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# **GENDER IDENTITY AND REPRODUCTIVE AUTONOMY**

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*Deconstructing sex, gender and roles*



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Deconstructing sex, gender and roles

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**GATE is an international organization working on gender identity, sex characteristics and, more broadly, on bodily diversity issues.** We work on supporting trans, gender diverse and intersex movements by producing and making available critical knowledge, promoting their access to organizational resources (funding, training, mentoring, personal and professional supporting systems), and advocating with them to make all human rights a lived reality. Our work on Depathologization is focused on increasing political mobilization on human rights in medical settings; securing classificatory reforms that depathologize trans, gender diverse, and intersex people while granting their full access to legal gender recognition, general and specific healthcare and its full coverage under public, private and mixed healthcare systems; preventing the introduction of new psycho-medical references pathologizing trans, gender diverse, and intersex children, and supporting processes of legal depathologization worldwide.

To find out more about GATE, our work and our international initiative on Depathologization, go to [www.transactivists.org](http://www.transactivists.org) or send email [gate@transactivists.org](mailto:gate@transactivists.org)

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## I. INTRODUCTION

The right to found a family is a fundamental right recognized by many international treaties and conventions. This is an evolving right, indicating that it is expanding and changing the meaning of other fundamental rights. In this sense, the development of this right has created the framework for a more democratic and equalitarian access to the right to procreate.<sup>1</sup>

Studies of human reproduction, reproductive health, and reproductive practices have historically focused on cissexism. Reproductive practices of transgender people is almost invisible in transgender studies as well as in studies of reproductive health, which have mainly focused on whether or not trans people should be offered assisted reproduction services and/or fertility preservation before starting medical transition.<sup>2</sup>

It is believed that loss of fertility is the 'price to pay'<sup>3</sup> for transitioning. Forced sterilization is still required by some governments that mandate that trans people be sterile or 'continuously non-reproductive' as a pre-condition to legal gender recognition.<sup>4</sup> As of this year, within the Council of Europe member states, 14 countries continued to enforce sterilization as a requirement for changing gender marker.

While blatant discrimination against trans and gender-variant individuals, such as compulsory sterilization in certain jurisdictions, is now being addressed, it is imperative that we guarantee trans persons the right to found a family under equal terms, that debates and discussions surrounding emerging ARTs are not confined to cisgender individuals, and that discourses also include trans, non-binary and other gender diverse individuals.<sup>5</sup>

The main concept of this paper is to analyze how the combination of the right to found a family with the right to benefit from scientific progress and access to it by any person regardless their sexual

orientation or gender identity has generated a deconstruction of biology, sex, gender and roles. This paper focuses on two main issues: 1) how the above rights should be guaranteed to trans people under equal conditions and 2) how the combination of these rights and new technologies are challenging concepts, roles, and relationships.

## II. THE DECONSTRUCTION OF THE BINARIES OF SEX, GENDER, AND RELATIONSHIPS

According to Article 2 of Law 26743, 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.<sup>6</sup> This definition was based on the Yogyakarta Principles, which stated that gender identity is understood to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth. According to this legal framework, there are not only two genders,<sup>7</sup> instead there are as many genders as persons.

This assumption also generates consequences for terminologies. Different news stories highlight that there are people who do not identify themselves with the terms related to 'mother' or 'father'.<sup>8</sup> This has also been reflected in a study, currently under peer review, about the naming practices of parents in same-sex adoptive families. The study, by Abbie E. Goldberg, Clark University is one of the few on this topic. This study found that of 80 participants - 20 lesbian couples and 20 gay couples - recruited from adoption agencies across the United States, all opted for derivatives of mother and father, with almost 13% participating in some version of "undoing gender."

The gender binary that underlies “mother” and “father” doesn’t conform with some parents’ self-understanding and self-presentation: “For queer parents who don’t think of themselves as gender conforming, ‘mommy’ and ‘daddy’ may be a little discordant with the way they think about themselves.”<sup>9</sup> To sum up, the terms mother and father were created under a binary that no longer exists, not only when it has to do with sex and gender, but also in terms of relationships... thus calling someone “dad” or “mom” is forced when the construction of these categories is being modified or even destroyed.

