormonal therapy as a requirement for legal recognition of their gender identity.”<sup>15</sup>

Yet in many countries trans people are required to undergo sterilization surgeries, or hormone treatment that may result in sterilization, as a prerequisite for legal gender recognition.<sup>16</sup> In some countries, including in Europe, forced sterilization of trans people takes place even though there are no laws enabling gender recognition. This may occur as a prerequisite to receiving gender affirmative medical treatment.<sup>17</sup>

In other countries there are de facto sterilization requirements. For example, the legal gender recognition process in Ukraine is set out in the Ministry of Health's Order No. 60.<sup>18</sup> This Order does not specify that sterilization is a requirement and notes that the patient has the option to choose whether to undergo any or all surgeries. However, the State Evaluation Commission, which approves individual applications, does not allow trans people to change identity documents unless they have undergone sterilizing surgeries. In addition relevant state authorities have interpreted Order No. 60 as requiring irreversible sterilization.<sup>19</sup>

Sterilization without full, free, and prior informed consent has been described by human rights bodies as coercive. It violates the right to health, the right to information, the right to privacy, the right to decide on the number and spacing of children, the right to found a family and the right to be free from discrimination.<sup>20</sup>

The United Nations Special Rapporteur on Torture has explicitly noted that “in many countries transgender persons are required to undergo often unwanted sterilization surgeries as a prerequisite to enjoy legal recognition of their preferred gender.”<sup>21</sup> He called upon all countries to outlaw forced sterilization in all circumstances and provide special protection to individuals belonging to marginalized groups, including trans people.<sup>22</sup> The UN Committee on the Elimination of all Forms of Discrimination Against Women has expressed particular concerns about compulsory sterilization that trans women are required to undergo in order to change their birth certificates.<sup>23</sup>

When people can only gain legal gender recognition after being sterilized, or after taking other medical steps that may result in sterilization such as hormone treatment, this undermines their right to recognition before the law. Such requirements also violate a person's rights to bodily integrity, self-determination and dignity. Denying access to gender recognition on these grounds perpetuates marginalization, stigma, and discrimination against people because of their gender identity or gender expression.<sup>24</sup>

Human rights bodies have recommended removing any compulsory sterilization requirements from gender recognition laws.<sup>25</sup> In June 2013, the Parliamentary Assembly of the Council of Europe passed resolution 1945 calling on its member states to revise laws and policies to ensure no one can be coerced into sterilization or castration. The resolution specifically lists trans people as disproportionately affected by coercive sterilization in the Council of Europe countries.<sup>26</sup>

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## CURRENT LAWS

### NO MEDICAL VERIFICATION

The most progressive gender recognition laws internationally require no evidence of gender affirming medical procedures. The first ground-breaking example was in 2012 when **Argentina** passed the *Gender Identity and Health Comprehensive Care for Transgender People Act*. Article 4 specifically rules out any need to provide evidence of having undergone “total or partial genital reassignment, hormone therapies or psychological or medical treatment.”<sup>27</sup> The gender recognition law that came into effect in **Denmark** in September 2014 was the first in Europe to be based on self-determination. It also abolishes any requirements for medical interventions, including psychiatric diagnosis, hormone treatment, sterilization, or other surgeries.<sup>28</sup>

This is also the approach taken in the Gender Identity, Gender Expression and Sex Characteristics Act in Malta. The 2015 Act creates both a right to gender identity and a simple process for that gender identity to be recorded on identity documents. This involves a person making a written, witnessed request that their recorded name and gender be amended to reflect their self-defined gender identity. The notary witnessing this request is prohibited from asking for any supporting psychiatric, psychological, or medical documents.<sup>29</sup> In June 2015, **Colombia’s** Justice Minister issued a decree to allow trans people to change their legal gender recognition through a simple bureaucratic process, without proof of surgery.<sup>30</sup> In July 2015, Ireland passed the Gender Recognition Act, which allows individual’s over the age of 18 to be legally recognized through a simple statutory declaration.<sup>31</sup> There is no requirement for a medical diagnosis or interventions.

### NO STERILIZATION REQUIREMENTS

In many other countries the first struggle, often over lengthy periods of time, has been to remove sterilization requirements. Strategic litigation by trans people has been successful in a number of countries in Europe.

