

Depathologizing Gender Identity Through Law

GATE Series on Legal
Depathologization, N°1

S Kara



Depathologizing Gender Identity Through Law

GATE's Series on Legal
Depathologization, N°1

S Kara

Copyright© 2020 GATE

This work may be reproduced and redistributed, in whole or in part, without alteration and without prior written permission, solely for nonprofit advocacy and/or educational purposes provided all copies contain the following statement:

© 2020 GATE. This work is reproduced and distributed with the permission of GATE. No other use is permitted without the express prior written permission of GATE. For permission, contact gate@gate.ngo

Author: S Kara

Forewords: Mauro Cabral Grinspan

Editors: Mauro Cabral Grinspan, Naomhán O'Connor and Leslie Minot

Design and Layout: ZkySky and Camila Macca

We sincerely acknowledge Amets Suess Schwend, Jack Byrne and Zhan Chiam for their generous contributions this report.

Suggested citation:

GATE: Kara, S. *Depathologizing Gender Identity Through Law*.
GATE Series on Legal Depathologization, N° 1. New York: GATE, 2020.

About GATE

GATE is an international advocacy organization working towards justice and equality for trans, gender diverse and intersex communities. Rooted in our movements, we work collaboratively with strategic partners at the global level to provide knowledge, resources and access to international institutions and processes. Our vision is a world free from human rights violations based on gender identity, gender expression and sex characteristics. Our strategy is to transform the landscape of global advocacy, knowledge creation and resource distribution through critical inclusion of trans, gender diverse and intersex movements at all levels of political, legal and socio-economic processes.

Find out more about GATE by visiting www.gate.ngo

| | |
|--|-----------|
| Foreword | 5 |
| Introduction | 7 |
| A brief history of trans pathologization | 8 |
| Key arguments for depathologizing gender identity in law and practice | 11 |
| Routes to legal depathologization of gender identity | 17 |
| Examples of legal depathologization | 17 |
| Argentina | 18 |
| Belgium | 19 |
| Chile | 19 |
| Colombia | 20 |
| Denmark | 20 |
| France | 21 |
| India | 21 |
| Malta | 22 |
| Mexico | 23 |
| The Netherlands | 23 |
| Norway | 24 |
| Pakistan | 24 |
| Peru | 24 |
| Uruguay | 25 |
| Ongoing developments in legal depathologization | 25 |
| Botswana | 26 |
| Republic of Ireland | 26 |
| Nepal | 27 |
| Sweden | 28 |
| Opposition to legal depathologization | 29 |
| New Zealand | 29 |
| United Kingdom (excluding Northern Ireland) | 30 |
| Conclusions | 33 |

Foreword

Mauro Cabral Grinspan

On behalf of GATE, I am very pleased to present the first issue of our **Series on Legal Depathologization**. Since the very beginning of GATE's work on de-pathologization, we were acutely aware of the intrinsic relationship between three seemingly separated domains: that of psycho-medical classifications, protocols and procedures; that of public and private healthcare systems, insurances and coverages; and that of laws and policies.

The connection between diagnostic codes (as provided by classificatory tools) and healthcare coverage has always been clearest, as it has an evidently direct impact on trans and gender diverse people and our access to gender affirming procedures, as in many countries a psycho-medical diagnosis is still required for those procedures to be covered. Therefore, as trans and gender diverse people, we can easily find ourselves having to "choose" between de-pathologization and access to healthcare. By working to advance de-pathologization in psycho-medical classifications, GATE is also working to address and dismantle a healthcare system rooted in socioeconomic injustice.

Trans and gender diverse people have not only been pathologized by psycho-medical institutions and their classifications, but also by the laws and policies governing our lives. Around the world, legal systems have adopted pathologizing approaches to differentiate between "proper" and "improper" subjects of human rights and to condition, restrict or even deny access to those rights. **One of the key goals of de-pathologizing trans and gender diverse people is to stop the justification of systemic legal cissexism in psycho-medical roots.** However, as this report shows, **processes of legal de-pathologization can also be possible.**

This first issue is published **at a particularly challenging moment for trans and gender diverse people around the world, for their families and friends, communities and movements, and allies in diverse movements**, including feminist, LGB and intersex movements. Processes of legal reform grounded in de-pathologization are being fiercely resisted by the anti-gender opposition in the UK and in Spain, provoking a wave of transphobia that has included advocating for the

revoking of basic rights, instigating a rhetoric of fear focused on the promotion of re-pathologization of trans identities, the reinstatement of psycho-medical authority over trans lives, and the differentiation between “real” trans people and supposedly “pretend” trans people, and the placement of these arguments within the framework of protecting society and paternalistic perspectives, thus placing trans and gender diverse children and their families at risk.

At the same time, **this is a moment of hope**, as The Netherlands joined Sweden in committing to making reparations for their history of sterilization as a requirement for legal gender recognition, which is still a requirement in many countries. Abortion law in Argentina shows that not only is it possible, but achievable in a way that guarantees access to sexual and reproductive rights on the basis of respecting people’s right to decide on their own transition-related healthcare.

While this publication was being finalized, a key trans rights activist who worked tirelessly in the movement for depathologization and in the struggle for reparations passed away. Her name was Maria Sundin. We dedicate this publication to her beloved memory.

In solidarity

A handwritten signature in black ink, appearing to read 'Mauro Cabral Grinspan', with a long horizontal stroke extending to the right.

Mauro Cabral Grinspan
Executive Director
GATE

Introduction

In 2016, a group of human rights experts from United Nations (UN) and regional human rights bodies called on States to depathologize trans and gender diverse identities and expressions).¹ In 2018, after dedicated awareness raising and advocacy efforts by trans activists, the World Health Organization (WHO) released its 11th edition of the International Classification of Diseases (ICD-11), declassifying trans identities as mental health disorders.² Prior to this, in 2012, Argentina blazed a trail for domestic recognition of the rights of trans people by adopting legislation that provided for legal gender recognition, as well as gender affirming healthcare and its coverage without pathologizing requirements. Since then, a handful of States have followed suit, and a number of others have processes underway to amend discriminatory laws and policies on gender identity.

In many countries, diagnostic categories on trans identities have provided and regulated access to legal gender recognition and gender affirming treatment, and often continue to do so. However, **States that have decided to progress beyond such pathologization have illustrated that a human rights approach rather than a medicalized approach is not only possible, but a significant improvement for trans people.** They have shown that realization of the rights to recognition before the law and to the highest attainable standard of health care need not be dependent on discriminatory classifications, providing trans people with legal gender recognition and gender affirming care without pathologizing requirements. Indeed, such case studies show that the promotion and protection of the human rights and fundamental freedoms of trans people is inseparable from the removal of discriminatory provisions. It was these examples that informed and influenced the ICD revision process, demonstrating that a less discriminatory approach based on legal depathologization was both possible and necessary.

1 OHCHR. *Pathologization – Being lesbian, gay, bisexual and/or trans is not an illness. For the International Day against Homophobia, Transphobia and Biphobia*, [Press release], May 12, 2016.

2 Note: ICD-11 was adopted by the World Health Assembly in 2019. WHO, *World Health Assembly Update* [Press release], May 25, 2019.