Most recently, the Advisory opinion OC-24/17 of November 24, 2017 requested by the Republic of Costa Rica related to gender identity, and equality and non-discrimination of same-sex couples (OC24) in its paragraph 95, states that:

“sex, together with the socially constructed identities, attributes and roles that are ascribed to the biological differences regarding the sex assigned at birth, far from constituting objective and unchangeable characteristics of the civil status that individualizes a person – for these being a physical or biological fact – are merely characteristics that depend on the subjective appreciation of the person concerned, and are based on the construction of a self-perceived gender identity dependent on the free development of the personality, sexual self-determination, and the right to privacy.”

According to the OC24, there are no two genders that correspond to two sexes. This rupture of the binary conception of gender is also presented with respect to sex, as it is also necessary to deconstruct the social and political categories that binarize it, or simply to understand that the distinction is based on these categories.

It can no longer be said that there are two sexes, but a multiplicity of sex characteristics that are

compulsively reduced into two sex categories. This is what the Yogyakarta Principles +10 (YP+10) stated when they defined ‘sex characteristics’ as “each person’s physical features relating to sex, including genitalia and other sexual and reproductive anatomy, chromosomes, hormones, and secondary physical features emerging from puberty.” Thus both sex and gender are crystallizations of certain social practices, ways of interpreting, classifying and disciplining bodies. In this way, there are as many genders as identities, and therefore as many gender identities as people.

Additionally, this binary does not exist in terms of relationships, as there are no longer just two parents, two mothers, two fathers, or a mother and a father. Today, it is legally possible to recognize more than 3 legal parents.<sup>10</sup> What shall we call them? Is that third person, if there is someone who could be presented as a plus, a father or a mother? On what basis?

### III. REPRODUCTIVE AUTONOMY FOR TRANS PEOPLE

Following on, the question that arises is: What is reproductive autonomy for trans people?

Research thus far conducted on families where a parent is trans or gender variant shows that children in these families do not fare any less well than children reared in other kinds of family units.<sup>11</sup> Notwithstanding, the discrimination trans people have faced in the context of actualizing their procreative rights both with and without gender-affirming treatments has been well documented.<sup>12</sup> In the context of discussions regarding procreative liberty, whilst the rights of many groups have been examined, trans individuals are a group who have, until recently, been neglected in such discourse.<sup>13</sup>

This is why it is important to know what is regulated under Argentinian law and the Yogyakarta Principles.

#### IV. THE RIGHT TO FOUND A FAMILY UNDER GENDER IDENTITY LAW AND YOGYAKARTA PRINCIPLES<sup>14</sup>

Argentine law on gender identity, Law 26743, allows, on one hand, the "the rectification of identity data to conform with the self-perceived gender identity" as an administrative procedure. Additionally, the law allows access to total and partial surgical interventions and comprehensive hormonal treatments as part of public or private health care plans.<sup>15</sup> To access both rights, only the consent of the person is required. Thus, the law guarantees two independent rights without subjecting one to the other, as there are people who may want to modify their body but not their ID and vice versa.

This is so, not only because demanding otherwise violates human rights,<sup>16</sup> as stated many times by different UN and other international bodies<sup>17</sup> - as happened systematically in Argentina before the enactment of the law - but also because the law goes further and seeks to guarantee all human rights of trans people, including the right to found a family.

Firstly, this right to found a family can be realized through adoption. In Argentina, one of the first precedents took place in Córdoba.<sup>18</sup> Secondly, the right to found a family can be accessed through "natural" procreation, as in the case of Karen and Alexis, who got married in 2013, with Alexis giving birth to Genesis Angelina in 2014. Other such cases include Diane Rodríguez and Fernando Machado in Ecuador, or more recently, the case of Trystan Reese and Biff Chaplow.<sup>19</sup> Thirdly, the right to found a family can be accessed through ART. An example of this is the case of Thomas Beatie, who said:

"I have a very stable male gender identity. I see pregnancy as a process, and it doesn't define who I am. It's not a male or female desire to want to have a child - it's a

human desire... I'm a person, and I have the right to have my own biological child."<sup>20</sup>

Thus, it is important for ART laws to regulate healthcare coverage of the cryopreservation of gametes or tissues for trans people. This requirement was explicitly recognized by the Yogyakarta Principles, which stated that States shall: "take all necessary measures to ensure the right to found a family, including through access to adoption or assisted procreation (including donor insemination), without discrimination on the basis of sexual orientation or gender identity."

