LGBTQ POLICY JOURNAL

Trans* Rights: The Time Is Now

VOLUME VI, 2015–2016

LGBTQ POLICY JOURNAL

at the Harvard Kennedy School

Volume VI, 2015–2016

Trans* Rights: The Time Is Now

Featured Articles

Our Mission

To inspire thoughtful debate, challenge commonly held beliefs, and move the conversation forward on LGBTQ rights and equality.

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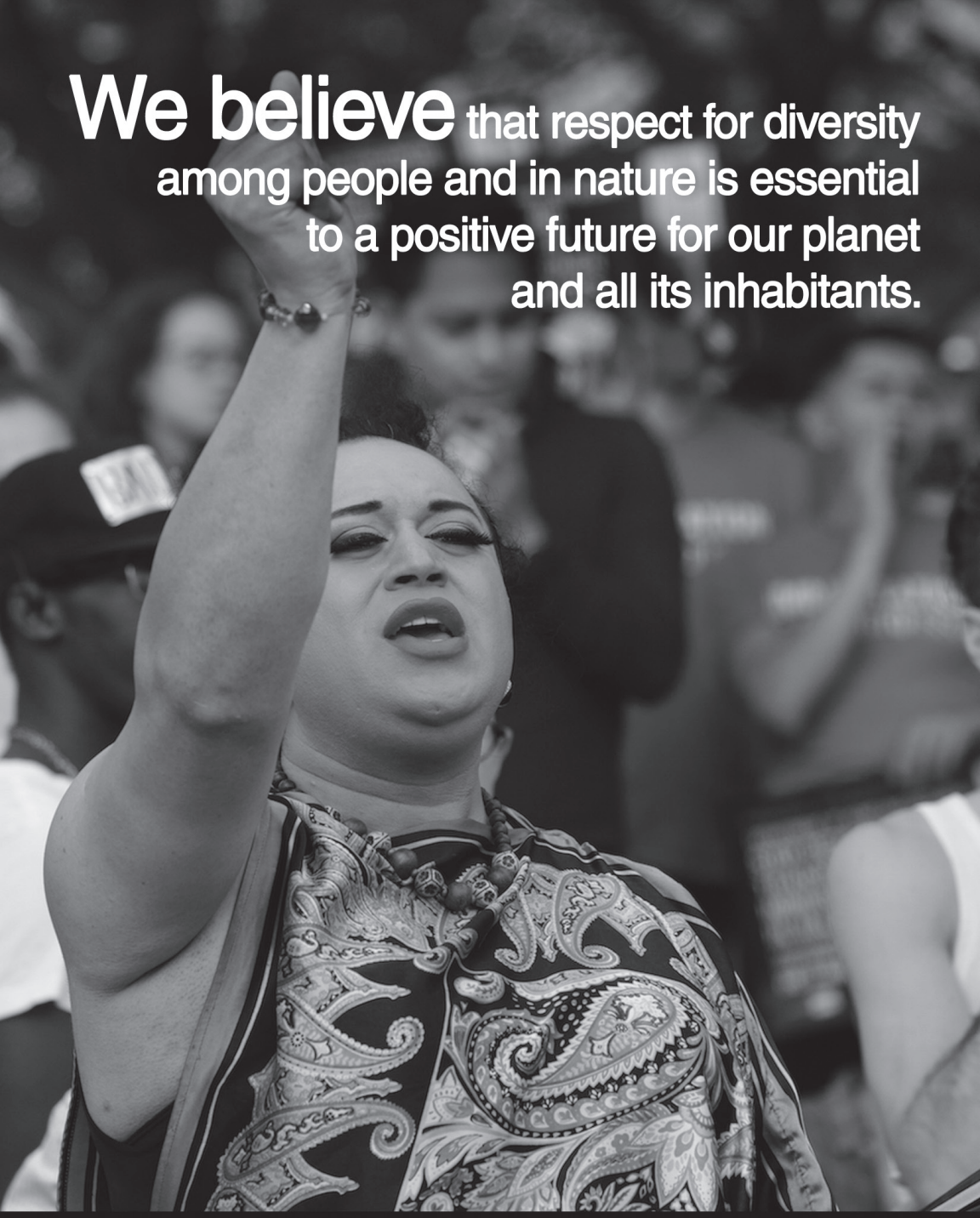

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LGBTQ POLICY JOURNAL

AT THE HARVARD KENNEDY SCHOOL

VOLUME VI

Trans* Rights: The Time Is Now

2015 - 2016

WWW.HKSLGBTQ.COM

ISSN# 2160-2980

SPECIAL THANKS

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2016 Special Edition – Trans* Rights: The Time Is Now

A NOTE ON TERMINOLOGY

The *LGBTQ Policy Journal at the Harvard Kennedy School* intentionally chose to use "trans*" in our messaging and language for this edition, in order to emphasize the diversity of gender identities and expressions we hoped would be represented in submissions. The use of an asterisk began in recent years to convey that "trans" was not limited to a binary of transwomen and transmen, but additionally inclusive of gender-non-conforming, gender fluid, genderqueer, bigender, transsexual, transvestite, and other non-cisgenders. We felt this was the best way to articulate rejection of a binary, even within the context of "trans" issues. At the same time, we recognize language diversity throughout the world, and we were not prescriptive with authors to use language they were uncomfortable with. We recognize that language is power, and also a site for contention. As language continues to evolve, so will the *LGBTQ Policy Journal*.