Legal depathologization refers to the removal, through legislative change, judicial decision or executive order, of certain legal or policy provisions that treat trans people as inherently unwell or disordered on the basis of their gender identity, including, forced or coerced psycho-medical assessment and/or diagnoses, psychotherapy, hormonal and surgical processes, and sterilization. Legal depathologization can also refer to the adoption of laws that explicitly prohibit trans pathologization or provide for legal gender recognition and/or gender affirming care without pathologizing requirements.

This paper intends to show that **depathologizing gender identity through law is a valid and achievable goal** and provides examples of legal depathologization of gender identity at the national level. It seeks to lay out the various paths to legal depathologization that have found success in different countries, as well as to examine the ongoing efforts and challenges faced in some States by lawmakers and advocates for trans equality. Ultimately, it seeks to inform domestic processes for legal depathologization and catalyze the realization of human rights and fundamental freedoms of trans and gender diverse people.

A brief history of trans pathologization

As noted by Drescher et al. in “Minding the Body”, medical theorizing about trans identities in the Western world dates back to at least 1886, with psychiatrists documenting cases of individuals living or desiring to live as ‘the other sex’ and classifying trans presentation as psychopathological.³ Records of gender affirming surgery in Europe can be found dating back to the 1920s, with certain publicized cases leading to increased awareness and interest from medical professionals, doctors and psychiatrists who sought to understand, diagnose and treat those who contravened socially accepted gender norms.⁴ Such treatment varied from provision of gender affirming care—that is, aligning the individual’s physical experience of body with their gender identity through surgery, hormones and cosmetic treatments—to the more harmful “conversion therapies.”

3 Jack Drescher, Peggy Cohen-Kettenis, and Sam Winter. [“Minding the body: situating gender identity diagnoses in the ICD-11”](#), *International Review of Psychiatry* 24.6 (2012): 568–577.

4 Ibid.

“Conversion therapy’ is used as an umbrella term to describe interventions of a wide-ranging nature, all of which are premised on the belief that a person’s sexual orientation and gender identity, including gender expression, can and should be changed or suppressed when they do not fall under what other actors in a given setting and time perceive as the desirable norm, in particular when the person is lesbian, gay, bisexual, trans or gender diverse. Such practices are therefore consistently aimed at effecting a change from non-heterosexual to heterosexual and from trans or gender diverse to cisgender.”⁵

These practices are grounded in perceptions that trans identities are the result of neurosis, psychosis or delusion, and treatable as such. However, evidence has shown such treatments to be unethical, unscientific and ineffective, and moreover, highly abusive and traumatic.⁶ Indeed, the UN Office of the High Commissioner for Human Rights (OHCHR) has noted that, in some cases, such treatments may be tantamount to torture.⁷

The conceptualization and medical classification of trans identities as disorders or illnesses (i.e., pathologies) is what is referred to as trans pathologization, or psychopathologization with regards to mental illness. While psychiatrists and physicians had varyingly interpreted their observations of trans people as disorders since the 19th century, it was not until 1975 that the WHO included transgender identities in its International Classification of Diseases.⁸ In 2018, with the 11th edition of the ICD, trans-related diagnostic codes on “gender identity disorders” were deleted from the chapter on “mental and behavioral disorders”, and a new code on “gender incongruence” was included in the chapter on “conditions related to sexual health”. The ICD-11 includes the category of “Gender Incongruence of Childhood” as a sub-code to apply to trans and gender diverse children.⁹

5 UN Independent Expert on Sexual Orientation and Gender Identity, Mr. Víctor Madrigal Borloz. [Report on Practices of so-called ‘conversion therapy’](#), [A/HRC/44/53], May 1, 2020.

6 Ibid.

7 OHCHR. [Born Free and Equal: Sexual Orientation, Gender identity and Sex Characteristics in International Human Rights Law](#), [2nd edition], 2019.

8 Note: The ICD also pathologized ‘transvestitism’ as a ‘sexual deviation’ in the previous revision (ICD-8, Code 302.3) in 1965. This was followed by inclusion of ‘transvestism’ in the ICD-9 (302.3), and of ‘dual-role transvestism’ in the ICD-10 (F64.1). See: Drescher, Cohen-Kettenis and Winter, “Minding the Body”.

9 WHO. [International Classification of Diseases](#), 2019.

Trans identities have also been classified as pathologies since 1980 in the classificatory system authored by the American Psychiatric Association– the Diagnostic and Statistical Manual of Mental Disorders (DSM). The latest and fifth edition of the DSM, released in 2013, reclassified trans identities from “gender identity disorders” to “gender dysphoria.”¹⁰ In addition to the ICD, the DSM is viewed as an authoritative document by mental health practitioners.

The ICD is used by over 100 countries around the world, including for monitoring health trends and providing a diagnostic classification standard for clinical and research purposes. The WHO posits:

“while evidence is now clear that [gender incongruence] is not a mental disorder [...] there remain significant health care needs that can best be met if the condition is coded under the ICD.”¹¹

The classification of trans identities as mental disorders has been reinforced through national law and policy provisions for amending sex and gender markers on official documentation, changing names and accessing gender affirming treatment, such as hormones and surgery. For example, some jurisdictions require trans people to have undergone medical diagnosis and surgery, regardless of whether this is desired, in order for their self-identified gender to be officially recognized.¹² In other cases, trans people must receive a mental health diagnosis from a psychiatrist, and/or undergo a set period of psychiatric care, before gaining access to gender affirming treatment.

10 APA. *Diagnostic and statistical manual of mental disorders*, [5th ed.], 2013.

11 WHO. *Coding disease and death*, June 18, 2018.

12 Zhan Chiam, Sandra Duffy, Matilda González Gil, Lara Goodwin and Nigel Timothy Mpemba Patel. *Trans Legal Mapping Report 2019: Recognition before the law*. Geneva: ILGA World, 2020.

Key arguments for depathologizing gender identity in law and practice

As outlined in GATE's 2017 paper *Gender is Not an Illness*, there are various reasons put forward by trans advocates and allies for depathologizing trans identities.

1. Defining gender diversity, including for gender diverse children, as a pathology is unfounded, discriminatory and has no demonstrable clinical utility.

Scholarship in this field has noted that trauma and dissonance are not inherent to trans people, but are a result of the “sociocultural and medico-legal failure to embrace bodily diversity.”¹³ It also questions the medical utility of diagnosing as unwell pre-pubescent gender diverse children, who may or may not grow up to be trans, who do not need medical intervention, but who instead would benefit from support, understanding, information and freedom in exploring gender expressions and identities.¹⁴

(Mis)diagnosis of pathology lends itself to suggestion of treatment, and while many trans people desire to undertake gender affirming medical procedures (for example through surgery or hormones) this is not universally the case. Furthermore, treatment has been enforced on trans people in the form of so-called ‘conversion therapies’, which in themselves have been revealed as not

13 Wendy O'Brien. [“Can International Human Rights Law Accommodate Bodily Diversity?”](#), *Human Rights Law Review*, 15.1 (2015): 1-20; Matthew P. Ponsford. [“The Law, Psychiatry and Pathologization of Gender-Confirming Surgery for Transgender Ontarians”](#) *Windsor Review of Legal and Social Issues* 38 (2017): 20-37.