In 2012 **Sweden’s** Administrative Court of Appeal in Stockholm ruled that forced sterilization intrudes on a person’s physical integrity and cannot be seen as voluntary.<sup>32</sup> In **Germany** a 2011 Federal Constitutional Court judgement overturned the requirement to prove permanent sterility. Such surgeries were deemed incompatible with the right to sexual self-determination and physical integrity.<sup>33</sup> In 2009, both the Administrative Court and the Constitutional Court in **Austria** ruled that proof of gender reassignment surgery was not required for legal gender recognition.<sup>34</sup>

In September 2014 the Norwegian Equality Body (Ombud Ørstavik) found that the Ministry of Health had provided no justification for the sterilization requirement in its gender recognition law. Requiring sterilization was deemed to contravene the Anti-Discrimination Act in **Norway**.<sup>35</sup> In addition, **Uruguay, Hungary, Portugal**, and the **United Kingdom** do not require medical interventions that result in sterilization as a condition for gaining legal gender recognition. While the law in **Spain** does not require medical interventions, in practice evidence of at least hormone treatment is typically required.

In Africa, neither **Botswana** nor **South Africa** technically require evidence of sterilization. However, in practice, evidence of reassignment surgeries, which may result in sterility, is routinely required in South Africa.

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In **Oceania**, sex/gender details can be changed on a **New Zealand** passport without any diagnosis or medical information. However expert medical evidence is required to amend these details on a birth certificate. There is no guarantee that an individual Family Court judge assessing an application will not require proof of medical interventions that result in sterilization.<sup>36</sup> In **Australia** passport details can be amended based on a supporting letter from a medical practitioner confirming that the person “has had or is receiving appropriate clinical treatment for gender transition” or is intersex. No evidence of specific medical interventions is needed. Since April 2014, this approach has also been adopted for birth certificates in one jurisdiction, the Australian Capital Territory.<sup>37</sup>

In Asia, an April 2014 decision from the **Indian** Supreme Court cited the Yogyakarta Principles including the specific requirement that “no one shall be forced to undergo medical procedures, including SRS, sterilization or hormonal therapy, as a requirement for legal recognition of their gender identity.”<sup>38</sup> In practice, however, trans women and men are being required to show proof of “sex reassignment surgery.”<sup>39</sup>

Three other South Asian countries, **Nepal**, **Bangladesh**, and **Pakistan** have recognized the specific status of hijras, metis and other trans people who identify as a third gender. The Nepal provisions do not require any medical evidence. However implementation phase been very slow.<sup>40</sup>

In **Hong Kong**, **Japan**, **Singapore**, and **South Korea**, legal gender recognition is only possible after gender reassignment surgeries and sterilization. In June 2014, two trans men in South Korea failed in their bid to gain legal gender recognition without undergoing full hysterectomies. This was despite long-term hormone treatment and medical evidence that they had reached menopause and had no reproductive ability.<sup>41</sup>

In **Hong Kong**, the proposed *Marriage Amendment* Bill 2014 would have also explicitly limited legal gender recognition, for the purpose of marriage, to trans people who had undergone sterilization and genital reconstruction.<sup>42</sup> A High Level Roundtable on Gender Identity, Rights and the Law, held in Hong Kong in October 2014, urged legislators to reject that proposal. It called instead for progressive gender recognition legislation, in line with international and regional human rights. Later that month the Legislative Council of Hong Kong rejected the bill.<sup>43</sup>

In the **United States**, four states (**California**, **Iowa**, **New York State**, and **Vermont**) and **Washington, D.C.** allow sex details on birth certificates to be changed with a letter or affidavit confirming the person has undergone appropriate clinical treatment.<sup>44</sup> This does not require evidence of medical procedures that can result in sterilization, such as hormone treatment or surgeries.

In **Canada**, the province of **Ontario** was required to revise the criteria for amending sex details on a birth certificate after an April 2012 Human Rights Tribunal decision found that requiring proof of “transsexual surgery” is discriminatory. The revised policy requires a letter of support from a treating doctor or psychologist.<sup>45</sup> Similarly, in April 2014, a judge in the province of **Alberta** ruled that requiring proof of surgery was discriminatory.<sup>46</sup> In May 2014, Alberta’s Vital Statistics Act was amended to enable current regulations to be revised in light of this decision. As at March 2015, Ontario, **Quebec**, **British Columbia**, and **Manitoba** have replaced any requirement for genital surgery or other specified medical procedures with written support from a health care professional.<sup>47</sup> **Nova Scotia** is also reviewing its Vital Statistics Act.