LETTER FROM THE EDITORS-IN-CHIEF

Dear Readers,

In August 1966, trans women, drag queens, and sex workers rioted against police violence and anti-transgender discrimination at the Compton Cafeteria in San Francisco's Tenderloin District. Three years later, in Greenwich Village in New York City, the same forces of police brutality, legalized transphobia, and violent homophobia triggered days of protests, later known as the Stonewall Uprising. This was the beginning of the national movement for LGBTQ rights.

Throughout the world, trans* and gender-non-conforming communities have been at the forefront of movements to end oppression based on gender and sexuality. And while progress has been slow in the fifty years since the Compton Cafeteria riots, recent times have brought hard-won victories. The Equal Employment Opportunity Commission ruled the prohibition of discrimination based on sex in Title VII of the 1964 Civil Rights Act includes trans* people.[1] The Department of Health and Human Services overturned an outdated policy and now allows Medicare to cover sex reassignment surgery.[2] Laverne Cox became the first transgender person to be featured on the cover of *Time* magazine and nominated for an Emmy.[3] In Nepal, Malta, Australia, and New Zealand, a third gender category is permitted on official documents, such as passports.[4] Thailand opened the first trans* health and support center in Asia.[5] In South America, Michelle Suárez Bértora and Tamara Adrián became the first openly transgender women to be elected to national legislatures, in Uruguay and Venezuela, respectively.[6]

And yet, despite these gains, trans* people and trans* issues continue to be marginalized in virtually every society in the world. According to a study by the US National LGBT Task Force and National Center for Transgender Equality, one in four trans* people has been subjected to transphobic violence.[7] Individuals with multiple marginalized identities—low-income transgender women of color, for example—face the highest rates of assault, both in the United States and abroad. In Brazil, there were forty-eight reported murders of transwomen in January 2016 alone.[8] Transgender individuals are twice as likely to be unemployed and four times as likely to be living in extreme poverty in the United States. This trend holds in Europe as well, where the Fundamental Rights Agency found that trans* individuals are substantially less likely to be in paid employment compared to cisgender peers.[9] Recent reports from Black and Pink and Human Rights Watch describe the abysmal situation for trans* incarcerated people and gender-non-conforming individuals in detention cen-

ters in America.[10] States such as Malaysia, Kuwait, Nigeria, and others enforce laws that criminalize "posing" as the "opposite" gender.[11]

This is the reality for trans* people: hard-won victories are juxtaposed with daunting challenges. The *LGBTQ Policy Journal* at the John F. Kennedy School of Government at Harvard University chose to focus on trans* policy this year, in an effort to further the discussion about the roles policymakers—at all levels of society and in all sectors—can play in impacting trans* lives for the better. This year's journal features eight phenomenal articles covering a range of topics.

Sheherezade Kara assesses human rights mechanisms at the United Nations, and the degree to which these mechanisms, and frameworks such as "gender-based violence," adequately include and protect trans* rights. **Enrique Restoy** takes us to the local level, examining the ways that transwomen community-based organizations in Honduras are appropriating international human rights norms for empowerment and to defend their rights.

Again looking to international human rights law, **Ignatius Yordan Nugraha** argues the right to health entitles transgender people to sex reassignment therapy. **Vanessa Ho**, **Sherry Sherqueshaa**, and **Darius Zheng** present the case of Singapore's gender recognition law, and the way it constrains and enables different segments of the trans* and gender-non-conforming communities.

Considering the recent refugee crisis sweeping Europe, **Jennifer S. Rosenberg** urges for policies that reflect the unique needs of trans* people, distinct from a broad LGBTI approach. The necessity of trans*-specific policy design is echoed in **Evelyn Deshane**'s article, which discusses the ways transgender men and non-binary people treated for eating disorders are impacted by gendered language and misunderstandings about trans* identities.

Kit Chalberg and **Kelly Collins-McMurry** offer an analysis of strategies being tested at the Community Relations Service Agency in the US Department of Justice to improve the relationship between the trans* community and police.

Finally, **Masen Davis, Sarah Gunther**, **Dave Scamell**, and **Mauro Cabral** describe the contemporary landscape of funding for trans* organizing, and argue that a "paradigm shift" in philanthropy is necessary to sustain the movement.

