



The European International Model United Nations 2016

Human Rights Council



Photo source: National Center for Transgender Equality.

*Legal Recognition and Protection for
Transgender Individuals*

Welcome Letter

Distinguished delegates,

As The European International Model United Nations (TEIMUN) conference quickly approaches, we would like to welcome you to The Hague. Whether you are an experienced delegate or a first time model UN participant, we hope that each of you will leave TEIMUN with friends, memories, and a greater knowledge of the United Nations.

The Greek philosopher, Heraclitus, once said, "The only thing that is constant is change." Since the inception of the United Nations, we have witnessed changes and shifts in international standards for human rights, creating new challenges for the future. Within the Human Rights Council, we will be discussing two topics, the legal recognition and protection for transgender individuals and the right to uncensored internet. As chairs, we are looking forward to lively debates, fruitful resolutions, and great fun. During this intense week both in and out of the committee room, we encourage you to take advantage of this great opportunity to get out of your comfort zone and embrace this truly unique experience that is TEIMUN.

Should you have any questions, remarks or simply want to have a chat, please feel free to come to us at any point during the week. We hope to meet you all in person very soon, and welcome to TEIMUN!

Your chairs,

Teele Murphy & Erin Heeter
HRC@teimun.org

Introduction

GLAAD's media reference guide defines the adjective 'transgender' as, "An umbrella term for people whose gender identity and/or gender expression differs from what is typically associated with the sex they were assigned at birth."¹ Though the transgender community is often included in the overall 'queer' community, as denoted by the T in LGBTQ, their concerns are often intrinsically different from their gay, lesbian, and bisexual peers. For example, while recognition of same-sex marriage is the law of the land in the United States, American transgender people are still fighting for their right to use the bathroom which corresponds with their gender identity. Trans people face constant opposition to what they perceive as a basic right, yet also feel they get no support from the broader gay community. Thus, even as the LGB community gains more and more in terms of rights and awareness, trans people feel they are being left behind. Laws prohibiting discrimination based on sexual orientation do not protect trans people from discrimination in many cases, partly from so-called 'transphobia' but also because the needs of trans people differ greatly from the needs of gays, lesbians, and bisexuals. Thus, the legal code finds itself in need of an update in order to protect more vulnerable citizens.

Background

Though some point to modern influences to explain the increased presence of trans individuals, the reality is trans people have existed throughout history. In the 1620s, the new colony of Virginia faced a servant who wore both men's and women's clothes and variously went by the names Thomas and Thomasine Hall. Because the colony court was unable to determine Hall's 'true' gender, it ordered that Hall wear a man's breeches and a woman's apron and cap.² For contemporary trans activists and writers, the court's decision was a double-edged sword. On the one hand, it recognised a dual gender identity, but on the other, it regulated any gender expression by Hall. In any event, the case of Thomas/Thomasine Hall demonstrates that gender nonconformity is not unique to the modern age. Later on, particularly in the United Kingdom and its sphere of influence, being transgender and cross-dressing became shorthand for being gay and thus, liable for prosecution.³

The concerns of the LGBTQ community are only just beginning to receive attention at the international level. In 2006, in response to a variety of abuses, a group of human rights experts drafted what became known as the Yogyakarta

¹ "GLAAD Media Reference Guide-Transgender Issues," *GLAAD*. Accessed 14 March 2015.

² Genny Beemyn, "Transgender History in the United States" in *Trans Bodies, Trans Selves* ed. Laura Erickson-Schroth (Oxford University Press: Oxford, 2014), 2.

³ Stephen Whittle, "A Brief History of Transgender Issues," *Guardian*. 2 June 2010.

Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity.⁴ These principles became the basis for international protection of the LGBTQ community by NGOs and regional organizations. However, it was not until June 2011 that the UN Human Rights Council (UNHRC) adopted any resolution on human rights, sexual orientation and gender identity. In it, the UNHRC expressed grave concern “at acts of violence and discrimination... committed against individuals because of their sexual orientation and gender identity.”⁵ The following report by the High Commissioner for Human Rights outlined five key steps that states must take in order to safeguard the rights of their LGBTQ citizens.⁶ Since that resolution, gay and lesbian activists have brought their problems to the forefront of society’s conscience and gained increasing acceptance in the world at large.