In many countries the first struggle, often over lengthy periods of time, has been to remove sterilization requirements.

# SOME COMMON ARGUMENTS AND POSSIBLE RESPONSES

## STERILIZATION ENSURES A PERSON'S BODY AND GENDER IDENTITY MATCH

### ARGUMENT:

#### A PERSON'S GENITALS AND REPRODUCTIVE ORGANS MUST MATCH THEIR GENDER IDENTITY

A trans person should have their original reproductive organs removed. They should not retain their reproductive organs and be fertile in their biological sex. It is not right for a trans woman to have male genitalia or a trans man to have female genitalia.

### RESPONSE:

#### GENDER IDENTITY IS NOT DEFINED BY GENITALS, REPRODUCTIVE ORGANS, OR FERTILITY

- A person's gender identity is distinct from their physical body, including their external genitals or their internal reproductive organs.
- It should always be a person's choice whether or not they have surgeries to change their genitals or to remove reproductive organs. Such decisions should be based on full, free, and informed consent.
- Any blanket requirement that someone's genitals must match their gender identity violates people's right to decide whether or when to have such surgical interventions.
- If someone is infertile or has surgeries that affect their ability to have children, it does not change their gender identity. This is true for anyone, regardless of their sex or gender identity.
- Similarly, there should be no pressure for infants' or children's genitals to be changed to match their assigned sex. Frequently, such medical interventions occur in the first weeks of life for infants with intersex variations. There is no way to know whether such changes will match the child's future gender identity.
- Such irreversible, invasive interventions are increasingly understood to be a breach of human rights. Human rights bodies, professional organizations, and ethical bodies have argued that wherever possible such medical interventions should be postponed until a child is sufficiently mature to participate in decision-making and to give full, free, and informed consent.<sup>48</sup>

### ARGUMENT:

#### STERILIZATION PROVES THAT A TRANS PERSON IS SERIOUS ABOUT THEIR GENDER IDENTITY

It is important that people take tangible, irreversible steps to prove they are committed to their gender identity and that it is not simply a passing phase. Other surgeries such as mastectomy or chest reconstruction could still be reversed.

### RESPONSE:

#### FORMAL GENDER RECOGNITION IS A DECISIVE STEP ON ITS OWN

- Legal gender recognition and resulting changes to official documents are public acts that, in themselves, demonstrate a commitment to a specific gender identity.
- A trans person's gender identity is not based on what surgeries they have undergone. It is integral to someone's sense of self and develops over time.<sup>49</sup>
- Not all trans people will be able to undergo sterilization procedures due to financial, medical, religious, cultural, or other reasons.
- Trans people should not have to give up their right to have a family, or lose their right to make decisions about their own body, in order to be recognized before the law.

**ARGUMENT:****MEDICAL EXPERTS  
RECOMMEND STERILIZATION  
FOR TRANS PEOPLE**

Health professionals specializing in working with trans people recommend sterilization, and many trans people undergo such procedures as part of their gender reassignment/affirmation. A desire to have genital surgery is one indicator of gender dysphoria.

**RESPONSE:****STERILIZATION IS A MATTER OF CHOICE AND MUST BE SEPARATE  
FROM GENDER RECOGNITION**

- Many trans people choose not to have surgeries or hormonal treatment that result in sterilization. These should be personal decisions, based on full, free, and informed consent. This requires having adequate information to assess the pros and cons of sterilization.<sup>50</sup>
- If trans people are required to have surgeries or take hormones before being able to change sex details on their official documents, their ability to freely choose those medical interventions is compromised. Consent given under such conditions does not amount to full, free and informed consent.<sup>51</sup>
- WPATH's Standards of Care (SOC) Version 7 reflect the prevailing international medical standards for providing trans health care. These emphasize that "treatment is individualized" and may or may not involve bodily modifications.<sup>52</sup>
- The principles underpinning the SOC stress the importance of choice. Health professionals are directed to match the treatment approach to a trans person's specific needs and to seek their informed consent before providing such treatment.<sup>53</sup>
- Informed consent also requires providing comprehensive information about the impact of hormone treatment or surgeries on reproductive options.<sup>54</sup>
- In a 2010 statement, WPATH made it clear that "no person should have to undergo surgery or accept sterilization as a condition of identity recognition."<sup>55</sup>
- Separating gender recognition from medical interventions gives trans people more ability to medically transition at the most appropriate time for them, if at all. This reduces the risk that trans people make coerced or uninformed decisions about irreversible medical interventions.
- In May 2014, the World Health Organization and six other UN agencies issued a joint statement that opposed making sterilization, or procedures resulting in infertility, a prerequisite for legal recognition of preferred sex or gender.<sup>56</sup> They also highlighted the specific vulnerability of other groups to forced sterilization. These included intersex people, people with disabilities, and women from marginalized communities.
- Even those trans people who want surgery need identification documents in advance of surgery. Typically it takes trans people many years to save money for surgeries, get accepted to hospital waiting lists or navigate an overburdened public health system. Over that period, gender recognition and accurate identification documents can be crucial for daily life, including finding and securing employment.