More recently, to the right to found a family, the YP+10 added the state obligation to:

"Enable access to methods to preserve fertility, such as the preservation of gametes and tissues for any person without discrimination on grounds of sexual orientation, gender identity, gender expression, or sex characteristics, including before hormonal treatment or surgeries."

This is why the Equality and Human Rights Commission, a government human rights agency in the UK, is threatening legal action if "outdated" National Health Service (NHS) policies, which it says discriminate against the trans community, are not urgently changed.

The Equality and Human Rights Commission claims that the NHS is obliged to provide fertility services for trans people, so that, if their sperm or eggs are frozen and stored, it is still possible for them to have children later in life.

In Argentina, ART's are regulated in Argentina under Law 26862. This law, enacted in 2013, aims "to guarantee full access to medical-assistance procedures and techniques of medically assisted reproduction". The element that characterizes this regulation is its breadth, by allowing access to medical coverage of such practices to any person regardless their marital status, sexual orientation or gender identity, encompassing not only medical infertility, but

also social infertility. Article 2 of the decree alludes to the "female reproductive system" without using the term "woman", in accordance with Law 26.743

ART's are also regulated under the Civil and Commercial Code (CCYC) which has organized a system for parentage that arises from ART. It states that the crucial element is the intentional will, regardless the provision or not of the genetic material. According to this system, if a person provides informed consent according to the provisions regulated under the code, then he, she or they are the legal parents of the child, and their maternity or paternity cannot be contested.

Article 8 of Law 26862 states that the coverage also includes the preservation of gametes and reproductive tissues, even for persons under 18 years of age, when they are experiencing health problems or undergoing medical interventions and want to cryopreserve their genetic material.

In this case, the preservation is only allowed for medical reasons and does not include trans people, as it demands the pre-existence of a "health problem". Even if we could – and I think we should - make a wide interpretation, as health is integral to all areas of life, some scholars consider it to be necessary to have a specific norm designating the access to preservation of gametes and tissues for trans people. It is those arguments that the health system is using to deny cover of cryopreservation to trans people.

According to Argentinian Gender identity Law and the PY, any person, regardless of their marital status or age, can access the rectification of identity data at the civil registry without any limitation. If the person is married, the authorities will then proceed to rectify the marriage certificate so that it reflects the identity of the person. Thus, the birth certificates of the children of those persons who have changed their gender identity after their registration must also be rectified.

In the area of Buenos Aires, Resolution 1094-2016 of 5 -5 2016 was passed, with Article 1 providing that:

"in the cases contemplated by law 26743 in which the applicant had registered their children's birth, marriage or civil unions prior to the change of gender identity, the original record must be immobilized and re-inscribe the event or vital act appropriate to the new self-perceived identity of the applicant."

This standard should be imitated in all civil registries of Argentina, according to the YP+10 as an additional obligation to the right to found a family, by providing the duty of the state to: Issue birth certificates for children upon birth that reflect the self-defined gender identity of the parents;

## V. ACCESS TO REPRODUCTIVE AUTONOMY AND ACCESS TO ART

As previously stated, the Yogyakarta Principles guarantees to every person access to reproductive technologies.

The following section will analyze how this works in different situations, or how it should work in legal terms.

Consider the following 8 different scenarios:

**1.** A heterosexual couple, i.e. a cis woman and a cis man, who require donor material because they cannot provide their own genetic material.

With this first case, we are already beginning to question biology, as there is a non-genetic parent as a mother and/or a father. According to the Argentinian civil and commercial code, as long as they consented access to ART on the forms required by law, they are the legal parents.

**2.** A lesbian couple, i.e. two cis women, who require a sperm donation in order to procreate. In this case, there will be two mothers (parental

rights) and a sperm donor with no parental rights. i.e. no father.

The interesting thing about this case is that, if ART is done according to the law, then the genetics of the donor would be legally irrelevant, while the lack of genetic material from the cis woman who does not provide her eggs for fertilization is also irrelevant. Again, as ART is found on intentional will, the genetic link, or the provision or not of genetic material, is of no legal consequences.

**3.** A gay couple, i.e. two cis men, who in order to access to the right to found a family, require an egg donor and another person (or not, because it can be the same person) to act as surrogate.<sup>21</sup> Despite giving birth, the surrogate is not a legal parent to the child.

