

# Report on Gender Identity



All persons have some form of gender identity. 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 and other gender expressions, including dress, speech and mannerisms.

**The notion that there is a gender norm, from which certain gender identities "vary" or "depart" is based on a series of preconceptions that must be challenged if all humankind is to enjoy human rights. Those misconceptions include:**

- That human nature is to be classified with reference to a male/female binary system on the

basis of the sex assigned at birth;

- That persons fall neatly and exclusively into that system on the same basis;
- That it is a legitimate societal objective that, as a result, persons adopt the roles, feelings, expressions and behaviours that are considered inherently "masculine" or "feminine."

The term "trans" is used to refer to persons who identify with a different gender than the one they were assigned at birth. Cultures and countries from all over the globe recognize in law and in cultural traditions genders other than male and female. Examples are Australia, Bangladesh, Canada, India, Nepal, New Zealand and Pakistan, which together represent a quarter of the world's population.

**Concepts of gender identity vary greatly across the world, resulting in a wide range of identities and expressions that often transcend Western concepts of gender, such as: *hijra* (Bangladesh, India and Pakistan), *travesti* (Argentina and Brazil), *okule* and *agule* (Democratic Republic of the Congo and Uganda) and *two-spirit* (indigenous North Americans).**

Gender diversity is often illegitimately repressed, under the umbrella of culture, religion and tradition. The IE SOGI Report on Gender Identity studies two types of narratives: thinking of some forms of gender identity as an illness; and failing to legally recognise gender diversity.

## The classification of some forms of gender as a pathology

In May 2019, the World Health Assembly approved the eleventh revision of the ICD, removing trans categories from the chapter on mental and behavioral disorders. Therefore, being trans is no longer considered a pathology. Different civil society groups and other stakeholders worked for decades to challenge that classification. A new category related to trans identities has been created in a chapter on conditions related to sexual health: "gender incongruence of adolescence and adulthood".



The new category is intended to facilitate access to gender-affirming treatment. In other words, there is no reason to assign a diagnosis to trans people who do not seek gender-affirming medical treatment or some sort of bodily change. These changes are expected to have a significant impact on the wrong perception of some forms of gender as a pathology, promote the visibility of those forms of gender and allow gender diverse individuals to access better health care.

In spite of positive developments, mental health diagnoses have been misused for years to reduce gender diverse identities to diseases, creating stigma and discrimination. Pathologization has had a deep impact on public policy, legislation and jurisprudence, thus penetrating all realms of State action and permeating the collective conscience. Eradicating such misconceptions from everyday life will be a long and difficult process, which will require strong proactive measures to succeed.

## Lack of State recognition of diverse gender identities

Self-determined gender is a cornerstone of a person's identity. The resulting obligation of States is 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.

**Lack of legal recognition negates the identity of trans and gender-diverse persons. It compromises their right to health; their right to freedom of movement and residence, including to leave any country; their access to housing and social security; and it fuels discrimination, exclusion and bullying in contexts of education and employment.**

The vast majority of trans and gender-diverse persons in the world do not have access to gender recognition by the State. They may live in a legal vacuum, in which case it is likely that stigma and prejudice will create a climate that permits, encourages and rewards with impunity the acts of violence and discrimination against them, and leads to a situation of de facto criminalization.

Persecution is also enabled through the use of laws or by-laws related to gender expression and dress codes, for example, those based on public decency, public morals, public health and security, and laws that criminalize conduct seen as "indecent" or "provocative". In addition, laws criminalizing sex work tend to be used disproportionately against trans persons, exacerbating police abuse and drawing them into the criminal justice system.

Some States establish abusive requirements in order to recognize the gender identity of trans persons: 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; as well as third-party consent for adults, forced divorce and age-of-offspring restrictions.

Even requirements that may at first seem neutral can become unacceptable hindrances or be utilized to obstruct respect for gender identity. It is often the case that procedures take years to be completed and the long waiting lists often contribute to several social problems and result in drug and alcohol abuse and self-medication with hormones, which can generate severe negative health consequences.

**This report endorses the recommendation issued in 2015 by the United Nations High Commissioner for Human Rights (A/HRC/29/23), which indicates that the process of legal recognition of gender identity should:**

- be based on self-determination by the applicant;
- be a simple administrative process;
- be accessible and, to the extent possible, cost-free;
- not require applicants to fulfil abusive medical or legal requirements;
- recognize non-binary identities (gender identities that are neither "man" nor "woman");
- ensure that minors also have access to recognition of their gender identity.



Several countries around the world have started to adopt legislative models of gender recognition based on self-determination: Argentina in 2012; Denmark in 2014; Colombia, Ireland and Malta in 2015; Norway in 2016; Belgium in 2017; Brazil, Luxembourg, Pakistan, Portugal, Uruguay and Chile in 2018; Iceland in 2019 and Switzerland in 2020. Other countries have similar laws pending final approval, such as Spain, Costa Rica, Sweden and Thailand. In some of these countries, however, such as Denmark and Belgium, the waiting period imposed to complete the process can be excessively long.

## Trans and gender-diverse children

Recognition systems enacted by States need to also consider the gender identity of trans and gender-diverse children, in line with the Convention on the Rights of the Child, which establishes the best interests of the child as a primary consideration and recognizes the child's autonomy and decisional power in accordance with age and maturity. States must fulfil their obligation to ensure to the maximum extent possible the survival and development of the child and the creation of an environment that respects human dignity.

Beyond legislative reform, States must also adopt all measures necessary to eliminate the social stigma associated with gender diversity, including the development, implementation and evaluation of an education and sensitization campaign, and in particular, all measures necessary to protect trans and gender-diverse children from all forms of discrimination and violence, including bullying, by raising public awareness and implementing safety and support measures.