**ARGUMENT:****ONLY WOMEN SHOULD BE ABLE TO BECOME PREGNANT AND GIVE BIRTH**

If trans people do not have to be sterilized, then trans men can become pregnant and become mothers; and trans women can become fathers.

**RESPONSE:****CONCEIVING AND CARRYING A CHILD IS ABOUT PHYSICAL BODIES, NOT GENDER IDENTITY**

- There are many diverse types of families, including single-parent families, grandparents raising their grandchildren, children with two female or two male parents, and children who have a trans parent.
- Trans parents exist, whether or not their gender identity is legally or socially recognized. Some are visible and others are not. Their children may have been conceived before, during, or after the trans parent's transition.

**ARGUMENT:****A TRANS PARENT EXPOSES THEIR CHILD TO DISCRIMINATION**

If trans parent retains their fertility and parents a child, this will result in confusion for the child and discrimination from others. This is a selfish act by a trans parent and is not in the best interest of the child.

**RESPONSE:****STRONG LAWS, EDUCATION, AND ACCEPTANCE PROTECT CHILDREN FROM DISCRIMINATION**

- There is no evidence that a parent's gender identity affects outcomes for their children.<sup>57</sup>
- Discrimination against any parent is stressful for children and other family members, whether based on the parent's race, gender identity, religion, disability, or another personal characteristic.
- Denying or revoking a parent's legal gender recognition impacts children, who may suffer from discrimination targeted at a parent.
- It is wrong to force someone to hide who they are in order to avoid discrimination. This amounts to victim-blaming and does nothing to reduce discrimination or to promote diversity.
- Progressive gender recognition laws are complemented by laws that prohibit discrimination based on a person's gender identity or sex.
- Progressive gender recognition laws reduce the likelihood that a person's gender identity will be exposed. This diminishes the discrimination trans people experience, and safeguards their children and other family members.

**ARGUMENT:****STERILIZATION MAKES IT CLEAR WHETHER SOMEONE IS A MAN OR A WOMAN**

There needs to be a tangible way of knowing someone's gender identity. This is particularly important when trans people are in sex-segregated facilities such as hospital wards or prisons.

**RESPONSE:****SOMEONE'S GENDER IDENTITY IS NOT DEFINED BY WHETHER THEY HAVE BEEN STERILIZED**

- A person's gender identity is independent of their physical body and any surgical or medical procedures they have undergone.
- This is very personal information and should remain private. Trans people, like any other person, have the right to choose whether or not to disclose sterilization procedures.
- In most non-medical circumstances, there is no polite way of establishing whether or not someone has undergone sterilization.
- Progressive anti-discrimination laws enable trans people to participate in sex-segregated activities and enter sex-segregated facilities based on their gender identity, not on whether they have had surgeries that result in sterilization.
- When people are able to amend identification documents to match their gender identity this also verifies which sex-segregated facility is the most appropriate and safe for them to use.
- Knowing whether someone has been sterilized does not tell you their gender identity. Non-trans people undergo some similar procedures for completely different reasons, including as a form of contraception.

## STERILIZATION REQUIREMENTS MEET OTHER POLICY OR FUNDING NEEDS

**ARGUMENT:****REQUIRING GENITAL SURGERIES WILL DISCOURAGE TRANS PEOPLE FROM SEX WORK**

Trans women who have not had genital surgery are in demand as sex workers. Making genital surgery a requirement for legal gender recognition will increase the proportion of trans women who have such surgeries, which may reduce the chance that trans women will be sex workers.<sup>58</sup>

**RESPONSE:****ALL TRANS PEOPLE HAVE THE RIGHT TO GENDER RECOGNITION, INCLUDING SEX WORKERS**

- Sterilization is unethical when imposed as a legal compliance mechanism.
- Trans people have the same rights as non-trans people to choose whether or not they will be sex workers.
- Sex workers should have the same rights and protections as other workers, including being able to change their name and sex details on official documents.
- Every person has the right to refuse to undergo medical procedures including genital surgeries or sterilization, for whatever reason. Imposing sterilization requirements as a means to discourage sex work is unethical and a violation of human rights.
- There is no evidence to suggest that restrictive gender recognition laws discourage trans people from doing sex work.
- There is considerable evidence that not having access to legal gender recognition increases discrimination against trans people and limits their employment choices. For some trans people, this discrimination means sex work is their only option.