These articles present some of the challenges and opportunities that exist in crafting trans*-inclusive policies. At the same time, the issues explored here comprise only a subset of the trans* community's policy needs. To name but a few areas for future research, more resources and energy must be directed at developing strategies to end the criminalization and incarceration of trans* individuals; to eradicate the epidemic of violence against trans* people; to prevent negative outcomes in schools settings—from bullying to discriminatory and outdated school curriculum; to overcome challenges to inclusion and equity in the workplace, housing, and social services; and more.

Thank you for reading these articles and supporting research for one of the most marginalized communities in the world. In light of the victories for sexual

orientation and marriage equality in 2015, we believe that the LGBTQ community must educate ourselves and educate each other about the urgency facing the trans* community. The next fifty years must advance rights for trans* people with greater expediency.

Trans* rights: the time is now.

In solidarity,
Stephen Leonelli & Alex Rothman
Editors-in-Chief
Cambridge, MA
April 2016

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Department of Justice Agency Facilitates Improved Transgender Community-Police Relations

Christopher "Kit" Chalberg and Kelly Collins-McMurry

ABSTRACT

This article explores the nexus of social problems and interactions between LGBTQ populations, particularly members of the transgender community, and law enforcement. It highlights the proactive work of several US law enforcement agencies and their attempts to work with transgender communities. This article specifically explores the unique work of the Community Relations Service, a branch of the US Department of Justice (DOJ), and the development and delivery of the agency's groundbreaking "Law Enforcement and the Transgender Community" training program. This training has been instrumental in facilitating improved relations between the transgender community and police force, and is an important tool for building trust.

BRIEF HISTORY

The mistrust of law enforcement among lesbian, gay, bisexual, transgender, and queer (LGBTQ) communities is rooted in laws that have oppressed diverse communities, questionable—if not brutal—police tactics used to enforce these laws, and violent clashes between police and these communities. The 1966 Compton's Cafeteria Riot in the Tenderloin District of San Francisco is remembered as one of the first recorded transgender riots in US history.[1] Compton's Cafeteria was a twenty-four-hour chain of eateries, and one of the few places where transgender people could publicly congregate during evening hours, as they were unwelcome in gay bars. As Nicole Pasulka writes, "The 24-hour eatery was a local favorite. It was centrally located—adjacent to the hair salon, the corner bar and the bathhouse—and provided a well-lit and comfortable haven for trans women performing in clubs or walking the streets in San Francisco's Tenderloin neighborhood."[2] Fed up with "unruly" transgender customers, cafeteria staff began calling police. Police "arrested drag queens, trans women and gay hustlers who had been sitting for hours, eating and gossiping and coming down from their highs with the help of 60-cent cups of coffee."[3] Reportedly, an attempted arrest of a transgender woman resulted in hot coffee being thrown in an officer's face, smashed windows, and the burning of a nearby newsstand.[4]

In response to this incident, the transgender community began to picket

the cafeteria. When police harassment continued, a riot ensued, resulting in serious damage to the cafeteria and surrounding neighborhood. The next night, demonstrators, including transgender people, members of the lesbian, gay, and, bisexual communities, and others gathered to picket the cafeteria again. When transgender people attempted to enter the cafeteria they were refused, which resulted in more violence and further damage to the cafeteria.[5]

A second and more familiar incident occurred in the summer of 1969. Local police raided the Stonewall Inn, a well-known gay bar in New York City's west Greenwich Village neighborhood. Employees were arrested for selling liquor without a license, patrons were searched, and a large crowd gathered during the raid. According to author Sarah Schulman in 1984, "drag queens and black drag queens fought the police and the raid resulted in arrests, property damage, and, ultimately, violence." Over the next several days, protests and clashes with police ensued.[6]

The Stonewall Riots have long been touted as the beginning of the gay rights movement in America, and they generated increased activism across the country.[7] The mistrust between LGBTQ communities and law enforcement isn't, however, isolated to localities. On 27 April 1953, President Dwight D. Eisenhower issued Executive Order 10450, authorizing the Federal Bureau of Investigation (FBI) Director J. Edgar Hoover to conduct personal investigations of federal government employees for "sexual perversion."[8] The President also "ordered all private contractors doing business with the government to fire their gay employees. And urged our (United States) allies overseas to conduct similar purges in their countries."[9]

These historical accounts and public policies, as well as anti-LGBTQ attitudes, have helped to create a deep mistrust among LGBTQ communities of law enforcement. This article will explore contemporary issues and how they fuel mistrust between transgender communities and law enforcement. I will also discuss the approaches of several law enforcement agencies to work with transgender communities. Finally, this article will highlight the unique work of the DOJ's community relations service in LGBTQ communities, including the groundbreaking "Law Enforcement and the Transgender Community" training.