In this case, regardless of the biological contribution of the surrogate and the egg donor (in some cases, this is the same person), they will not have legal parental rights to the child. In this case, there will be two parents, both fathers, one of whom has no genetic link to the child. As in the previous situation: the genetics of the donor would be legally irrelevant, while the lack of genetics of the cis man who does not provide his sperm is also irrelevant.

**4.** A lesbian couple, i.e. one trans woman and one cis woman. The cis woman may give birth by becoming pregnant with the sperm of the trans woman, who is also a mother, despite providing sperm.

In this case, the same legal consequences would - or should apply - if the cis woman resorts to an egg or sperm donor. That is, if the cis woman becomes pregnant by sperm donation, the trans woman would still be a mother, just as the cis woman still remains a mother if she becomes pregnant with an egg donation. In all cases, the ART rules apply, so what legally matters is who provides the

intentional will, regardless the genetic material, and that must be in accordance with the self determination of the person. In this case, again, there are two legal parents, both mothers.

**5.** A gay couple, i.e. one trans man and one cis man. The trans man gives birth by becoming pregnant with the sperm provided by the cis man. Both are fathers, despite one of them providing eggs and giving birth.

As in the previous case, the same legal consequences would, or should, apply if they resort to an egg or sperm donor. That is, if the trans man becomes pregnant with an egg donation, he would still be a father, just as the cis man is still a father even if the sperm is provided by a donor. In this case, there are again two legal parents, both fathers.

**6.** A heterosexual couple, i.e. a trans woman and a cis man. They must resort to a person who provides their eggs and another or not - because it can be the same - to act as surrogate.

In this case both the trans woman, the mother, and the cis man, the father, can provide sperm.

**7.** A heterosexual couple, i.e. a trans woman and a trans man. There is a mother who provides sperm, and a father who provides eggs and gives birth. They can be parents by sexual intercourse.

As in the previous cases, the same legal consequences would, or should, apply if they use an egg or sperm donor. That is, if the trans man gets pregnant with donated eggs, he will still be the father, just as the trans woman will still be the mother if sperm from a donor is provided.

**8.** A heterosexual couple, i.e. a trans man and a cis woman. In this case, both can gestate and provide eggs.

The father may give birth with his own eggs or by resorting to the mother's or a donor's



egg and using the sperm of a donor. Alternatively, the cis woman gestates and gives birth, with her own eggs or the father's egg or a donor's egg, and with the sperm of a donor.

The terms mother and father have been used above only for ease of organization. As previously mentioned, some people may not feel like, or identify themselves as, a mother or a father.

As we can see, transparental identity is a multidimensional, multidetermined, non-binary and fluid identity, so institutional forms and legislations relating to parenting and birthing must acknowledge the diversity of parental identity and designation.

In Argentina, although it's not always easy, the above parental rights can be achieved. However, it is not the same in all countries. For instance, in the UK, a trans man who gestates his own child will be regarded as the child's mother on the birth registration certificate, because the law continues to ascribe legal parenthood based on sex characteristics at birth. Thus, the legal 'mother' is defined by the Human Fertilization and Embryology Act 2008 as 'the woman who is carrying or who has carried a child as a result of placing in her an embryo or of sperm and eggs...'<sup>22</sup> The Gender Recognition Act 2004 provides that 'the fact that a person's gender has become the acquired gender under this Act does not affect the status of the person as the father or mother of a child.'<sup>23</sup> The explanatory notes that accompany the legislation state this provision was to ensure the continuity of parental rights and responsibilities for trans parents. Yet there is no clear provision for trans parents who conceive after having legally transitioned.<sup>24</sup> This situation manifested in the UK in 2017, when Hayden Cross, who had undergone gender-affirming treatment and had been legally recognized as male for 3 years, was registered as his child's 'mother'.<sup>25</sup>

To all the scenarios above, we must add those where more than two persons are exercising parenting roles. For instance, if the person who gets pregnant is not just a surrogate but takes on a parental role in some form, or if the person who provides egg or sperm is not only a donor... or if someone else simply wants to fulfill a caretaking role in the life of the child with legal consequences, even when they do not have any biological link or provide any genetic material to the child.