**ARGUMENT:****IF SURGERIES ARE NOT LEGALLY REQUIRED THEY WILL NOT BE FUNDED**

If gender recognition laws or policies do not require sterilization or other medical interventions, then there is no requirement of governments to fund such treatment. This would mean it is no longer provided by government hospitals or through public health insurance.

**RESPONSE:****SURGERIES AND HORMONES SHOULD BE FUNDED BECAUSE THEY ARE MEDICALLY NECESSARY**

- Governments have a requirement to realize the right to the highest attainable standard of health, without discriminating against people on any basis. This includes discrimination based on gender identity or expression.
- The WPATH Standards of Care clearly explain that gender affirming surgeries and hormone treatment are medically necessary for many people. Therefore such medical and surgical interventions should be funded on the same basis as other medically necessary treatment. Similar resolutions have been passed by other health professional bodies including the American Medical Association.
- This expectation to fund medically necessary gender affirming health services is reflected in Article 11 of Argentina's 2012 gender recognition law.<sup>59</sup>
- Coverage of health expenses is also signalled in a 2010 recommendation to Council of Europe member states. This recommendation requires member states to ensure effective access to "gender reassignment services" and cautions that any decision to exclude health insurance coverage must be "lawful, objective and proportionate."

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# CONCLUSION

Many gender recognition laws or policies still require hormone treatment or surgeries that result in sterilization. This amounts to coerced sterilization and an individual's right to recognition before the law is dependent upon foregoing other fundamental rights—including reproductive autonomy.

Decoupling medical transition from legal gender recognition is vital. This recognizes a person's right to bodily integrity, or self-determination over their own body. This is at the heart of laws in **Argentina** and **Malta**, and arguably the Supreme Court decision in **India**.

Many trans people choose to have gender affirming surgeries that result in sterilization, or hormone treatment that risks reducing fertility. As the WPATH Standards of Care state, for many people these are medically necessary procedures. These decisions are ones that trans people should make, for personal and health reasons, not because sterilization is needed to gain legal gender recognition. Such decisions must also be based on full, free, and informed consent.

A growing number of countries are introducing gender recognition laws that remove the need for sterilization and also no longer require evidence of other medical interventions. Instead they emphasize people's right to self-define their gender identity. This means a third party no longer has the authority to make decisions about another person's legal gender identity, whether based on medical evidence or on arbitrary perceptions about another person's gender expression.

Progressive gender recognition laws can also provide an opportunity to address forced sterilization of other groups too, as shown by the Malta provisions recognizing everyone's right to bodily integrity and physical autonomy. Such laws affirm every person's right to freedom from torture, cruel, inhuman, or degrading treatment within health care settings, and the universal right to the highest attainable standard of health.