CURRENT ISSUES

Bias, Harassment, Suicide, Homelessness, and the Sex Trade

It's been over fifty years since the Stonewall Riots. Despite changes in societal perceptions, penal codes, and local laws, as well as increased visibility of transgender people and a transgender social justice movement, transgender individuals continue to face pervasive discrimination. A 2011 National Center for Transgender Equality (NCTE) survey found that 26 percent of transgender individuals reportedly lost a job due to bias.[10] The same survey found that "individuals who expressed a transgender identity or gender non-conformity while in grades K-12 reported alarming rates of harassment (78 percent), physical assault (35 percent), and sexual violence (12 percent)."[11] Unfortunately, these factors have led to increased marginalization and alarmingly high rates of suicide and suicide attempts. The survey also found

that 41 percent of transgender individuals questioned have attempted suicide.[12] In comparison, a study conducted by the Centers for Disease Control and Prevention study found that 0.6 percent of adults attempted suicide in 2015.[13]

Transgender populations are also at increased risk of homelessness. According to the NCTE in 2015,

> Homelessness is also a critical issue for transgender people; one in five transgender individuals have experienced homelessness at some point in their lives. Family rejection and discrimination and violence have contributed to a large number of transgender and other LGBQ-identified youth who are homeless in the United States—an estimated 20 to 40 percent of the more than 1.6 million homeless youth.[14]

The combination of unemployment and homelessness (among other factors) force some transgender individuals into the sex trade for survival. A recent report found that nearly 11 percent of transgender individuals surveyed had participated in sex work.[15] This number was significantly higher among transgender persons of color, where nearly 40 percent of black and black multiracial and 33.2 percent of Latino or Hispanic individuals reported sex trade participation.[16]

Police Contacts Related to Pervasive Issues Affecting Transgender Communities

The nature of police work is difficult with officers often placed in lose-lose situations, where they must react to symptoms of complex social problems. For example, an unfortunate result of both homelessness and sex work is increased contact with police. One obvious solution to the issue of increased police-transgender contact is to address bias, employment, discrimination, and other deep-seated social problems. However, law enforcement's role is constrained to enforcing laws and maintaining community safety. Faced with these stark realities, law enforcement is often placed in adversarial positions and forced to make difficult choices—much to the frustration, anger, and disappointment of alleged law-breakers. Further, these contacts with police may be perceived as harassing, unjust, and even violent.

Negative perceptions of law enforcement can be especially strong within transgender communities. The 2015 National Transgender Discrimination Survey (NTDS) found that 79.1 percent of transgender sex workers reported interactions with the police.[17] In addition to high rates of reported contact, the interactions with police are often negatively perceived. The same survey found that 22 percent of transgender individuals who had interacted with police reported harassment.[18]

Transgender individuals also report police violence. A 2012 survey by the National Coalition of Anti-Violence Programs (NCAVP) found that transgender individuals are 3.32 times more likely to experience police violence, as compared with non-transgender people.[19] Additionally, transgender women are almost three times more likely to experience police violence, as compared with overall reports of police violence.[20] Reports of harassment and violence are further compounded by perceptions of police profiling or "walking while trans."[21]

The facts or truths and right versus wrong in these reports are not known. Assigning who is right and who is wrong, along with the facts, doesn't ultimately matter. A police officer could have followed protocol during an arrest, but if the individual perceived bias or unjust treatment this interaction further reinforces longstanding community narratives about bias, profiling, and mistrust. It is apparent that these perceptions of harassment and alleged incidents of violence and profiling negatively impact relations between transgender communities and law enforcement. The lack of trust can lead to decreased victim reports and reluctance to seek help from police. For example, in 2015 Erin Fitzgerald and others found that transgender individuals reported they were somewhat uncomfortable (26.3 percent) or very uncomfortable (31.8 percent) seeking help from the police.

Mistrust is reinforced when police departments are found to have engaged in biased practices that target transgender communities. According to the NTDS:

> Investigations by the US Department of Justice of the New Orleans Police Department and the Puerto Rico Police Department both found biased policing of transgender communities—specifically targeting transgender women of color as suspected sex workers, as well as hostility to transgender victims of violence. Consent decrees in these jurisdictions required changes in policies toward transgender people. In some jurisdictions such as Louisiana, transgender sex workers have been specifically targeted under unconstitutional sodomy or "crimes against nature" laws that can lead to harsher penalties and sex offender registration.[22]

The social problems impacting transgender communities and the resulting police contacts are a complex issue. At the community level, police departments are often a bandage for a much deeper social wound, and because of the nature of their work, they walk a fine line between perception and reality. At the national level, the DOJ works to increase safety for LGBTQ communities through the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act. In particular, the Department's Community Relations Service (CRS), a little-known but historic and dynamic component, works to prevent hate crimes against LGBTQ communities through conflict resolution and training that aims for improved relations between local law enforcement and these communities.