14 Iranti-org. [Ending Pathological Practices against trans and intersex bodies in Africa](#), 2017; GATE, [Critique and Alternative Proposal to the “Gender Incongruence of Childhood” Category in ICD-11](#), 2013; Amets Sues Schwend, Sam Winter, Zham Chiam, Adam Smiley and Mauro Cabral Grinspan. [“Depathologizing gender diversity in childhood in the process of ICD revision and reform”](#). *Global Public Health* (2018),13(11).

only ineffective, but also highly abusive and in some cases tantamount to torture as defined under international human rights law.¹⁵

2. Pathologization creates a dependence on diagnosis for the realization of trans people's rights to legal gender recognition and gender affirming care.

Pathologization plays a gatekeeping role in access to legal gender recognition and gender affirming care. This means that trans people who wish to legally change their name or gender, or undertake gender affirming procedures are, in many countries, first required to seek, prove and accept a diagnosis of ill mental health (a process which can take years). Transgender Europe's (TGEU) Trans Respect versus Transphobia Worldwide (TvT) peer research project indicates that in at least 34 countries (out of 62 mapped) trans people require a psychiatric diagnosis in order to change their name, and at least 54 countries have a pathologizing requirement for gender affirming procedures or to change legal gender markers.¹⁶

For example, in Spain, trans people of legal age may request to change their legal gender provided that "they have been diagnosed with gender dysphoria, certified by a doctor or clinical psychologist" and provided "that they have had two years of medical treatment to alter physical characteristics to match gender identity" as certified by a doctor or medical examiner.¹⁷ Such requirements can be extremely burdensome, expensive and even traumatic, and many trans people are unwilling to put themselves through the process, and so remain unrecognized in their gender identity under the law.¹⁸

15 UN Independent Expert on Sexual Orientation and Gender Identity, Practices; OHCHR, Born Free and Equal.

16 TGEU. *Trans Respect versus Transphobia Worldwide.*, 2020.

17 Ley 3/2007, de 15 de marzo, reguladora de la rectificación registral de la mención relativa al sexo de las personas, as cited by Zhan Chiam, Sandra Duffy and Matilda González Gil. *Trans Legal Mapping Report 2017: Recognition before the law.* Geneva: ILGA, 2017. For more information on Spain, see: Amets Suess Schwend "Derechos de las personas trans e intersex: Revisión del marco legislativo en el contexto español desde una perspectiva de despatologización y derechos humanos", *Revista Derecho y Salud*, Vol 28 Extraordinario XXVII Congreso, 2018.

18 See for example: UK Minister for Women and Equalities. *Reform of the UK Gender Recognition Act – Government Consultation*, July 18, 2019.

3. Pathologization has been used to justify highly abusive policies and practices that violate human rights standards, and further contributes to a broader range of rights infringements for trans people.

The pathologization of trans people contributes to additional forms of abuse and discrimination by perpetuating the myth that trans people are abnormal or unwell. International, regional and national human rights mechanisms have repeatedly brought attention to laws, policies and practices that undermine the fundamental rights and freedoms of trans people.

For example, laws that require trans people to undergo surgeries or sterilization prior to legal gender recognition have been criticized by the UN Special Rapporteur on Torture as unlawful:

“Not only does enforced surgery result in permanent sterility and irreversible changes to the body, and interfere in family and reproductive life, it also amounts to a severe and irreversible intrusion into a person’s physical integrity.”¹⁹

Core human rights documents and treaties, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights, recognize that everyone has the right to recognition as a person before the law.²⁰ This includes trans people and those with non-binary gender identities.²¹ The OHCHR has noted that lengthy, costly and abusive preconditions for legal recognition of gender identity contribute to and exacerbate the many other human rights abuses faced by trans people, including in education, employment, health, housing, applying for bank credit or State benefits, or when traveling abroad.²² These forms of discrimination serve to further marginalize trans people and exclude them from formal economies. This, in turn, can increase the likelihood that those wishing to undergo gender affirming care will resort to clandestine, cheaper and potentially unsafe surgeries and hormones.

19 UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatments and punishments, Mr. Juan E. Méndez, [Report of the Special Rapporteur \[A/HRC/22/53\]](#), February 1, 2013 -paras. 36.38, 76-79, 88.

20 UN General Assembly. [Universal Declaration of Human Rights](#), art. 6; UN General Assembly, [International Covenant on Civil and Political Rights](#), 1966/1976, art. 16; UN General Assembly. [Convention on the Elimination of All Forms of Discrimination Against Women](#) (CEDAW), 1979; UN General Assembly; [Convention on the Rights of the Child](#), 1990, art. 7.

21 OHCHR, [Born Free and Equal](#), p. 67.

22 *Ibid.*

In addition to discrimination in economic and social rights, the societal stigma upheld against trans people contributes to the high rates of violence they face, including sexual violence and killings, committed by both State and non-State actors. TGEU's Trans Murder Monitoring project documented the killing of 331 trans people between 1 October 2018 and 30 September 2019.²³ The UN has brought attention to the particularly brutal nature of violence and killings committed against trans people.²⁴

In a joint statement, UN and regional human rights mechanisms recognized pathologization as one of the "root causes of violence, discrimination and stigma" faced by trans people, and have stressed that legal and policy reform to protect trans people from violence and discrimination "will not be effective or sufficient on their own while outdated medical classifications exist."²⁵ A second joint statement called on States to:

"depathologize trans and gender diverse identities and expressions, including for young transgender people, prohibit 'conversion therapies' and refrain from adopting new [...] pathologizing medical classifications."²⁶

UN human rights treaty monitoring bodies, Special Procedures and the OHCHR continue to express concern about the pathologization of trans people, and the ensuing barriers to equal promotion and protection of their human rights.

Regional bodies have held similar positions. In an Advisory Opinion on Costa Rica, the Inter-American Court on Human Rights specified the minimum conditions for legal gender recognition, including that it must be based on self-identity, free and informed consent,²⁷ and must not require unreasonable medical or psychological certifications, or surgical or hormonal treatment.²⁸

23 TGEU. [TMM Update Trans Day of Remembrance 2019](#), [Press Release], November 11, 2019.

24 OHCHR, *Born Free and Equal*, p 15.

25 OHCHR, *Pathologization*.

26 OHCHR. [Embrace diversity and protect trans and gender diverse children and adolescents, for International Day against Homophobia, Transphobia and Biphobia](#), joint statement of UN and regional human rights experts, 17 May, 2017.

27 Note: Informed consent is a decision made voluntarily on the basis of comprehensible and sufficient information regarding potential effects and side effects of treatment and the likely results of refraining from treatment. See also, UN Special Rapporteur on the Right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Mr. Anand Grover. [Report of the Special Rapporteur](#), [A/64/272], August 10, 2009: "Informed consent is not mere acceptance of a medical intervention, but a voluntary and sufficiently informed decision, protecting the right of the patient to be involved in medical decision-making, and assigning associated duties and obligations to health-care providers. Its ethical and legal normative justifications stem from its promotion of patient autonomy, self-determination, bodily integrity and well-being."

28 Inter-American Court of Human Rights. [Gender identity, and equality and non-discrimination of same-sex couples](#) [Advisory Opinion OC-24/17], November 24, 2017.