## ENDNOTES

- 1 The License to Be Yourself report can be found online at: <http://www.opensocietyfoundations.org/reports/license-be-yourself> and the accompanying animated video at: [www.osf.to/TransRights](http://www.osf.to/TransRights)
- 2 The requirement to have a medical diagnosis or to undergo any medical steps in order to gain legal gender recognition is critiqued more broadly because it undermines trans people's right to bodily integrity and self-determination.
- 3 Gender affirmation refers to ways a person receives social recognition and support for their gender identity and expression. The phrases 'gender affirmation' and 'gender affirming' are preferred by some trans activists because they reflect a positive support for self-defined gender identity and expression. Other words such as reassignment, confirmation or validation could imply external assessment of a trans person's gender identity.
- 4 World Health Organization (2014). Eliminating forced, coercive and otherwise involuntary sterilization: an interagency statement, OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO, p. 8. Accessed 25 September 2014 at: [http://apps.who.int/iris/bitstream/10665/112848/1/9789241507325\\_eng.pdf?ua=1](http://apps.who.int/iris/bitstream/10665/112848/1/9789241507325_eng.pdf?ua=1)
- 5 WPATH (2010). Identity recognition statement issued by the Board of Directors of the World Professional Association of Transgender Health (WPATH), 16 June 2010. Accessed 31 March 2015 at: [http://www.wpath.org/uploaded\\_files/140/files/Identity%20Recognition%20Statement%206-6-10%20on%20letterhead.pdf](http://www.wpath.org/uploaded_files/140/files/Identity%20Recognition%20Statement%206-6-10%20on%20letterhead.pdf)
- 6 WPATH (2015). WPATH Statement on Identity Recognition, 19 January 2015. Accessed 31 March 2015 at: [http://www.wpath.org/uploaded\\_files/140/files/WPATH%20Statement%20on%20Legal%20Recognition%20of%20Gender%20Identity%201-19-15.pdf](http://www.wpath.org/uploaded_files/140/files/WPATH%20Statement%20on%20Legal%20Recognition%20of%20Gender%20Identity%201-19-15.pdf)
- 7 Méndez, J.E. (2013). *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment A/HRC/22/53*, para 78. Accessed 31 March 2015 at: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53\\_English.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf)
- 8 United Nations Committee against Torture (2011) *Conclusions and recommendations of the Committee against Torture: Germany*, para. 20. UN Doc CAT/C/DEU/CO/5.
- 9 Carpenter, M. (13 December 2013). *Birth registrations and the necessity or prohibition of medical treatment*. Accessed 27 March 2015 at: <http://oii.org.au/24261/birth-registrations-necessity-prohibition-medical-treatment/>
- 10 Méndez, J.E. (2013), para 88.
- 11 *License to Be Yourself* describes many other elements of progressive gender recognition laws, as does Transgender Europe's 2013 Legal Gender Recognition in Europe Toolkit (Accessed 27 March 2015 at: [http://tgeu.org/toolkit\\_legal\\_gender\\_recognition\\_in\\_europe/](http://tgeu.org/toolkit_legal_gender_recognition_in_europe/)). While gender recognition should not depend upon medical interventions, laws and policies that facilitate voluntary access to such interventions are considered progressive.
- 12 While many such surgeries are performed on infants or children, they may also occur later in life. In August 2009, a German surgeon was ordered to pay €100,000 in compensation to Christiane Völling for surgeries performed in 1977 when Christiane was 8 years old. On 3 September 2008 the surgeon was found guilty of unlawful intervention for removing Christiane's female reproductive organs without providing prior information or obtaining informed consent (*In re Völling*, Regional Court Cologne, Germany, 6 February 2008). Case summary available in English in International Commission of Jurists (2011). *Sexual Orientation, Gender Identity and Justice: A Comparative Law Casebook*.
- 13 There is a provision in Article 14(2) for treatment to be agreed in exceptional circumstances. However "medical intervention which is driven by social factors without the consent of the individual concerned will be in violation of this Act."