COMMUNITY RELATIONS SERVICE AND THE MATTHEW SHEPARD AND JAMES BYRD, JR. HATE CRIMES PREVENTION ACT

On October 28, 2009, President Barack Obama signed the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (HCPA) into law. The law enables the Justice Department to

> prosecute crimes motivated by race, color, religion, and national origin without having to show that the defendant was engaged in a federally protected activity. The Shepard-Byrd Act also em-

> powers the department to prosecute crimes committed because of a person's sexual orientation, gender identity, gender, or disability as hate crimes. The law also marked the first time that the words, "lesbian, gay, bisexual and transgender" appeared in the U.S. Code.[23]

In addition to expanding the department's ability to prosecute hate crimes, this historic act also expanded the mandate of the Justice Department's CRS. The HCPA allows the CRS, also known as "America's Peacemakers," to help communities "prevent and respond to alleged violent hate crimes on the basis of actual or perceived race, color, national origin, gender, gender identity, sexual orientation, religion, and disability."[24]

How the CRS Works

The CRS employs conflict resolution specialists who are trained to provide assistance in four areas: mediation, facilitation, consultation, and training. Specialists apply these principles as they work with leaders to resolve conflicts stemming from issues covered under HCPA, and in the prevention of and response to hate crimes. Although much of the CRS's work involves collaborating with law enforcement and community leaders following divisive incidents, such as allegations of biased policing or in response to alleged hate crimes, the department also works with many other stakeholders.[25] These may include school district leaders, civil rights organizations, nonprofits, American Indian tribes, community-based organizations, advocates, community organizers, and city, county, state, and federal officials.

Created by Title X of the 1964 Civil Rights Act, the CRS was originally mandated to address community tension associated with allegations of discrimination on the basis of race, color, and national origin. Under Title X, the CRS is required to conduct its activities without publicity and is prohibited from disclosing confidential information.[26] The CRS does not investigate, litigate, enforce, fact-find, assign blame, or conduct its work through any coercive methods. Rather, the CRS provides impartial, confidential, and voluntary conflict resolution services without cost to communities in all 50 states and the US territories. The CRS does impose solutions to conflicts; instead, it helps people identify mutually agreeable resolutions.

The CRS is called upon as the third party to facilitate problem solving among stakeholders. The mediator assists in the exploration of issues and concerns, as well as develops agreements that promote communication and assist with conflict resolution in the community. Stakeholders engage voluntarily, and any information disclosed is held confidential by the CRS, unless there is a threat of violence or a potentially criminal act.

In 2009, the CRS's jurisdiction was expanded to include the HCPA. The HCPA allows the CRS to offer services to communities experiencing tension and violence related to actual or perceived race, color, national origin, gender, gender identity, sexual orientation, religion, and disability.

Mediation

The CRS provides mediation services to help the parties achieve sustainable agreements to resolve conflicts. The

CRS conciliators do so by helping parties uncover underlying interests and develop options that resolve differences. Mediation is not used to determine who is right or who is wrong; its goal is to provide a framework that helps communities clarify misunderstandings, establish mutual trust, and independently prevent and resolve future conflicts.[27]

Facilitation

Facilitation services help communities open lines of communication by identifying issues facing each community, learning from each group about each problem, and identifying potential solutions to the conflict. Dialogue promotes communication, which is a fundamental building block for developing community trust, reducing tension, and establishing collaborative relationships. These conversations often include various local agencies, institutions, and community residents. Topics may include police and community relations, perceived hate crimes, protests, demonstrations, and other issues important to a community.[28]

Consultation

The CRS conciliators also provide consulting services that include best practices, referrals, model policies, and community conflict resolution promising approaches. For example, the CRS might provide technical insight on the structure and function needed in order to establish a human relations commission or police liaison.[29]

Training

Finally, the CRS provides a wide variety of trainings that bring represenatives together from local government agencies, faith-based organizations, law enforcement, advocacy groups, and businesses in order to develop common understandings and collaborative approaches for reducing conflicts.[30]

The previous section provides an overview of the jurisdictional mandates, role, and services of the CRS in community-based conflict. The subsequent sections will focus on proactive law enforcement practices and, most notably, the CRS's work to facilitate improved relations between the transgender community and police.

EFFORTS TO IMPROVE TRANSGENDER COMMUNITY AND POLICE RELATIONS

As previously discussed, the social problems impacting transgender communities are complex and dynamic. Issues like bias, discrimination, homelessness, and suicide are not easily solved. However, one part of this equation can be influenced by training, collaborative relationships, and best practices—relations between police and the transgender community. How can relationships between transgender communities and law enforcement be strengthened? What are the best practices and policies that law enforcement agencies can adopt to improve relations? There have been attempts to improve transgender community-police relations in many local jurisdictions. The following are promising examples of such attempts.