The Inter-American Commission on Human Rights (IACHR) has likewise advised States to:

“Enact gender identity laws that recognize the rights of trans persons to change the name and gender marker on birth certificates and identity documents, without the need to present medical or psychological/psychiatric evaluations or certificates.”²⁹

The Parliamentary Assembly of the Council of Europe (PACE) adopted in 2015 a resolution on discrimination against transgender people in Europe in 2015 (prior to the ICD 11). The resolution states:

“The fact that the situation of transgender people is considered as a disease by international diagnosis manuals is disrespectful of their human dignity and an additional obstacle to social inclusion.”³⁰

The Yogyakarta Principles plus 10 (YP+10) a soft law document on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics calls on States to ensure that:

“no eligibility criteria, such as medical or psychological interventions, a psycho-medical diagnosis, minimum or maximum age, economic status, health, marital or parental status, or any other third-party opinion, shall be a prerequisite to change one’s name, legal sex or gender.”³¹

29 IACHR. *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, 2015.

30 PACE. Resolution 2048: *Discrimination against transgender people in Europe*, April 22, 2015.

31 *Yogyakarta Principles plus 10*, Principle 31: The right to legal recognition. The YPs+10 were adopted in 2017.

4. Historical Evidence of Gender Diversity

In addition to the three points outlined above, there are some indications that diverse expressions of gender may have existed across regions of the world for centuries. In 2014, the OHCHR issued a fact sheet illustrating examples of sexual orientation and gender identity throughout history, including gender diversity among indigenous peoples in Siberia, Indonesia, Samoa, Nepal, India, Saudi Arabia, the Democratic Republic of the Congo, the United States, and Albania.³² The fact sheet provided examples of the indigenous Chukchi people of Siberia identifying seven genders in addition to male and female, and the Bugis people of the island Sulawesi in Indonesia recognizing three sexes, four genders, and a fifth meta-gender group. Some trans activists and scholars have argued that pathologization is intrinsically related to colonization, as it imposes a cis-normative standard of sex and gender rooted in contemporary Western patriarchal, religious and cultural traditions.³³

32 OHCHR. [Sexual Orientation and Gender Identity Throughout History](#), [infographic], May 17, 2014.

33 Iranti-org, *Ending Pathological Practices*; Viviane Vergueiro. "[Despatologizar é decolonizar](#)", *GATE*, October 26, 2015.

Routes to legal depathologization of gender identity

At the national level, law and policy makers are also recognizing the need to depathologize transgender identities. Gender identity laws that have included pathologizing and other abusive requirements are increasingly being reviewed in light of rising awareness of the harm caused by such provisions. Argentina, Belgium, Chile, Colombia, Denmark, France, India, Malta, Mexico, the Netherlands, Norway, Pakistan, Peru and Uruguay have moved toward legal provisions for gender recognition without pathologizing requirements, although some maintain requirements in particular circumstances (for example, in relation to minors). These developments are outlined in the examples below. A number of other States have moved toward legal gender recognition, but retain requirements for physical transition, medical diagnosis and/or psychiatric treatment. Examples of these are given later. The coming years may see law and policy makers and civil society questioning whether the inclusion of sex/gender markers on identity documents is relevant, reasonable and necessary for a legitimate purpose.³⁴

Examples of legal depathologization

Legal developments in this area have been realized through a combination of executive decrees, judicial decisions and primary legislation, often following close consultation with civil society and/or strategic litigation. Gender recognition can be introduced, enhanced, or undermined through laws and policies. However, it is important to recognize that progressive laws must be properly implemented in order to make a difference, and that good practices

³⁴ See, for example, Neela Ghoshal and Kyle Knight. "[Netherlands Sees No Role for Gender Marker on ID Documents](#)", *Human Rights Watch*, July 8, 2020.

without complementary laws also exist. The following examples provide a summary only of legal status around trans depathologization, without insight into implementation or practice.

Argentina

Argentina's Gender Identity Law is widely presented as best practice and was a milestone for national legislation worldwide.³⁵ It provides for legal gender recognition and name change in civil registers, birth certificates and national identity cards on the basis of self-identity, without need for proof that surgical procedures, hormonal therapies or any other psychological or medical treatment have taken place.³⁶ Persons under 18 years old can submit requests through their legal representatives (or where this is not possible, through summary proceedings) taking into account the evolving capacities and best interests of the child as expressed in the *Convention on the Rights of the Child* (CRC) and national legislation on the *Comprehensive Protection of the Rights of Girls, Boys and Adolescents* (Law 26061).

The *Gender Identity Law* grants access to gender affirming care for adults, including surgery and/or hormonal treatment, on the basis of informed consent. It explicitly states there shall be no requirement of judicial or administrative authorization. In the case of minors, the informed consent should be made explicit by the minor and be submitted through legal representatives. Further, the competent judicial authorities for the jurisdiction must also express their agreement within 60 days, taking into account the evolving capacities and best interests of the child as expressed in the CRC and in Law 26061. The law explicitly states that gender affirming medical procedures are included in the *Compulsory Medical Plan*.

35 See for example: OHCHR, Living Free and Equal; UN Independent Expert on Sexual Orientation and Gender identity, Mr. Víctor Madrigal Borloz. [Protection against violence and discrimination based on sexual orientation and gender identity](#), July 12, 2018; Chiam, Duffy and González Gil, *Trans Legal Mapping Report 2017*; Yogyakarta Principles plus 10. Principle 31: The right to legal recognition.

36 National Congress of Argentina. [Identidad de Género: Establécese el derecho a la identidad de género de las personas](#) (Law 26.743), May 23, 2012.

Belgium

In 2017, the Parliament adopted a law reforming the rules for legal gender recognition for trans people.³⁷ A person over the age of 16 can submit an administrative request to the civil registry to change their name and gender marker. The request should be fulfilled following a confirmation period of three months. Minors are required to provide a medical expert statement that they are sound of mind. No pathologizing diagnosis is required.

Chile

Chile signed in a Gender Identity Law in late 2018³⁸ after more than five years of legislative procedure, and only months after the Supreme Court decided all courts must authorize the change of name and legal sex without surgery.³⁹ The Gender Identity Law covers all persons over 14 years old, with requests of those between 14 and 18 years old to be made in a family court with the support of at least one of their legal representatives or guardians. The adopted text recognizes that gender identity may or may not involve the modification of appearance or body through medical, surgical or other analogous treatments, as long as it is freely chosen. It asserts that modification of body or appearance will not be a condition for the recognition of the right to gender identity, and affirms that the right to gender identity recognizes, inter alia, the following principles:

- Non-pathologization, that is, that the person is not treated as sick, nor is the difference between biological sex and gender identity considered a pathology;
- The best interests of the child; and
- Progressive autonomy, considering that minors may exercise their rights on their own, in accordance with the evolution of their faculties, their age and maturity.

37 Belgian Chamber of Representatives. *Loi réformant des régimes relatifs aux personnes transgenres en ce qui concerne la mention d'une modification de l'enregistrement du sexe dans les actes de l'état civil et ses effets* (C – 2017/12964), July 10, 2017.

38 Senate of the Republic of Chile. *Identidad de género: adultos y adolescentes entre 14 y 18 años podrán optar al cambio de sexo registral*, September 4, 2018.

39 Equal Eyes. "[Chile: Sex Change No Longer Require To Alter Gender Identity](#)", May 31, 2018.

While the development was welcomed, the regulations for official name and gender change are yet to be fully elaborated by relevant ministries, including the Ministries of Justice, Social Development and Health.