The notion of parenthood and all the ideologies around parenting and kinship vary over time, as they are constantly changing to keep up with the dynamics of contemporary life. New lifestyles and social practices have not only led to the establishment of various family structures but have also prompted multiple adults to simultaneously seek the label of "parents" within a single-family unit.<sup>26</sup>

So far, Argentina has four decisions regarding multiparentality, and there are many others under consideration. Two such cases took place before the new civil code came into force, and both were administrative decisions of the respective civil registries.<sup>27</sup> The two other cases took place after the CCYC came into force and thus were judicial decisions.<sup>28</sup>

In these cases, socio-affective and biological links are equally recognized, with the same status, without any hierarchy. As we can see from these cases of multiparentality, it is clear that there is legal recognition of affection as a principle, bringing a parameter of social life to the world of law. This assimilation is important and constitutes a big step forward for family law and demonstrates that the concept of family cannot be reduced to standardized models anymore.<sup>29</sup>

## VI. OTHER SCIENTIFIC ADVANCES

To the above, it is necessary to add other scientific advances that are also challenging our notions of maternity and paternity.

### a) Mitochondrial replacement techniques

One of the newest developments in reproductive health are the mitochondrial replacement techniques (MRTs).

But what are MRTs? Every cell of our body (except red blood cells) contains mitochondria, organelles responsible for producing the necessary energy for cellular, organ and bodily function. Mitochondria have their own DNA (mitochondrial DNA or mtDNA), which accounts only for about 0.1% of our genetic material and is inherited via the “maternal” line of from the person who provides the egg. Mutations in the mtDNA can cause mitochondrial diseases. In order to avoid the transmission of mtDNA diseases from “mother” to child, scientists have developed two techniques that would allow “women” that are known carriers of mtDNA mutations to have children that are genetically related to them without risking transmitting mutated mtDNA.<sup>30</sup> The methods involve combining the nuclear DNA of the “mother’s” egg with healthy mitochondrial DNA from another person and fertilization with sperm.

Under existing legislation in the UK, a country where this technique is legal, MRT can only be used “to avoid passing on serious genetic diseases to future generations.” As it involves the mixture of two eggs, it also could be used by two cis women so that both can be genetic parents, even if the one who provides the mitochondria only provides a small bit of DNA. This is what Giulia Cavaliere and César Palacios-González,<sup>31</sup> of King’s College London, have argued for in the *Journal of Medical Ethics*. Their reasoning is quite interesting.

First, they insist that no MRTs can be considered therapeutic, as they do not cure children affected by mtDNA diseases, but instead are a means of creating children that are not affected by mtDNA diseases. Following on from this, they ask that if “cures” are not the reason for the existing legislation, then what is? For them, the rationale to offer MRTs is to allow “women” or persons at risk of transmitting mtDNA disease to have healthy children that are genetically related to them. The rationale, in other words, is to expand these women’s or persons reproductive freedom. Thus, if reproductive freedom (and not the health of a child) is the most fundamental reason, then all women or persons with eggs deserve to take advantage of MTR. Lesbian couples are as equally deserving as any other couple. Furthermore, if MRTs could be used by two cis women, then they could also be used by two trans men, so that they could both be genetic parents.

As we can see, techniques that originally were meant to address medical infertility or medical issues can theoretically be used by every person, taking into account the non-discrimination criteria. So, if the technique is available, then to whom? It should be available to every person who doesn't want to give up a genetic link to their child, regardless their sexual orientation or gender identity.

### b) Artificial gametes

The other new technique which is developing fast is the creation of artificial gametes.<sup>32</sup>

How does it work? When a newly fertilized egg has undergone a few stages of cell division, cells removed from the inner cell mass have the capacity to develop into any cell of the body. These are cells from which embryonic stem cell lines (ESCs lines) can be derived. Much research is being focused on ways of initiating and controlling the process of differentiation in embryonic stem cells, including their differentiation into gametes. Sperm from males and eggs from females have been derived using

these techniques, in both animal and human models, with fertilization and offspring reported in animals, but not humans. Furthermore, eggs have been derived from male mouse cells using this technique and fertilized with artificial sperm from the same male mouse source.<sup>33</sup>

Artificial gametes (AGs) may be used for:

- i. Increasing supplies for sperm and egg banks
- ii. Creating 'genetically related' gametes for infertile people.
- iii. Democratize reproduction, as AGs offer the possibility of genetic reproduction to people who are not typically regarded as being infertile.
- iv. Trans people. It could be used by trans people to become genetic parents if, prior to medical transition, they didn't preserve their gametes or tissues.