Efforts at the Local Level

Denver Sheriff Department

In 2012, the Denver Sheriff Department collaborated with the GLBT Community Center of Colorado and transgender community leaders to develop one

of the nation's most comprehensive jail policies.[31] This collaboration included a complete review of policies and practices related to transgender inmates. Of particular importance was policy guidance governing interaction with transgender and gender-variant inmates, including definitions; implementation and procedural guidelines for intake, initial classification, searches, and strip searches; temporary and long-term housing and classification; transgender review board purpose and policies; medical assessment and treatment; and the issuance of "blue cards."[32]

During the classification process, the intake officer will complete a blue card for the transgender/gender-variant inmate. A blue card contains the following information: search preference, preferred name and pronoun, criminal descriptor number, booking number, booked name, inmate signature, and supervisor signature and date. The intake search officer is also responsible for notifying the medical staff that a transgender/gender-variant inmate has been identified.[33]

San Francisco Police Department

The San Francisco Police Department (SFPD) has also created transgender policy guidelines, including prisoner handling and transportation; arrest and booking; name usage and forms of address; prohibitions on discrimination, harassment, retaliation, and biased policing; stops and searches; and an inclusive LGBT Safe Zone Project.[34] The safe zone project features laminated signage displayed at every police station in the City and County of San Francisco "to affirm the department's position of providing equal and quality access to officers for all members of the LGBT community."[35]

The SFPD has also made significant efforts to go beyond these policies. The department has attempted to make itself reflective of the community. There are a number of transgender police officers in the department. Most notably, Officer Mikayla Connell became the first transgender person to enter and graduate from the San Francisco Police Academy in August 2014.

Los Angeles County Sheriff's Department

In addition to adopting policies regarding strip searches of transgender individuals in custody and transgender contacts in reports and booking, the Los Angeles County Sheriff's Department also authored an in-house guide titled "An LASD Guide: Transgender and Gender Non-Conforming Employees." This guide is believed to be the first comprehensive policy in the United States by a police department or law enforcement agency that supports and protects transgender police officers and employees.[36]

The manual "sets forth guidelines to address the needs of transgender and gender non-conforming employees and clarifies how the law should be implemented in situations where questions may arise about how to protect the legal rights or safety of all employees." According to the publication, "in all cases, the goal is to ensure the safety and comfort of transgender or gender non-conforming employees, while maximizing the employee's workplace integration and minimizing stigmatization of the employee."[37]

The publication also addresses definitions, privacy, official records, names and pronouns, restroom accessibility,

locker room accessibility, dress codes, transitioning on the job, sex-segregated job assignments, discrimination and harassment, and additional resources. There are additional sections on the unit of assignment (UOA) transition plan guide. This includes planning for the UOA transition to begin, the day the transition will be made known to coworkers, and the first day of the employee's official workplace transition.

Washington, DC Metropolitan Police Department

The Washington, DC Metropolitan Police Department (MPD) has made efforts to engage transgender, lesbian, gay, and bisexual communities. The MPD launched the Lesbian, Gay, Bisexual, and Transgender Liaison Unit (LGBTLU) in 2000. The unit was the "first in the nation to redefine community policing by coupling community outreach with traditional crime fighting in the often invisible gay and lesbian communities."[38] The current commanding officer of the unit, Sergeant Jessica Hawkins, is transgender.[39] The MPD also created a hate crimes assessment task force to address hate crimes in the city.[40]

In 2015, the MPD issued updated policy guidelines governing interactions with transgender individuals, including definitions and regulations, and a procedure for handling calls for service and citizen complaints involving transgender individuals. The guidelines also addressed stop-and-frisk situations with transgender individuals, handling juvenile transgender arrestees, medical treatment of transgender arrestees, traffic stops, and requests to update names or sexes associated with a person's identification number.[41]

The above examples illustrate promising approaches at the local level. These law enforcement agencies have created policies and practices that seek to engage transgender communities and treat transgender people respectfully.

Efforts at the Federal Level

The CRS has positively impacted relations between the LGBTQ community and police by facilitating conflict resolution processes between the two. The CRS has also engaged with LGBTQ communities in the following ways:

- Working with transgender communities in the aftermath of hate crimes;
- Visiting schools to address lingering issues in the aftermath of LGBTQ suicides;
- Facilitating community dialogues to explore issues impacting transgender communities;
- Leading hate crimes prevention forums; and
- Providing self-marshaling training for demonstrations and marches.

In many cases, building bridges between transgender communities and local law enforcement is essential to improve community safety and reduce the potential for future conflict and hate crimes. The following cases illustrate the CRS's work to build these bridges in transgender communities impacted under the HCPA.

Case Examples

Jacksonville, Florida

In February 2014, a biased assault against a transgender student at a local university was reported. Community tension increased when LGBTQ students alleged that the school's admin-

istration and the local sheriff's office failed to promptly investigate the incident. In response, a local LGBTQ youth organization hosted a CRS-facilitated dialogue with representatives from the US Attorney's Office for the Middle District of Florida, the FBI, the Northeast Florida Hate Crimes Working Group, the university's LGBTQ resource center, and campus police. These facilitated dialogues resulted in several targeted outcomes, including training and guidelines for campus police interactions with LGBTQ community members.[42]

Minneapolis, Minnesota

In January 2011, the CRS conducted outreach to a Minnesota LGBTQ advocacy organization following the murder of a transgender woman. The CRS convened a series of dialogues with LGBTQ advocates, police leaders, and transgender community members. The conversations resulted in an LGBTQ advocate-led police roll call and other LGBTQ cultural awareness training for local police and sheriffs, corrections officers, and county workers. The CRS also led the creation of an LGBTQ outreach and liaison program, and the campaign for LGBTQ representation—specifically the transgender community—on the Chief's Monthly Roundtable Advisory Council.[43]