Colombia

The Ministries of Interior and Justice signed Decree 1227 in 2015, which affirms the right to gender identity.⁴⁰ The Ministries cited a Constitutional Court judgment recognizing discriminatory treatment in gender recognition of trans people, as compared with cisgender people, and the need for a less burdensome procedure for gender recognition.⁴¹ The Decree allows for a change of sex markers in official documents through public deed, which requires making a statement before a notary and providing copies of existing identity documents. The statement should refer to the sociocultural understanding the person has of their gender identity, and the Decree assures the limit to documentation or proof that may be required. The Decree does not contain any mention or requirements of medical certificates or procedures, allowing for fully depathologized gender recognition.

While the documentation required for gender recognition excludes minors, a Constitutional Court judgment in 2017 made provisions for those wanting to amend name and sex markers before the age of 18.⁴² However, this does require official third-party judgment of the minor's gender identity, such as certifications by doctors, therapists, social workers or other professionals.

Denmark

Denmark became the first European country to allow legal gender recognition without any pathologizing requirements in 2014, through the adoption of the Act to amend the *Civil Registration Law*.⁴³ The Act allows for a new social security number to be allocated to trans adults, with the requirement that a written

40 Colombian Ministry of Justice and Law. [Decreto 1227 Por el cual se adiciona una sección al Decreto 1069 de 2015. Único Reglamentario del Sector Justicia y del Derecho, relacionada con el trámite para corregir el componente sexo en el Registro del Estado Civil](#), June 4, 2015.

41 Constitutional Court of Colombia, [Judgement T-063/15](#), 2015.

42 Constitutional Court of Colombia. [Judgement T-498/2017](#), Judge Cristina Pardo Schlesinger, August 3, 2017, as cited in Chiam, Duffy and González Gil, *Trans Legal Mapping Report 2017*.

43 Danish Minister of Economic Affairs and the Interior. [Lov om ændring af lov om Det Centrale Personregister](#) [Act 752/2014], April 30th, 2014.

declaration be submitted and confirmed after a six-month period. Applicants must have reached the age of 18 by the time of submission. The law marked a significant development from previous requirements, which obliged trans people to undergo sterilization prior to recognition of their gender identity.

France

New language on gender recognition was integrated into the *Civil Code* through the *Law 2016-1547 on Modernization of Justice in the 21st Century*.⁴⁴ The law now states that any adult or emancipated minor can make an application to have their gender amended in the civil registry. They must demonstrate sufficient facts to support their claim: this can include that they appear publicly to belong to the affirmed gender; that they are known in that gender to family, friends, and colleagues; and that they have changed their forename to one of the affirmed gender. The applicant must declare their free and informed consent to the change of documents and bring any necessary supporting evidence. The law explicitly states that medical treatment, surgery and sterilization are not required.

India

In deciding on *National Legal Services Authority (NALSA) v. Union of India* in 2014, the Supreme Court declared the rights of trans people to decide their self-identified gender, as well as to the legal recognition of their gender identity as male, female or third gender without the need for surgery.⁴⁵

The judgement recognized that gender identity “forms the core of one’s personal self, based on self-identification, not on surgical or medical procedure.” It noted debates on “whether transgenderism is a disease,” while observing that “a prevalent view regarding this is that transgenderism is not a disease at all, but a benign normal variant of the human experience akin to left-handedness.”⁴⁶

44 French Parliament. [La loi sur la justice au 21^{ème} siècle](#) [Law n° 2016-1547], November 18, 2016.

45 Supreme Court of India. [National Legal Services Authority \(NALSA\) v. Union of India and others](#) [5 SCC 438], April 15, 2014, para.129.

46 *Ibid.*, para.112.

NALSA was followed in 2018 by the passing of the *Transgender Persons (Protection of Rights) Act* by India's Parliament in December 2019, coming into effect in January 2020. The Act requires trans persons to undergo surgery in order to legally change gender, in contradiction to the protections provided by the Supreme Court.⁴⁷ Two petitions have since been mounted in the Supreme Court challenging the constitutionality of the Act, for violating rights to equality, non-discrimination, life and liberty.⁴⁸

Malta

Following a process of consultation with concerned stakeholders, Malta adopted its Gender Identity, Gender Expression, and Sex Characteristics Act in 2015.⁴⁹ Under the Act, a person is not "required to provide proof of a surgical procedure for total or partial genital reassignment, hormonal therapies or any other psychiatric, psychological or medical treatment to make use of the right to gender identity." The Act states:

"The pathologization of any form of sexual orientation, gender identity and, or gender expression as may be classified under the International Classification of Diseases or any other similar internationally recognized classification, shall be null and void in Malta. The nullity of such classification shall not impact negatively the provision of any healthcare service related to sex and, or gender."

Maltese citizens are able to file an application to change their name and gender markers in the civil registry and in their birth certificates, based on their self-identified gender identity. The act also provides for refugees to change their first name and gender in their records, through making a declaration confirmed on oath to the Commissioner for Refugees.

Parents or legal guardians may file applications on behalf of minors in the registry of the Civil Court. The Court must ensure consideration of the best interests of the child as expressed in the CRC and give due weight to the views of the minor having regard to the minor's age and maturity.

47 Senate of Pakistan. [Transgender Persons \(Protection of Rights\) Bill](#) [Bill No. 210-C], March 7, 2018.

48 HT Correspondent "[Supreme Court notice to Centre on plea against transgender act](#)". *Hindustan Times*, January 28, 2020. Shruti Mahajan. "[Transgender Persons Act](#)", *Bar and Bench*, June 13, 2020; Ashish Tripathi. "[Supreme Court notice to Centre on plea against Transgender Act](#)", 2019. *Deccan Herald*. 2020, January 27, 2020.

49 Maltese Parliament. [Gender Identity, Gender Expression, and Sex Characteristics Act](#), to provide for the recognition and registration of the gender of a person and to regulate the effects of such a change, as well as the recognition and protection of the sex characteristics of a person, April 1, 2015.

Mexico

The legislative assembly of the Mexico City Federal District approved an amendment to the Mexico City Federal District Civil Code as of 2015.⁵⁰ The amendment (Article 135) affirms the right to self-identified gender identity, stating that no surgical intervention, therapies or other diagnosis and/or procedure is required for the recognition of gender identity. Mexican citizens over the age of 18 can submit requests through an administrative process, accompanied by relevant identity documentation, to change their names and gender markers.

In 2017, a six-year-old was granted a change of name and gender on her birth certificate through an administrative procedure with the Civil Registry, without pathologizing requirements.⁵¹ Previously, minors were required to submit applications via their parents or official guardians to the courts, with supporting opinions from a doctor and a psychologist.

The Netherlands

In 2014, an amendment to the Dutch Civil Code came into force, allowing for Dutch citizens and residents over the age of 16 to change their name and sex marker in birth certificates and the civil registry through administrative process.⁵² A supporting expert statement must accompany the application, but all previous requirements of surgery and sterilization no longer apply. Minors under the age of 16 must apply for legal gender recognition through the courts.⁵³

A ruling by the Limburg District Court in 2018 recognized the right to change gender markers to the non-binary option of 'X' in place of male or female, affirming the right to self-identification of gender.⁵⁴ In July 2020, the government of the Netherlands stated its intention to remove gender markers from Dutch ID cards, to end "unnecessary" registration of gender.⁵⁵

50 Legislative Assembly of Mexico City. [Código Civil Para el Distrito Federal](#) (Amendment Article 135), February 5, 2015.

51 *Sin embargo MX*. "[Sophía, 6 años, se convierte en la primera niña trans en cambiar nombre y género en acta](#)", Octubre 15, 2017.