Most recently, in October 2018, the journal *Cell Stem Cell* published a study carried out by researchers from the Chinese Academy of Sciences.<sup>34</sup> According to the findings of the research involving two female mice, Chinese researchers have bred healthy mice which went on to have normal pups of their own. They achieved this by altering stem cells from a female mouse and injecting them into the eggs of another. Of 210 embryos, 29 survived.

As we can see, these techniques are developing fast, so they may soon become a possibility for humans too. AG has many challenges: If, until now, every person has been born from the union of sperm and egg, regardless who provided what, this basic status quo could be challenged. In the future, it's possible that people will no longer be born only from the union of sperm and egg.

### c) Uterus transplant

The world's first child that was born following a uterine transplant occurred in Sweden in 2014. In December 2017, it was reported that the first successful uterine transplant had been performed in the USA, and clinical trials of uterine transplantation are now underway in the USA, Europe, Asia, and have received ethical approval in the UK.<sup>35</sup>

This raises the question of whether it can be claimed that there is a right to gestate under the umbrella of procreative liberty, and whether such a right, if it does exist, applies not only to cis women, but also to trans and gender variant individuals and cis men.<sup>36</sup>

Even if there are still some medical issues concerning uterine transplant with a non-cis female recipient, including the creation of adequate uterine vascularization *de novo*, the necessity for appropriate hormone replacement to sustain implantation and pregnancy, and the placement of the uterus in a non-gynecoid pelvis, there is the possibility that UTx may one day become sufficiently safe to enable gestation in cis women, trans, and gender variant individuals and cis men, so as to restore, realign, and enhance reproductive function.<sup>37</sup> Thus, trans women may be able to seek UTx as a way of expressing or experiencing gestation and birth.

The issue here is not necessarily one of having children; trans women may already be parents and have had children either prior to or following gender affirming treatments, depending on what type of surgeries and hormonal therapies they have chosen. The issue is one of securing an experience imagined as important to one's (gender) identity and hoped-for parental bonds.

In the case of cis men asserting a right to uterus transplantation - in this context, uterus transplantation may be sought as an 'enhancement' of reproductive function - while this may be justified by recourse to arguments that

procreative liberty encompasses alternate and novel means of founding a family, others may claim that this is not necessarily about having children; but rather choosing a procreative experience that is not currently available to cis men.<sup>38</sup>

In a similar vein, a study was released recently<sup>39</sup> which documents the case of a trans woman who has been able to breastfeed her child. A 30-year-old trans woman presented to a clinic seeking help with achieving her goal of breastfeeding. She explained that her partner was pregnant but not interested in breastfeeding, and that she hoped to take on the role of being the primary food source for her infant. She had not had any gender-affirming surgeries. The study documents that the patient breastfed exclusively for 6 weeks. During that time, the child's pediatrician reported that the child's growth, feeding, and bowel habits were developmentally appropriate.

This is a clear case in which the union of science and identity facilitates the right that every person has to live the personal experiences of the body to which their gender identity accords and access the same rights as cisgender individuals of their identity, including caregiving experiences. The same technique could be used by any person, including any cis man, such that any cis man could also breastfeed if he so wished.

In short, and to sum up this point: if, for our legislation, the parental "role" is ultimately assumed to be a question of identity, if it does not matter the sex, nor the biological nor genetic contribution in terms of the definition of the role, then does that specific parental role matter? What defines it? It is obvious that they are political constructions stemming from cultural biases. Why does it subsist if it no longer has substance? Could it be that it only subsists culturally? Fortunately, all cultural constructions can be deconstructed, especially if the foundations that "naturally" sustained them have fallen.

Some feminist arguments may criticize these assertions on the basis that this reasoning makes the feminist struggle invisible. However, it is essential to move forward in order to finally achieve true equality, in all senses, and with respect to all people. There is also a feminist construction, which translates into the much-claimed debiologization of destinies, which facilitates a deconstruction of roles and binaries in which women have always been disadvantaged. It would be a true democratization and consecration of true autonomy.

## VII. THE SUPPRESSION OF SEX TO DECONSTRUCT ROLES

The starting point to deconstruct these legal constructions is to suppress sex as a legal category. Without legal sex, much progress would, and could, be made in the de-binarization of ties, links and roles.