Several months later in Minneapolis, a transgender woman and her friends were walking by a bar when they were allegedly harassed by patrons, who used transphobic, racist, and sexist slurs.[44] When the transgender woman was struck in the face with a bottle, a brawl ensued between the patrons and the group of friends. The alleged attacker sustained fatal injuries during the resulting brawl, and the transgender woman was arrested.[45] Due to the development of the LGBTQ outreach and liaison program, the CRS was able to quickly arrange and facilitate a series of dialogues in Minneapolis with local police and transgender advocates. The dialogues highlighted issues surrounding relations between the transgender community and police. Additionally, the best practices for interacting with transgender individuals and a comprehensive list of transgender support agencies were provided to law enforcement.[46]

Detroit, Michigan

In November 2013, the CRS was notified by a transgender advocacy organization of the murder of a transgender woman whose body was found discarded in a trash receptacle. LGBTQ community members believed the victim was murdered because of her gender identity. They also expressed fear for their personal safeties and of further hate crimes against community members. In response to the community tension, the CRS convened a series of meetings and trainings with LGBTQ community members, law enforcement, and advocacy organizations. The meetings focused on hate crimes that targeted LGBTQ communities and improving police relations with the community. In addition, the CRS assisted the parties in drafting a proclamation that established areas of consensus in order to strengthen trust and understanding between law enforcement and LGBTQ communities.[47] The CRS's services resulted in the creation of a LGBTQ community liaison who serves as the department's point of contact with LGBTQ communities and acts as a communication conduit.[48]

San Juan, Puerto Rico

In 2011 and 2012, following more than eighteen LGBTQ murders, the CRS worked in San Juan, Puerto Rico to address rising tensions and support the building of local collaboration between criminal justice officials and LGBTQ communities. More specifically, the CRS worked closely with prosecutors, law enforcement officials, and members of the LGBTQ community to reduce tensions and provide hate crimes prevention training. The CRS collaborated with the New York Police Department (NYPD) Hate Crimes Task Force and the Puerto Rico Police Department (PRPD) to facilitate the NYPD-PRPD Hate Crimes Train-the-Trainer program for state-level hate crimes in San Juan. In addition, the CRS convened dialogues between community members and officials resulting in a structured and ongoing working partnership between LGBTQ community leaders and law enforcement, and contributed to a DOJ-wide initiative to provide comprehensive support to Puerto Rico criminal justice officials regarding LGBTQ victimization.[49]

Denver, Colorado

In May 2012, the CRS facilitated an HCPA panel discussion at the annual Colorado Gold Rush—one of the nation's largest transgender conferences. The CRS invited officials from the Colorado US Attorney's Office, the FBI, the Denver Police Department, the Denver County District Attorney's Office, the GLBT Community Center of Colorado, and the Colorado Gender Identity Center to participate in a panel discussion before an audience of nearly one hundred transgender community leaders. Panelists provided information related to federal and state hate and bias crimes and best practices for prevention and response. They also addressed audience questions. The panel afforded a unique opportunity for federal, state, and local government leaders to engage in an active dialogue with transgender community members and advocates from across the country.[50]

The CRS Develops National Law Enforcement and Transgender Community Training

In addition to the cases highlighted above, the CRS has positively impacted LGBTQ and police relations by developing a groundbreaking national training program for law enforcement.

Training Development Process

As a result of the CRS's aggressive outreach and service to transgender communities, the agency received requests from LGBTQ advocacy groups to develop cultural professionalism training for law enforcement. In response to these requests, the CRS led over sixty national transgender organizations and law enforcement leaders in a series of meetings in the summer of 2013. Leaders included law enforcement executives, transgender community policy experts, advocates, LGBTQ police liaisons, anti-violence program members, and transgender police officers, members of the Transgender Community of Police and Sheriffs International (TCOPS), and other nationally recognized experts.

The goal of these meetings was to identify "cutting edge" content for what would develop into the Law Enforce-

ment and the Transgender Community cultural professionalism training. The CRS relied upon the expertise and experiences of the meeting attendees. The CRS's role during these sessions was to work with law enforcement and transgender community experts to identify critical training content. After months of meetings, the CRS, law enforcement experts, and transgender experts reached agreements on the training content. It included three topics for discussion: relevant terminology, misconceptions that impact the prevention of and response to hate crimes, and strategies and resources for effective collaboration. With this content, the CRS, with the help of law enforcement and transgender community experts, was able to develop the training package and curriculum. The training was vetted, approved, and authorized by the highest levels of the DOJ.