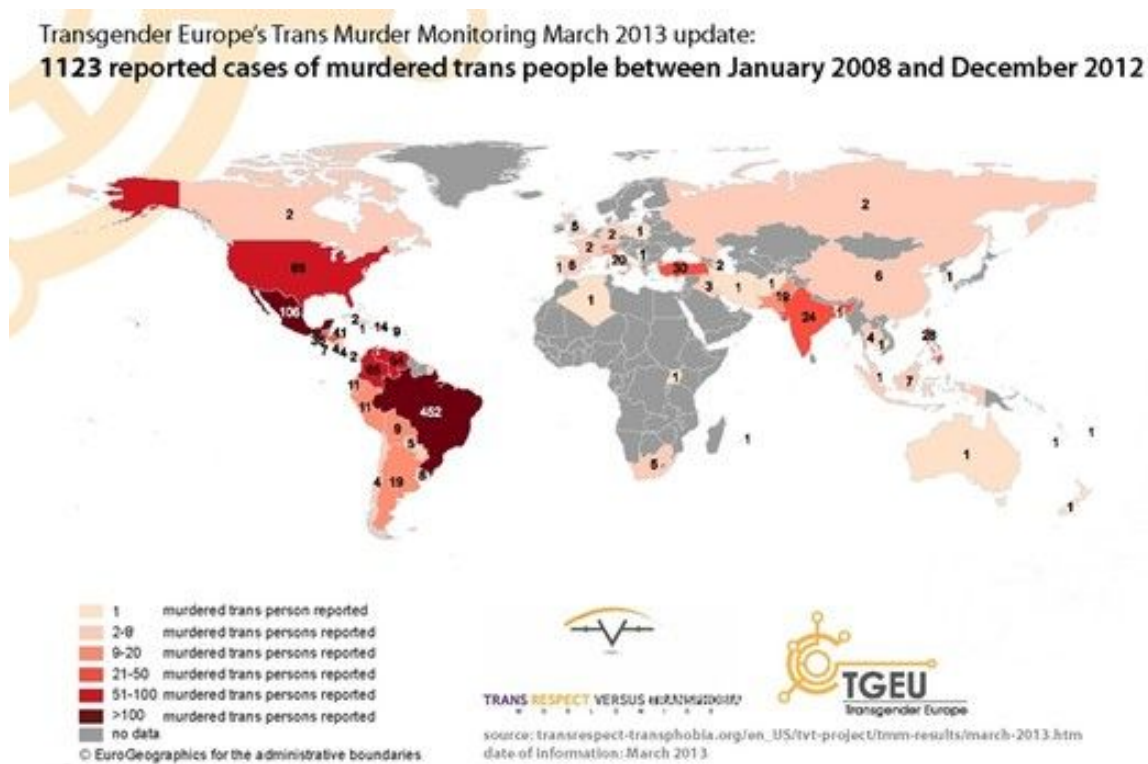


Figure 1: Transgender Europe.

However the transgender community remains woefully under-protected by their neighbours, their governments, and the international community with very real consequences. Significantly, 41% of trans and gender-nonconforming people in

⁴ Yogyakarta Principles. 2015.

⁵ Follow-Up and Implementation of the Vienna Declaration (adopted 17 June 2011, UNHRC resolution 17/19).

⁶ Born Free and Equal. Sexual Orientation and Gender Identity in International Human Rights Law. UN Human Rights, Office of the High Commissioner. 2012.

the United States have attempted suicide, compared to just 4.6% of the overall population.⁷ Though there are many reasons this number is so high, daily discrimination and harassment plays a role. Within the US alone, 19% of the transgender individuals have experienced domestic violence, 50% have experienced harassment by a co-worker, and 19% report being harassed or treated disrespectfully by police officers.⁸ Violations of the UN Declaration of Human Rights, particularly articles 3 and 5, are part of everyday life for the transgender community.

Why Is This Important?

When a person's gender presentation does not match their gender on official documents, they can be forced to reveal private information about themselves that leaves them exposed to discrimination and violence. One transgender Finnish man told Amnesty International, "I still have a female name and identity number, and I have had problems with my ID. For instance, almost every time I try to collect a parcel from the post office, they question whether the passport is mine. Also, the travel card has my identity number on it and when I try to get on a bus, the driver often claims it is not my card as it says female."⁹ This man's story is one of the less dramatic but it demonstrates the difficulty trans people face when their documents cannot match their identity.