We need to question ourselves on the basis of what criteria we use to assign a sex to a person at birth. Sex is not determined but classified on the basis of categories, and categories are social constructions, therefore they are also clearly political. If not, then what do we define or what do we consider in a body to "classify" it as feminine or masculine? What part of the body do we select for the purpose of dividing bodies into male and female? Who decides this election? We also have to take into account that sex is not static, it is not invariable across time.

These sex categories also promote "normalizing" surgeries<sup>40</sup> conducted on intersex people, who are born with a body that varies with respect to male and female corporal "averages."<sup>41</sup> It is precisely these sex categories that demarcate the "intersex". If there were no standardization criteria, it would not make sense to mark those who are outside of them.<sup>42</sup>

The reality is that today, by considering arbitrary sexual characteristics, the parents and the States are registering the person who is born with a 'sex' category that is irrelevant in terms of identity. Hence the need to eliminate sex as a legal category.

This paper urgently calls for the abolition of sex registration at birth, which would allow all people self-determination of both sex and gender. This would also permit the raising children in a neutral gender, without stereotypes, categories or classifications. Each person would be able to decide independently, and with full autonomy, their identity, and also their "supposed role" - insofar as they subsist - in the care of their own children.

This debiologization is in Argentina's present legal framework and is mandatory. In Argentina, sex should be suppressed or deleted as a legal category because to demand it today, with a Gender Identity Law that emerges from biologicism, is a legal incoherence. Our legal framework is not interested in bodies or biology, but identity. To demand data that only reflects the bio-anatomy of a person, which is also not static and not necessarily in coherence with gender identity, is at the very least discordant and incoherent.

This exact outcome took place in Mendoza, for the first time, in 2019. Two non-binary persons were permitted to be registered with no sex or gender on their legal documents.<sup>43</sup> The space designating sex was left empty, and this happened only by resorting to the administrative authorities as permitted by Argentine Gender Identity Law.<sup>44</sup> This is a worldwide precedent.<sup>45</sup>

This same outcome could be achieved in Denmark,<sup>46</sup> City of Mexico,<sup>47</sup> Malta,<sup>48</sup> Colombia,<sup>49</sup> Ireland,<sup>50</sup> Norway,<sup>51</sup> Portugal,<sup>52</sup>

Chile<sup>53</sup> and Uruguay<sup>54</sup>. The suppression of sex as a legal category was a consequence, and the main effect, of the OC24 mentioned previously.

In Costa Rica in May 2018, the Supreme Electoral Tribunal (TSE) adopted a series of decisions, based on the recognition that the OC24 is legally binding.<sup>55</sup> The TSE approved and regulated the change of name and gender for persons who requested it from the Civil Registry. Furthermore, in order to avoid stigma, the TSE declared that it must proceed to eliminate the indication of sex assigned at birth on all identity cards.

This requirement is established by the Yogyakarta Principles+10, in Principle 31 on legal recognition, that calls states to: "Ensure that official identity documents only include personal information that is relevant, reasonable and necessary as required by the law for a legitimate purpose, and thereby end the registration of the sex and gender of the person in identity documents..."

The Declaration of Costa Rica of March 2018 also called on States to: Abolish "sex" as a legal category to be recorded in official documents.

## VIII. CONCLUSION

Let's move towards a world without legal sex, which promotes and brings about the existence of as many genders as people and the elimination of the roles culturally constructed on those bases.

The conditions already exist. What remains are only fallacies and hypocrisies that continue to attempt to fit things into realities that already exist outside the categories that are arbitrarily placed upon them.

## IX. ENDNOTES

- 1 Reproductive rights infer not only deciding when, how many and with whom one will have children, but also, in combination with the right to benefit from scientific progress, how it is accomplished, taking into consideration the development of many different techniques, according to the ICHR in the *Artavia Murillo Case*, 2012. According to the court: "The right to privacy and reproductive freedom is related to the right to access to the medical technology that is necessary to exercise that right." (...) . *Artavia Murillo y otros (Fertilización in Vitro) Vs. Costa Rica*, 28 November 2012. Serie C No. 257.
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The second case was from May 2015. Similar to the aforementioned case, this one also involved a multiparental set-up of two women and a friend in common who used "home insemination". As in the previous case, civil registry admitted the multiparentality, and ordered modification of the data collection forms: instead of saying "father / mother" they should say "Parent 1 / Parent 2 / Parent 3".

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