52 Burgerlijk Wetboek Boek 1. as cited by Chiam, Duffy and González Gil, *Trans Legal Mapping Report 2017*.

53 Reiss Smith. "[Dutch government makes legal transition for transgender people easier](#)", *Pink News*, April 11, 2019.

54 *Human Rights Watch*. "[Dutch Court signals need for gender neutral option](#)", June 1, 2018.

55 Neela Ghoshal and Kyle Knight. "[Netherlands Sees No Role for Gender Marker on ID Document](#)", *Human Rights Watch*, July 8, 2020; Jamie Wareham, "[Dutch ID Cards to become gender free -could more of Europe follow?](#)", *Forbes*, July 7, 2020

Norway

The Legal Gender Amendment Act provides for amending legal gender based on self-declaration for persons over the age of 16, without the need for surgery or sterilization.⁵⁶ Minors between the ages of six and 16 must have their applications submitted by their custodian(s). Should custodians not agree on amending the child's legal gender, the decision will be made according to the best interests of the child, taking into account the child's age, maturity and gender expression.

Pakistan

The Transgender Persons (Protection of Rights) Act affirms the right of a transgender person to be recognized as per their "self-perceived gender identity."⁵⁷ Persons over the age of 18 can change their name and gender marker on identity documents. The Act also prohibits discrimination against transgender persons, including in healthcare services.

A third gender option has been allowed in national identity cards and passports since a Supreme Court decision in 2017.⁵⁸ A requirement for medical examination to determine the validity of a claim was reportedly repealed as a result of community advocacy.⁵⁹

Peru

A bill is under discussion in Peru to allow for legal gender recognition through administrative request and without pathologization, including without requirements for medical or psychological certificates, surgery, sterilization or hormonal therapy.⁶⁰ The bill also affirms the right to enjoy the highest possible standard of comprehensive health, including the right of people over 18 years of age to access gender affirming treatment in line with their self-identified gender identity, without judicial or administrative authorization.

56 Norwegian Council of State. [Proposition to the Storting \(proposal for a legislative decision\) The Legal Gender Amendment Act](#) [proposal 74L], March 18, 2016. [TGEU, Unofficial Trans.]

57 Senate of Pakistan. [Transgender Persons \(Protection and Rights\) Act](#) [Act No. XIII], May 24, 2018.

58 Supreme Court of Pakistan. [Khaki v. Rawalpindi Pakistan](#) [Const. Pet. No.43], December 12, 2009.

59 UN Development Program (UNDP) and Asia Pacific Transgender Network (APTN). [Legal Gender Recognition: A Multi-Country Legal and Policy Review in Asia](#), 2017.

60 Congress of the Republic of Peru. [Presentan proyecto de "Ley de Identidad de Género" para personas trans en el Perú](#) [Press Release], December 18, 2016.

The bill, if passed, would affirm the findings of a Constitutional Court ruling in 2016, which affirmed that trans identity “cannot be considered a pathology or disease.”⁶¹ The ruling allows for trans people to request a change of name and gender markers recorded in identity documents through summary process.

Uruguay

The Uruguayan congress passed the Comprehensive Law for Trans People (*Ley Integral para Personas Trans*) in October 2018.⁶² Applications to change name and gender on official documents, including the birth certificate, can be made through administrative process. The law affirms the right of trans people to access health services without any type of discrimination or pathologization due to their gender identity. It allows for gender affirming treatment, including through hormones and surgery, based on informed consent.

For persons under 18 years of age, the request must be complemented by the consent of their legal guardians. Where this consent cannot be obtained, the best interests of the minor must be considered, in line with the CRC and existing national law.

Health providers, whether state or private, must permanently guarantee the rights recognized by this law, and all health benefits considered in this law are included in the National Integrated Health System.

Ongoing developments in legal depathologization

The above examples present legal systems that have provided for trans depathologization. In a number of other States, advances on legal gender recognition are being made without having clearly or explicitly depathologized gender identity. In these States, transgender identity might still be lawfully treated as a (psycho)pathology. A selection of these are outlined here.

61 Constitutional Tribunal of Peru. *San Martín-Rodolfo Enrique Romero Saldarriaga (Ana Romero Saldarriaga)* [Expte. No. 06040-2015-PA/TC], 2015.

62 Uruguayan Parliament. *Ley Integral para Personas Trans* [Law 19.684], November 7, 2018.

Botswana

In 2017, the High Court ruled in favor of a trans man's request to change the gender marker on his identity card.⁶³ While the Court considered medical evidence of the applicant's physical transition, it was also concerned with the distress he suffered from having incongruent identity documents. It affirmed the duty of the State to:

“[U]phold the fundamental human rights of every person and to promote tolerance, acceptance and diversity within our constitutional democracy. This includes taking all necessary measures to ensure that procedures exist whereby all State-issued identity documents which indicate a person's gender/sex reflect the person's self-defined gender identity”.

Despite the frequent reference to the medical evidence submitted in support of the applicant's claim, the Court also recognized the right to legal recognition of self-defined gender identity as essential in protecting the inherent dignity of the person, and the rights to non-discrimination, privacy and freedom of expression.

Republic of Ireland

The *Gender Recognition Act* allows for a change of name and gender markers for unmarried persons over the age of 18 based on self-declaration, through an administrative application to the Minister for Social Protection. Minors are required to have guardian consent, as well as supportive certificates from their primary treating medical practitioner that: (a) the child is of sufficient maturity to make the decision to apply for gender recognition; (b) the child is aware of, has considered and fully understands the consequences of that decision; (c) the child's decision is freely and independently made without duress or undue influence from another person, and; (d) the child has transitioned or is transitioning into his or her preferred gender. Such medical certificates need not necessarily be pathologizing.

Under the law, the Minister for Social Protection was required to commence a review of the Act within two years. The report of the review was published in 2018 and made recommendations for the legal gender recognition of minors

63 High Court of Botswana. *ND v. Attorney General of Botswana and Another*, [MAHGB-000449-15], September 29, 2017.

and non-binary persons. A Gender Recognition (Amendment) Bill is currently before the upper house of the Irish legislature, the Oireachtas.⁶⁴ The Amendment Bill proposes legal recognition of persons “who have a preferred gender which is neither man/male nor female/woman.”⁶⁵ It also proposes the right to self-identification for people who have reached the age of 16, and legal gender recognition for minors under the age of 16.

Nepal

In discussing sexual orientation and gender identity in *Sunil Babu Pant and Others v. Nepal Government and Others* the Supreme Court of Nepal noted “medical science has already proved that this a natural behavior rather than a psychiatric problem.”⁶⁶ Furthermore, the ruling stated:

“When an individual identifies her/his gender identity according to the self-feelings, other individuals, society, the state or law are not the appropriate ones to decide as to what type of genital s/he should have, what kind of sexual partner s/he needs to choose and with whom s/he should have marital relationship. Rather, it is a matter falling entirely within the ambit of the right to self-determination of such an individual.”

The Court ordered the Government to guarantee non-discrimination on the ground of gender identity, recognizing three genders: male, female and a third gender.

Again in 2017, the Supreme Court affirmed the right to change name and gender in identity documents and relevant certificates.⁶⁷

In addition, the 2015 Constitution affirms the right to non-discrimination on the basis of sex and ensures the rights of citizens to obtain a certificate of citizenship that reflects their gender identity. It also includes sexual and gender minorities in a list of protected groups.