Right to Legal Recognition

For transgender people, the fight to have their gender identity match their legal sex remains an elusive goal across the world. In 2007, Nepal's Central Bureau of Statistics gave official recognition to transgender and gender nonconforming individuals by allowing for a third gender on census forms and on citizenship certificates used as national identity papers.¹⁰ However, despite the progressive vision of this ruling, problems remained in implementing it; some local authorities did not know about the ruling and, of those who were aware, others were afraid of losing their jobs if they gave third gender citizenship papers.

Argentina's landmark Gender Identity Law from 2012 is considered to be among the most progressive laws regarding the fair treatment of trans people. It gives Argentinian citizens the right to recognition of their gender identity and to be identified that way on official government documents. More importantly, the law states, "In no case will it be needed to prove that a surgical procedure for total or partial genital reassignment, hormonal therapies or any other

⁷ Zack Ford, "No, High Suicide Rates Do Not Demonstrate That Transgender People Are Mentally Ill," *ThinkProgress*. 22 June 2015.

⁸ Injustice at Every Turn: A Report of the National Transgender Discrimination Survey. National Center for Transgender Equality. 2011.

⁹ Quoted in *The State Decides Who I Am: Lack of Legal Gender Recognition For Transgender People in Europe*, Amnesty International. 2014, 20.

¹⁰ Manesh Shrestha, "Nepal Census recognizes 'third gender'." CNN. 31 May 2011.

psychological or medical treatment has taken place.”¹¹ For many trans people, the requirement that a doctor confirms one’s gender identity is humiliating and degrading. It also further empowers a profession that until 2012 classified being transgender as a mental disorder.¹²

At first glance, Iran seems like an unlikely haven for transgender individuals but it is quite the opposite. Not only are sex-change operations sanctioned by law and religion, they are heavily subsidized by the government through state health insurance and housing aid for trans people.¹³ In fact, Iran performs the second-most sex-change operations in the world, behind only Thailand, a State with a robust history of non-binary individuals.¹⁴ However, many human rights advocates and LGBTQ activists say this tolerance is only a cover for an intense hatred and fear of homosexuality. In many cases, the operations are not used on people genuinely experiencing gender dysphoria, but rather as a corrective to the ‘abomination’ of homosexuality. In its documentary on being gay in Iran, *VICE*, of HBO, has shown that for gay Iranians, the choice usually comes down to choosing a sex-change and living as someone they’re not for the rest of their lives, or execution.¹⁵ Thus, while it may be construed as good for the community, Iran stands as an example of the way transgender people may be vilified in service of a different ideal.

The Vietnamese National Assembly passed a bill on November 24, 2015 that legalizes sex reassignment surgery in Vietnam and subsequently legalizes the right to change an individual’s gender on their official identification documents. This law is a step in the right direction for the Vietnamese transgender community but there is still more progress to be made. Many transgender advocates are still advocating for the right to be legally recognized as the other gender without undergoing surgical procedures. Nguyen Hai Yen, the project manager of Instruct, Connect and Service (ICS) said, “We are celebrating this victory not only for our community, but also for our country. Vietnam has become more tolerant and inclusive. Still, a lot of work needs to be done to ensure a gender recognition procedure that meets transgender people’s needs. In amending the civil code, an important door has been opened for us.”¹⁶

¹¹ Argentina Gender Identity Law. Transgender Europe. Translated by Alejandra Sardá-Chandiramani and Radhika Chandiramani. 2013.

¹² Zack Ford, “APA Revises Manual: Being Transgender Is No Longer A Mental Disorder,” *Think Progress*. 3 December 2012.

¹³ Lora Moftah, “Iran Transgender Law: Islamic Republic Advances Bill To ‘Protect Transsexuals’ Amid Crackdown On Gay Rights,” *International Business Times*. 27 May 2015.

¹⁴ *Ibid.*

¹⁵ Thom Senzee, “HBO’s *VICE* Uncovers Gay Iranians Forced to Surgically Change Gender,” *The Advocate*. 11 April 2015.

