



## Gender Identity and Human Rights

### Definition:

According to the *Yogyakarta Principles*, **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 expressions of gender, including dress, speech and mannerisms.”<sup>1</sup>

GATE uses the term **trans\*** as a political umbrella term, which encompasses many different and culturally specific experiences of embodiment, identity and expression. The asterisk aims to make its open-ended character explicit. Every day and all around the world, human rights violations based on **gender identity** affect, primarily, **trans\* people**. Human Rights violations based on gender identity can also affect intersex people –those people whose sexed body (chromosomes, gonads and/or genitals) varies from culturally normative female or male standard bodies. Intersex people are usually forced to undergo medically unnecessary procedures –surgical and hormonal- in early childhood, aimed to “normalize” their bodily appearance and prospectively fix their gender identity.<sup>2</sup>

### Common Human Rights Violations:

- ⊙ Early violence and exclusion from family and community life, such as:
  - Domestic violence, threats, harassment, beatings, rape and harmful ‘therapies’
  - Expulsion from home, which often leads to early entrance into sex work
  - Violence, exclusion and bullying in educational, religious and recreational institutions, including social and child welfare services.
  - Risk of separation and custody issues when families are openly supportive.
- ⊙ Limited or denied access to education, employment and housing:
  - High school drop-out and expulsion rates
  - Stigma and discrimination associated both with the gender identity and the resulting limited education.
  - Loss of employment when the gender identity becomes known, for example while transitioning
  - Denial of use of bathrooms and other gender-segregated facilities.
  - All of the above often lead to extreme poverty and survival in underground economies
- ⊙ Social and institutional violence against trans\* people, including criminalization:
  - Anti-cross-dressing provisions
  - Criminalization of (perceived) sex work, “public scandal” and “improper behavior”, misdemeanors
  - Persecution, arbitrary detention, torture and killings both by state and non-state actors, which is rarely investigated, prosecuted or punished.<sup>3</sup>
  - Inappropriate identification of victims in police documents and media.
  - Cruel and unusual punishment in penitentiary facilities and psychiatric hospitals including exposure to violence, extended solitary confinement, gender-inappropriate placement and lack of access to healthcare.

- ⊙ Limited and often denied access to health care services:
  - Limited or no access to general health care
  - Limited or no access to gender affirming procedures<sup>4</sup>
  - High risk for HIV/AIDS.
  - All of the above lead to extremely risky body modifications -such as industrial silicone injections and black market hormones and surgeries.
- ⊙ Impossibility or difficulty to obtain legal documentation:
  - Passports, birth certificates etc. cannot be changed in most countries
  - Requirements that include, sterilization and other hormonal and surgical procedures, divorce, psychiatric diagnosis
  - All of the above violate rights to privacy every time trans\* people sign a contract, cross a border or run into a police checkpoint, often with disastrous results.

### Successes in regional and international instruments:

- ⊙ Inclusion in the 2011 OHCHR landmark report '*Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*'<sup>5</sup>
- ⊙ Four OAS General Assembly Resolutions on Sexual Orientation and Gender Identity<sup>6</sup>
- ⊙ Parliamentary Assembly of the Council of Europe resolution 'Discrimination on the basis of sexual orientation and gender identity'<sup>7</sup>
- ⊙ Issue paper and study published by the Council of Europe's Commissioner of Human Rights on respectively *Human Rights and Gender Identity*<sup>8</sup> and *Discrimination on grounds of sexual orientation and gender identity in Europe*<sup>9</sup>

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**GATE - Global Action for Trans\* Equality is an international organization working for trans\* rights at the international level, supporting trans\* movements worldwide and making critical knowledge and resources available to trans\* activists.**

[www.transactivists.org](http://www.transactivists.org)

<sup>1</sup> The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, [www.yogyakartaprinciples.org](http://www.yogyakartaprinciples.org)

<sup>2</sup> See, for example, the Yogyakarta Principles, Principle XVIII. Protection from Medical Abuses.

<sup>3</sup> Reports on violence against trans\* people come from countries so distant and different such as, for example, Argentina, Brazil, Chile Colombia, Guatemala, Honduras, Mexico, Peru, Venezuela, the US, Italy, Portugal, Spain, Sweden, Russia, Turkey, China, India, Indonesia, Malaysia, Nepal, Pakistan, Philippines, South Africa, Algeria, Kuwait, etc. Source: Trans Respect Versus Transphobia Worldwide, [http://www.transrespect-transphobia.org/en\\_US/mapping.htm](http://www.transrespect-transphobia.org/en_US/mapping.htm)

<sup>4</sup> "Gender affirming procedures" refers to all those procedures - surgical, hormonal, psychological or otherwise - aimed to affirm trans\* people's gender identity and/or to allow them to express their gender freely and in the way they prefer. Gender affirming procedures must be driven by the desire of the person who seeks them.

<sup>5</sup> [http://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.41\\_English.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.41_English.pdf)

<sup>6</sup> See, for example, AG/RES. 2653 (XLI-O/11), [http://www.oas.org/dil/esp/AG-RES\\_2653\\_XLI-O-11\\_esp.pdf](http://www.oas.org/dil/esp/AG-RES_2653_XLI-O-11_esp.pdf)

<sup>7</sup> <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta10/ERES1728.htm>

<sup>8</sup> <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1476365>

<sup>9</sup> [http://www.coe.int/t/Commissioner/Source/LGBT/LGBTStudy2011\\_en.pdf](http://www.coe.int/t/Commissioner/Source/LGBT/LGBTStudy2011_en.pdf)