- 14 Article 14(5) of the Act states that the Interdisciplinary Team would also assess cases where a child, with consent from a parental authority, requests treatment. The medical professionals' role would be to ensure that the best interest of the child are paramount and, in so far as is practicable, to give due weight to the child's views based on the child's age and maturity.
- 15 International Commission of Jurists (2007). Yogyakarta *Principles – Principles on the application of international human rights law in relation to sexual orientation and gender identity*, pp.11-12.
- 16 Transgender Europe (2014) Legal and Social Mapping, October 2014 update from the TransRespect versus Transphobia (TvT) worldwide project. Accessed 27 March 2015 at: [http://www.transrespect-transphobia.org/uploads/downloads/Legal-Social-Mapping2014/web\\_tvt\\_mapping\\_1\\_EN.pdf](http://www.transrespect-transphobia.org/uploads/downloads/Legal-Social-Mapping2014/web_tvt_mapping_1_EN.pdf)
- 17 Méndez, J.E. (2013), Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. (Para 78).
- 18 Ministry of Health of Ukraine (2 February 2011) *Order No. 60: On improvement of provision of healthcare services to people who need change (correction) of gender identification*. Accessed 27 March 2015 at: <http://zakon4.rada.gov.ua/laws/show/z0239-11>
- 19 Based on information supplied in a complaint to the Special Rapporteurs on Torture and on the Right to Health, October 2014
- 20 World Health Organization (2014), p. 1.
- 21 Méndez, J.E. (2013), Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. (Para 78).
- 22 Méndez, J.E. (2013), paras 78 and 88.
- 23 Committee on the Elimination of Discrimination Against Women (2010). *Concluding Observations on the Netherlands*. CEDAW/C/NLD/CO/5. While the Committee focused on the experiences of trans women, these issues are no less serious for trans men and intersex people too.
- 24 World Health Organization (2014), p. 7
- 25 United Nations Committee against Torture (2008) *General comment no. 2: Implementation of Article 2 by states parties*, para 21. UN Doc CAT/C/GC/2; United Nations Committee on Economic, Social and Cultural Rights (2009) General comment no. 20: Non-discrimination in economic, social and cultural rights, para 32. UN Doc E/C.12/GC/20; Hammarberg, T. (2009) *Gender Identity and Human Rights: Issue Paper*.
- 26 Parliamentary Assembly of the Council of Europe (June 2013) *Resolution 1945*. Accessed 31 March 2015 at: <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=19984&Language=EN>
- 27 The Argentinean Gender Identity and Health Comprehensive Care for Transgender People Act (Decree No. 773/12, of Gender Identity Act No. 26.743). Accessed 31 March 2015 at: <http://globaltransaction.files.wordpress.com/2012/05/argentina-gender-identity-law.pdf>
- 28 Transgender Europe (1 September 2014), *Historic Danish Gender Recognition Law comes into Force*. Accessed 27 March 2015 at: <http://tgeu.org/tgeu-statement-historic-danish-gender-recognition-law-comes-into-force/>
- 29 Article 5(2) of the *Gender Identity, Gender Expression and Sex Characteristics Act* 2015.
- 30 Colombia to allow gender change without surgery: <http://www.washingtonblade.com/2015/06/08/colombia-to-allow-gender-change-without-surgery/>
- 31 Article 10 (1)(f) Gender Recognition Act: <http://www.oireachtas.ie/documents/bills28/acts/2015/a2515.pdf>
- 32 Mål nr 1968-12, Kammarrätten i Stockholm, Avdelning 03, 19 December 2012. Accessed 30 March 2015 at: <http://tgeu.org/administrative-court-of-appeal-in-stockholm-on-sterilisation-requirement-in-gender-recognition-legislation-19-dec-2012/>
- 33 *Bundesverfassungsgericht* [Federal Constitutional Court], BVerfG, 1 BvR 3295/07, 28.01.2011. Accessed 30 March 2015 at: <http://tgeu.org/german-federal-court-verdict-on-forced-sterilisation-2011/>
- 34 Austrian Administrative Court Cases (VwGH) 2008/17/0054 (decided on 27 January 2009); Austrian Constitutional Court (VfGH) Case B 1973/08-13 (decided on 3 December 2009). Cited in Transgender Europe (2013).
- 35 Transgender Europe (13 Sept 2014), *Norwegian Ombud decides forced sterilisation is discrimination*. Accessed 27 March 2015 at: <http://tgeu.org/tgeu-statement-norwegian-ombud-decides-forced-sterilisation-is-discrimination/>