¹⁶ “Vietnam: Positive Step for Transgender Rights.” *Human Rights Watch*. November 30, 2015, December 24, 2015. <https://www.hrw.org/news/2015/11/30/vietnam-positive-step-transgender-rights>

Though a thorough tour of European laws regarding legal recognition of trans people would be unmanageable, a brief discussion is necessary. Western Europe is often held up as a paragon of progressive and fair society. Certainly on many issues, such as healthcare, workers' rights and same-sex marriage, Europe has shown itself to be ahead of the curve. However, the state of trans rights in Europe demonstrates how differently gay and trans people are treated. Amnesty International's report on the lack of legal recognition for European transgender people highlights a profound disparity between what is said and what is done. The European Court of Human Rights first found that a state's refusal to allow individuals to change their gender on official documents was in violation of the European Convention on Human Rights in 1992.¹⁷ Yet 20 years on, little has been done to address this. In fact, countries such as Finland, France, Norway, Belgium and Germany have in place laws and procedures that still require psychiatric diagnoses or medical surgery in order to legally change gender markers.

Obstacles to Legal Recognition

Some countries do have in place laws that allow for changing gender markers on official documents. However, the laws often put pressure on trans individuals' other human rights. As of May 2013, 24 European countries required that trans people undergo sterilization procedures as a part of the process to legally change their gender.¹⁸ Even countries generally considered 'progressive' in their human rights record, such as Finland, Norway, and France require sterilization. Sterilization is often the last in a series of procedures that trans people must undergo, including a psychiatric diagnosis of their condition and genital reassignment surgery as was required in Denmark until 2014.¹⁹ These kinds of requirements put trans people in an untenable position. Luca, a Norwegian trans man, described it as feeling, "like I am deprived of my rights [legal gender recognition] just because I choose to exercise some other rights [refusing sterilization]."²⁰

Many proponents of the sterilization requirement say that undergoing the procedure proves trans people are serious about their gender change. And in some circles, the idea that a trans man may get pregnant and have a baby would upset the social order.²¹ Regardless of motives, sterilization requirements put intense pressure on trans people trying to have their true gender recognized. In 2013, the UN Special Rapporteur on torture and inhuman, cruel

¹⁷ *The State Decides*, 7.

¹⁸ "Trans Rights Europe Map, May 2013," Transgender Europe. Accessed 22 December 2015.

¹⁹ *The State Decides*, 30.

²⁰ Quoted in *ibid.*, 24.

²¹ Kieran Guilbert, "Sterilization threat darkens Europe's transgender quest for identity," *Reuters*. 6 April 2015.

or degrading treatment recommended that states end to their sterilization practices.²²

Another obstacle states impose on trans people seeking to change their legal gender is the requirement that the applicant be single. For example, both Italy and Finland demand changes in marital status in order to legally recognize a person's gender change.²³ Trans activists and allies argue this requirement is in direct violation of article 23 of the International Covenant on Civil and Political Rights (ICCPR), which states, "The right of men and women of marriageable age to marry and to found a family shall be recognized."²⁴ They also believe that the provision for single status defies the Yogyakarta Principles, article 3, "No status, such as marriage or parenthood, may be invoked as such to prevent legal recognition of a person's gender identity."²⁵

For countries with this requirement, there is a general fear that legal gender recognition will result in same-sex marriages, thus the importance of being single.²⁶ But trans men and women see this as a betrayal of their other rights. Heli, a trans woman from Finland, told Amnesty International, "The biggest issue is them requiring changes in my personal life, in things that have to do with my privacy, to treat a medical condition."²⁷ Heli and her wife could convert their marriage into a civil partnership, but this would go against their religious beliefs and constitute an unlawful violation for their privacy.

Other countries across the world have different requirements for transgender identification. On December 29th 2014, the Russian government adopted a list of medical disorders and diseases that may prohibit citizens from driving. This list was adopted from the World Health Organization (WHO) which states that under International Diseases Number 10 (ICD-10), personality disorders include transgender, bigender, asexual, and cross dressing.²⁸ This adoption of the list caused much controversy regarding the regression of Russian policies in relation to LGBTQ rights. Many LGBTQ activists were worried that this new classification would make it easier for officials to discriminate against the LGBTQ community and ban them from driving. Weeks later a Russian representative spoke publicly about the policy adoption, stating that it would in

²² A/HRC/22/54, the Rapporteur recommends states put an end to involuntary sterilization stemming from genital reassignment surgeries transgender people have to undergo if they want to obtain legal recognition of their gender, 1 February 2013.

²³ *The State Decides*, 26.

²⁴ International Covenant on Civil and Political Rights (adopted 16 December 1966, GA resolution 2200A) entered into force 23 March 1976.

²⁵ Yogyakarta Principles, article 3. 2015.