64 House of the Oireachtas. [Gender Recognition \(Amendment\) Bill](#), 2017.

65 Ibid.

66 Supreme Court of Nepal. [Babu Pant and Others v. Nepal Government and Others](#) [Writ No. 917 of 2064 BS], December 21, 2007.

67 Supreme Court of Nepal. *Sunil Pant and Anik Rana v. the Government of Nepal*, 2017. judgement not yet available.

Despite these developments it is not clear that gender identity is legally recognized without any pathologizing requirements. Furthermore, amendments to Nepal's Citizenship Act may require proof of physical gender transition through a medical certificate.⁶⁸

Sweden

In 2015, ILGA-Europe reported on a proposal to eliminate requirements of psycho-pathologizing diagnoses and medical interventions as a requirement for legal gender recognition.⁶⁹

Although Sweden allows for legal gender recognition and name change without compulsory surgery or sterilization, it continues to require a diagnosis in line with the International Classification of Diseases. Reportedly, applications must be accompanied by a medical report from a psychiatrist confirming a "diagnosis of transsexualism."⁷⁰

In 2018, the Parliament decided to pay compensation to trans people who were forced to undergo sterilization for their gender to be legally recognized in Sweden between 1972 and 2013. Applications were to be made in writing by May 2020, and personal information of the applicant should remain confidential for seventy years.⁷¹

68 Kalpana Jha, Abha Lal and Sangitta Thebe Limbu. "[What mainstream feminists are getting wrong about the citizenship debate](#)", *The Record*, June 30, 2020.

69 ILGA Europe, "[Swedish law proposals on gender recognition and gender reassignment treatment](#)", February 10, 2015.

70 Chiam, Duffy and González Gil, *Trans Legal Mapping Report 2017*.

71 Social Committee, Swedish Parliament. "[Statlig ersättning till personer som har fått ändrad könstillhörighet fastställd i vissa fall](#)", March 21, 2018.

Opposition to legal depathologization

Despite such progress, challenges remain; not only in amending or repealing laws that continue to pathologize trans people, but in preventing the adoption of new laws and policies that may ostensibly seek to advance rights, yet ultimately entrench the harm caused by classifying trans identities as disorders.

In recent years, governments that have sought to simplify legal gender recognition processes have faced opposition lobbying from activists and groups that perceive recognition of the rights of trans people to be a threat to sex-based legal protections as well as privacy, dignity and fairness for cis women. In particular, they claim that a policy of self-identification of gender will facilitate violence against women perpetrated by cis men posing as trans women in prisons, changing rooms, toilets and women's shelters. They also claim that cis women and girls need access to "female only spaces" (i.e. excluding trans women) in situations where they are recovering from sexual and gender based violence, where religious beliefs require sex segregation, or where trans women may present physical dominance such as in competitive sports. Questions around data collection, resource allocations and affirmative action have also come up as regards to how trans women will be counted. While the rhetoric of these groups is not primarily focused on the pathologizing clauses of gender recognition initiatives (they are rather concerned about policies based on self-identification), they have interrupted progress on depathologization in some countries, as illustrated by the examples below.

New Zealand

An initiative to update the Births, Deaths, Marriages, and Relationships Registration Act (1995) to allow adults to change the sex on their birth certificate via an administrative process based on self-identification was proposed in 2018. The bill would have similarly facilitated the process for minors and added a non-binary option to birth certificates. However, the passage of the bill was ultimately deferred following requests for public consultation on the matter.⁷² The Minister's rationale for deferring the bill was on procedural grounds, that the amendments on self-identification were not included in the version of the bill initially shared for public consultation, although the proposal for

72 ["Reasons for Safeguarding Concerns with Self-ID"](#), posted by Kerry, *Speak Up for Women*, December 19, 2018.

a self-determination model had been signaled in a previous report from the Select Committee. Parties calling for further consultation had made submissions regarding the Bill opposing a self-determination approach, in which they advocated to legally separate trans and cis women⁷³. In addition, questions were posed as to whether the Government intended to maintain or collapse an existing distinction between a person's registered sex and their sex "for the purposes of accessing reserved entitlements, facilities, services, roles or opportunities, or rights and obligations under the law."⁷⁴

In late June 2020, the Minister announced that there would be no progress on the Bill before Parliament stopped sitting in August prior to the September 19 general election.⁷⁵

United Kingdom (excluding Northern Ireland)

The *Gender Recognition Act* of 2004 allows for trans people to correct the sex marker in their birth certificate if they are able to convince a faceless gender recognition panel that they are trans through receiving a diagnosis of gender dysphoria and providing evidence of living as their 'acquired gender' for at least two years. Reviews have been taking place in England and Wales, and separately in Scotland, to reform the *Gender Recognition Act* to facilitate gender recognition for adults through a simple administrative procedure.

In December 2019, the Scottish parliament launched a public consultation on a draft bill⁷⁶ to amend the Gender Recognition Act.⁷⁷ The proposed bill covers the removal of existing medical requirements for legal gender recognition, removal of the need to apply to the gender recognition panel, and reduction of the minimum time the applicant must have lived in their "acquired gender" from two years to three months. The applicant would also have to confirm that they intend to "live permanently in their acquired gender," and would still be required to submit statutory declarations, made in front of a notary public or a justice of the peace.

73 *Speak up for women*. "[Our Four Reasonable Demands](#)", n/d.

74 NZ Crown Law advice to the Department of Internal Affairs on the BDMRR Bill, 20 February, 2019

75 Isaac Davison. "[Trans law change won't happen before election, Internal Affairs Minister Tracy Martin says](#)", NZ Herald, Jun 22, 2020.

76 Scottish Government (2019, December 17) [Gender Recognition Reform \(Scotland\) Bill: consultation](#), December 17, 2019

77 Scottish Government. [Gender Recognition Reform \(Scotland\) Bill: A consultation](#), 2019-2020.

While the draft bill, if adopted, would significantly facilitate gender recognition for trans men and women, the Scottish government has stated that it does not intend to allow minors under the age of 16 to apply for legal gender recognition, nor does it intend to recognize non-binary identities.⁷⁸ However, it does state an intention to “seek views on what support is needed for children and young people who are uncertain of their gender identity” and prepare guidance on supporting trans pupils in schools. It would also establish a working group to “consider possible changes to procedures and practice in relation to non-binary people.”

While the consultative process on the bill in Scotland closed in March 2020 for independent analysis of the results, next steps have been put on hold while the government focuses attention on the COVID-19 pandemic.⁷⁹

With regards to England and Wales, the UK Government ran a 16-week consultation on reforming the Gender Recognition Act in 2018. This followed a government LGBT survey which indicated that trans people were not applying for legal gender recognition under the existing process, because it was “too bureaucratic, too expensive and too intrusive.”⁸⁰

The consultation document on the reform of the Gender Recognition Act presented to the UK Parliament by the Minister for Women and Equalities in July 2018 explicitly stated in multiple instances that “being trans is not a mental illness” and noted the revised ICD-11 placement of “gender incongruence” in the chapter on sexual health. The document noted that trans people found the existing process for gender recognition to be “overly intrusive, humiliating and administratively burdensome” and that the requirement of a diagnostic psychiatric report “perpetuates the outdated and false assumption that being trans is a mental illness.”⁸¹

However, in September 2020, the government sent out its final response to the consultation, deciding to maintain pathologizing requirements (UK Government Equalities Office, 2020).⁸² In order to apply for a Gender Recognition Certificate, applicants would continue to need:

78 Scottish Government, *Gender Recognition Reform*, 2019.

79 Scottish Government, *Gender Recognition Reform*, 2019-2020.

80 LGTB Policy Team, Government Equalities Office. [Reform of the Gender Recognition Act – Government Consultation. Presented to Parliament by the Minister for Women and Equalities by Command of Her Majesty., 2018.](#)

81 Ibid.

82 UK Government Equalities Office. [Government responds to Gender Recognition Act consultation](#) [Press release] September 22, 2020. See also: UK Parliament. [Gender recognition reform: consultation and outcome](#), December 10, 2020.