## ENDNOTES

- 36 2013 submission by the Aotearoa / New Zealand Sexual Orientation, Gender Identity and Intersex (SOGII) UPR Coalition to New Zealand's second Universal Periodic Review. Accessed 27 March 2015 at: [http://hrc.co.nz/files/7014/2406/3081/SOGII-Coalition\\_joint-UPR-submission\\_New-Zealand\\_Jan-Feb-2014-with-appendices.doc](http://hrc.co.nz/files/7014/2406/3081/SOGII-Coalition_joint-UPR-submission_New-Zealand_Jan-Feb-2014-with-appendices.doc)
- 37 Office of Regulatory Services (April 2014) *Births, Deaths and Marriages: Fact sheet*. Accessed 30 March 2015 at: [http://www.ors.act.gov.au/resources/attachments/Births,\\_Deaths\\_and\\_Marriages\\_-\\_Change\\_of\\_Sex\\_Fact\\_Sheet.pdf](http://www.ors.act.gov.au/resources/attachments/Births,_Deaths_and_Marriages_-_Change_of_Sex_Fact_Sheet.pdf). Intersex activists in Australia have remaining concerns about the definition of intersex in these provisions and consider a third sex category is not in the best interests of children born with intersex variations. Their recommendation has been that a third sex category should only be available for people who can provide informed consent. See <https://oii.org.au/24868/birth-registrations-in-act/>, accessed 31 March 2015.
- 38 *National Legal Services Authority v. Union of India*, WP (Civil) No 604 of 2013. Accessed 30 March 2015 at: <http://supremecourtindia.nic.in/outtoday/wc40012.pdf>
- 39 This medical evidence is not required by *hijra* applying to be recognised as a third gender. Source: Presentation by the Lawyers Collective, Delhi, at the *Being LGBT in Asia Regional Dialogue*, Bangkok, 27 February 2015.
- 40 UNDP, Williams Institute (2014) *Surveying Nepal's Sexual and Gender Minorities: An Inclusive Approach - Executive Summary*.
- 41 Personal communication with Seung-hyun Lee, 5 September 2014
- 42 The Bill was proposed after the 2013 decisions of the Final Court of Appeal in *W v Registrar of Marriages*, [2013] HKCFA 39 (CFA). Accessed 30 March 2015 at: <http://www.hkii.hk/eng/hk/cases/hkcfa/2013/39.html> Reversing earlier rulings over the preceding five years, the Court allowed a trans woman, who had undergone gender reassignment surgery, to marry her boyfriend. This decision was suspended for 12 months to allow the Government of Hong Kong to propose law changes to the Legislative Council.
- 43 Global Commission on HIV and the Law (2 October 2014) 'High-level Roundtable on Gender Identity, Rights and the Law'. Accessed 30 March 2015 at: <http://hivlawcommission.org/index.php/follow-up-stories/377-high-level-roundtable-on-gender-identity-rights-and-the-law>. This vote reflected opposition both from those wanting more progressive laws and those who rejected any legal recognition of a trans person's marriage.
- 44 Lambda Legal (2014) *Changing Birth Certificate Sex Designations*. State-By-State Guidelines. Updated 14 July 2014 and accessed 27 March 2015 at: <http://www.lambdalegal.org/know-your-rights/transgender/changing-birth-certificate-sex-designations>
- 45 Ontario Human Rights Commission (2013), *Annual Report 2012-13* pp. 10-11. Accessed 27 March 2015 at: [http://www.ohrc.on.ca/sites/default/files/2012-2013\\_accessible\\_1.pdf](http://www.ohrc.on.ca/sites/default/files/2012-2013_accessible_1.pdf)
- 46 *C.F. v. Alberta* (Vital Statistics), 2014 ABQB 237 (CanLII). Accessed 27 March 2015 at: <http://canlii.ca/t/g6ll9>
- 47 Koshan J. (2014) *A Vital Judgement: Upholding Transgendered Rights in Alberta*. Accessed 27 March 2015 at: <http://ablwg.ca/2014/05/07/4349/> The most recent changes were to Manitoba's Vital Statistics Act that came into force on 1 February 2015, accessed 30 March 2015 at: [http://vitalstats.gov.mb.ca/change\\_of\\_sex\\_designation.html](http://vitalstats.gov.mb.ca/change_of_sex_designation.html)
- 48 World Health Organization (2014), Méndez, J.E. (2013).
- 49 International Commission of Jurists (2007) p. 11.
- 50 Trans men may be encouraged to have a hysterectomy/oophorectomy due to fibroid growth, endometrial conditions, or when there is a family history of cancer.
- 51 World Health Organization (2014)
- 52 WPATH (2012) *Standards of Care for the Health of Transsexual, Transgender and Gender-Nonconforming People*, p. 5. Accessed 31 March 2015 at: [http://admin.associationonline.com/uploaded\\_files/140/files/Standards%20of%20Care,%20V7%20Full%20Book.pdf](http://admin.associationonline.com/uploaded_files/140/files/Standards%20of%20Care,%20V7%20Full%20Book.pdf)
- 53 *Ibid.*, p. 3..
- 54 *Ibid.*, p. 50
- 55 WPATH (2010).
- 56 World Health Organization (2014), p. 8 and p. 13.
- 57 Freedman, D. et al (2002) 'Children and adolescents with transsexual parents referred to a specialist'. *Clinical Psychology and Psychiatry*, 7, 423-432.
- 58 This argument was reportedly made by a health professional in Ukraine in 2014.
- 59 AMA Resolution 122, A-08. Accessed 31 March 2015 at: <http://www.ama-assn.org/ama/pub/about-ama/our-people/member-groups-sections/glb-advocacy-committee/ama-policy-regarding-sexual-orientation.page>
- 60 Council of Europe, CM/Rec (2010)5. Accessed 31 March 2015 at: <https://wcd.coe.int/ViewDoc.jsp?id=1606669>



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