²⁶ Emine Saner, "Europe's terrible trans rights record: will Denmark's new law spark change?" *Guardian*. 1 September 2014.

²⁷ Quoted in *The State Decides*, 45.

²⁸ "Russia Includes Transgender Status on List of Driver's License Medical Restrictions." *Human Rights First*, 8 January 2015.

no way harm the LGBTQ community's right to a driver's license. Instead, "the law would affect only those suffering from chronic and prolonged mental disorders with severe or persistent symptoms", Health Ministry spokesman Oleg Salagai told the Thomson Reuters Foundation.²⁹

In Saudi Arabia, there is no acceptance of the LGBTQ community. The US Dep. of State 2014 Human Rights Report on Saudi Arabia stated the government follows Shari'a law which prohibits sexual activity between same-sex individuals. The report also stated "It is illegal for men "to behave like women" or to wear women's clothes, and vice versa... There were reports of official societal discrimination, physical violence, and harassment based on sexual orientation or gender identity in employment, housing, statelessness, access to education, or health care."³⁰ Saudi Arabia is one of the most oppressive states in regards to LGBTQ rights. The Saudi Arabian government has been known to give sentences such as one given to an individual for "trying to be a woman" by wearing makeup and women's clothes. He was sentenced to 10 years in prison and 1,500 lashes in June 2008.³¹

The Role of the Medical Community

As already noted, in many of the countries that recognise trans people, the medical community play an active role in deciding who can be trans and who cannot. Psychiatric evaluations, while an understandable tool for proving sincerity, mean in practice that another person must confirm your inherent identity. Like the case of Thomas/Thomasine Hall of Virginia where courts had to confirm and uphold a bi-gendered nature, a psychiatric evaluation gives the ability to shape your identity to another person. Furthermore, it places a trans person at the mercy of a profession who only declassified being transgender as a mental illness in 2012. Given this recent history, many trans people are wary of the medical community, in particular medical practitioners such as Dr. Paul McHugh who wrote an op-en in the *Wall Street Journal* calling for an end to sex reassignment surgery and instead treating transgender people with more therapy.³² Though McHugh may be in the minority, his is an outsized voice that colours the way trans individuals view doctors and psychiatrists.

²⁹ Liisa Tuhkanen, "Russia gives green light for transgender drivers to stay on the road," *Reuters*, 14 January 2015.

³⁰ "Saudi Arabia 2014 Human Rights Report." *Country Reports on Human Rights Practices for 2014 United States Department of State, Bureau of Democracy, Human Rights and Labor*. pg 49.

³¹ "2008 Human Rights Report: Saudi Arabia" *2008 Country Reports on Human Rights Practices United States Department of State, Bureau of Democracy, Human Rights and Labor*. Accessed December 24, 2014. <http://www.state.gov/j/drl/rls/hrrpt/2008/nea/119126.htm>

³² Paul McHugh, "Transgender Surgery Isn't The Solution," *Wall Street Journal*. 12 June 2014.

Those who advocate for mental and physical evaluations of trans people before changing their legal gender often honestly believe it is the best way to put in place safeguards to prevent abuse of the system. They fear that sexual predators will change their gender in order to get better access to victims in public restrooms. In Houston, Texas, a citywide referendum in 2015 overturned a council ordinance allowing trans people to use bathrooms matching their gender identity. The campaign largely turned on the issue of men using women's bathrooms. Television ads produced by opponents of the law featured a mysterious man following a little girl into the woman's restroom.³³ Having qualified medical personnel to evaluate the sincerity and commitment of trans people could allay this widespread fear of sexual predators.

Questions a Resolution Must Answer (QARMAS)

1. Do states have a legal right to develop and enforce their own path to officially recognizing gender changes?
2. What constitutes reasonable proof of sincerity for trans people seeking to change their gender markers on official documents? (Sex reassignment surgery, living as another gender for a certain amount of time, psychiatric evaluation, etc. etc.)
3. What role should the medical community play in helping the government and transgender people?
4. Should states have legal grounds to reject LGBTQ rights based on an official state religion which therefore its laws?
5. How do states enforce the rights of transgender citizens in areas of homophobia and discrimination against the LGBTQ community?

Authors: Teele Murphy, Erin Heeter. TEIMUN 2016.

³³ Alexa Ura, "Bathroom Fears Flush Houston Discrimination Ordinance," *Texas Tribune*. 3 November 2015.