- A medical diagnosis of gender dysphoria from an approved medical practitioner;
- A medical report from an approved medical professional providing details of any treatment they have had;
- Evidence they have lived in their “new” gender for at least two years;
- Agreement from their spouse/civil partner to the marriage/civil partnership;
- A statutory declaration that they intend to live in the acquired gender until death.

This documentation would still be sent to a Gender Recognition Panel, made up of four judges and four medical professionals, for assessment. Each application would be assessed by one judge and one medical professional, who would then decide whether to issue the GRC. The applicant would not be required to meet the panel.

--

The examples of New Zealand and the UK give insight into the challenges ahead. Where governments are undertaking processes to review laws on legal gender recognition and access to gender affirming care, it is essential that they consult closely with concerned groups to ensure the exercise of due diligence and the duty to do no harm.

While the ICD-11 is expected to take some time to roll out worldwide, States can lead by example, and move ahead with depathologization of gender identity at the national level. Through consultative processes with relevant stakeholders, law and policy makers can gain a deeper understanding of how discriminatory classifications affect trans people.

There is growing recognition of the harms rooted in pathologization, as well as increasing consensus that labelling trans people as inherently unwell has no demonstrable clinical utility. Requiring trans people to seek a diagnosis based solely on their gender identity in order to change their name or legal gender is discriminatory, and acts as a barrier to realizing fundamental rights and freedoms. Critically, pathologization contributes to a culture of stigma, ostracism and transphobia, which leaves trans people vulnerable to violence, discrimination and economic marginalization.

As steps toward comprehensively depathologizing trans identities, States should be encouraged to ensure legal gender recognition and name change in birth certificates, civil registry and national identity cards without need for medical diagnosis or treatment, including psychological treatment or assessment, or gender affirming treatment.

With regards to trans and gender non-conforming minors, law and policy makers and medical professionals should take guidance from the (almost universally ratified) Convention on the Rights of the Child. This includes taking into account best interests of the child, and the child's evolving capacities, in all decisions regarding a child's legal name and gender, as well as any medical treatment or diagnosis.

States should take measures to ensure trans people have access to the highest attainable standard of gender affirming healthcare, on the basis of free, prior and informed consent. Practices of so-called "reparative" or "conversion" therapies that seek to change a person's gender identity or expression have

been found to be unethical, ineffective and unfounded in science, and may also be tantamount to torture. States should immediately prohibit any such practice and repeal any laws and policies that allow such practices to take place. Victims of such practices should have access to support and complaint mechanisms, reparations, rehabilitation and legal assistance. States should also carry out campaigns to raise awareness among parents, families and communities about the harms caused by “conversion therapy.” Affirmative and non-discriminatory materials on sexual, biological, physical and psychological diversity and the human rights of people of diverse gender identities should be included in medical curricula and continuing professional development programs.

Examples of processes in the United Kingdom and New Zealand should also serve as caution for advocates and allies for trans depathologization, indicating some of the key battlegrounds for rights moving forward. Alliances with generalist, intersectional and supportive feminist groups, as well as national human rights institutions, will continue to be key in carving pathways that avoid pitting the struggle for women’s rights against progress on the rights of trans people. Ultimately, advances will be won collectively if common ground can be found; in shared concerns about violence and discrimination, and recognition that human rights is not a zero-sum game.

While many law and policy makers are on a learning curve on gender identity, trans advocates, allies and human rights experts have been documenting human rights violations and advocating for trans equality for decades. Governments should ensure meaningful consultation with trans civil society and their allies in developing any new legislation and/or policy affecting trans people, and in reporting to UN mechanisms on implementation of such provisions and their impact on trans people’s human rights.

The case studies outlined in this paper provide examples of how States can amend laws, policies and practices that treat trans people as ill or disordered, through recognizing their autonomy and self-identification. Good practice allows for simple, accessible and fast administrative procedures for name and gender change, without abusive requirements such as forced medical diagnosis or treatment.

S Kara is a queer feminist human rights jurist working toward the development and implementation of international norms and standards on the human rights of women and LGBTIQ people. As an independent consultant, she has worked with civil society organizations, donors, academic centres and the United Nations, including in an advisory capacity. From 2010 to 2015, S was the advocacy and communications director for ARC International, and previously worked for Human Rights Watch and Women Living Under Muslim Laws. She was at the forefront of advocacy on the first UN resolutions on human rights, sexual orientation and gender identity, including the establishment of the Independent Expert on this topic, and has since assisted the mandate holder in his work. S was a core member of the expert drafting committee responsible for elaborating the *Yogyakarta Principles plus 10*. She attained her Master's degree in International Law from SOAS, University of London in 2008.

--

Mauro Cabral Grinspan is an activist and researcher from Argentina. He co-founded GATE in 2009 and has served as GATE's Executive Director since 2017. His advocacy work has been focused on trans, gender diverse and intersex issues and, particularly, on articulating gender identity, gender expression, sex characteristics and other bodily issues within human rights frameworks. Mauro participated in the elaboration of the *Yogyakarta Principles* and the *Yogyakarta Principles plus 10*, and he is a signatory of both. He holds a Degree in History from the National University of Córdoba and pursued postgraduate studies in the fields of Philosophy and Gender Policies. His research work has been centered in normative approaches to sex, gender and biotechnology and, particularly, on torture in healthcare settings and the right to truth. Mauro edited the book *Interdicciones. Escrituras de la Intersexualidad en Castellano*, and he is one of the co-authors of the Argentinian Bill on the Comprehensive Protection of Sex Characteristics. Mauro has been distinguished with the *Bob Hepple Equality Award*.

GATE's work on Depathologization focuses on campaigning for legal gender recognition, gender affirming healthcare and its coverage, and by seeking recognition of many human rights violations as rooted in pathologization. We do this by engaging with the World Health Organization on specific processes, including the reform of the International Classification of Diseases; building critical dialogues with key stakeholders and producing and sharing technical and political resources; introducing pathologization as a key issue within the international human rights system; and monitoring legal depathologization and gender ideology-based attacks against our communities.

To find out more, visit us at www.gate.ngo

Do you believe in furthering trans, gender diverse and intersex rights? Support our work to empower our communities: www.gate.ngo/support-us



DEPATHOLOGIZATION

UNITED NATIONS

SOCIO-ECONOMIC JUSTICE

MOVEMENT BUILDING

HIV

www.gate.ngo

[f GATEOrgOfficial](https://www.facebook.com/GATEOrgOfficial)

[y GATE](https://www.youtube.com/channel/UCGATE)

[i gateorg](https://www.instagram.com/gateorg)

[t gateorg](https://twitter.com/gateorg)

[in gateorg](https://www.linkedin.com/company/gateorg)