The groundbreaking training program was launched nationally in March 2014, during a formal ceremony, to an audience of more than 200 people, including top DOJ officials, transgender community leaders, law enforcement officials, and media. Deputy Attorney General James M. Cole (2014) said,

> . . . [the] CRS's new training helps ensure that we in law enforcement proactively protect the civil rights of all persons, including those who suffer from acts of hate violence or discrimination on the basis of his or her actual or perceived gender identity. . . At its most basic level, the new training will provide tools to enhance an officer's ability to build partnerships with community members and to work with fellow citizens, who share a commitment to public safety.[51]

Since March 2014, the CRS has partnered with transgender community organizations and law enforcement agencies across the nation and co-facilitated numerous training sessions for law enforcement. More specifically, the CRS has facilitated thirty-seven individual trainings across the country, including sessions in Michigan, Montana, Ohio, Mississippi, Texas, Utah, California, and Arkansas, among others. The trainings have been conducted in jurisdictions large and small, rural and urban. In total, nearly 1,400 law enforcement officers, including patrol officers, training officers, supervisors, and executives have been trained.

TRAINING MODEL

The CRS does not act as an expert in areas like cultural awareness or cultural professionalism. Rather, the agency's training model utilizes vetted and trained experts to deliver training content. The CRS relies on experts to aid in the development of cutting-edge training materials. This is a model the CRS has successfully used since the early 2000s following the development of Arab, Muslim, and Sikh (AMS) cultural professionalism training content. For the transgender community training, experts include recognized transgender community leaders, as well as law enforcement officers with a record of successful engagement with transgender communities.

During the development process, the CRS recognized the need to develop a "co-trainer model." This unique training model brings together transgender

experts and law enforcement officers as co-trainers. The approach allows trainees to hear from local experts, and visually demonstrates that proactive partnerships between the transgender community and law enforcement are both possible and mutually beneficial.

The training package includes PowerPoint presentations utilizing role-play scenarios. These scenarios allow trainees to model skills in front of their peers, which replicates how officers learn situational responses in the police academy. The package also includes handouts and a scenario-based training DVD. These tools represent various approaches for delivering the training to multiple audiences and allow law enforcement, transgender community advocates, city leaders, and others to effectively use the materials.

LOOKING FORWARD

There is little doubt that more needs to be done to improve relations between the transgender community and police, and in the prevention of and response to hate crimes. Trust between transgender communities and law enforcement remains low.[52] Murders of transgender and gender-nonconforming people increased in 2015. According to the National LGBTQ Taskforce:

> . . . twenty-three trans women and gender nonconforming people [were] murdered in 2015. Twelve other trans women of color were reported murdered in 2014. In 2013, where there were also twelve reported murders of trans women of color, the National Coalition of Anti-Violence programs reported that 72 percent of hate crimes against LGBTQ people were against trans women, 90 percent of whom were transgender women of color.[53]

Likewise, there is little doubt that training alone will address these complex issues. However, the CRS's approach to training development, the agency's unique training model, and ongoing work to increase trust between law enforcement and transgender communities are successful examples of collaboration.

The CRS will continue to facilitate cultural professionalism training for law enforcement and community leaders, and will also continue to work with transgender community members, law enforcement, schools, and other stakeholders to help prevent and respond to violent hate crimes and build and strengthen local partnerships. Equally, the CRS will work with federal, state, and local officials, and others to improve hate crimes reporting and to reduce abuse, discrimination, intolerance, and injustice. In 2016, the CRS will launch two other training products related to the transgender community: a scenario-based, roll call training video that illustrates some of the most common ways law enforcement encounters members of the transgender community, and a laminated pocket card for law enforcement with tips for successful interaction with the transgender community.

Communities need to be heard. This is especially true for communities whose voices have been silenced or marginalized, communities subjected to violence or bias, and communities that live in fear of police. The CRS gives voice to communities large and small, which

is fundamental in addressing many of these issues, and is the pathway toward community empowerment and trust. Over the last fifty years, the CRS has done this through mediation, facilitation, and training. Most notably, the development and delivery of the national Law Enforcement and the Transgender Community training program filled a critical need and was an important step toward healing transgender community and police relations. The CRS's work, along with the efforts of local police departments and advocates, offers hope there will never be another Compton's Cafeteria Riot, and that transgender people will be better positioned to fulfill their individual and collective promise in a nation built on the premise of equality and justice for all.

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Collins-McMurry was awarded her bachelor of science degree in journalism, summa cum laude, from Ohio University. She has received numerous letters of appreciation for community policing, gay and lesbian liaising, and crime reduction.

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DISCLAIMER

The views expressed in this article are those of the individual authors. These views do not necessarily represent the views of the Community Relations Service, the United States Department of Justice, or the US government.

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Reclaiming the Gender Framework: Contextualizing Jurisprudence on Gender Identity in UN Human Rights Mechanisms

By Sheherezade Kara

ABSTRACT

While the human rights mechanisms of the United Nations (UN) are increasingly addressing the global and systemic infringements on the rights of trans* persons, there remains some disjuncture in how the various bodies place violations against trans* persons in a broader critical framework of gender-based violence and discrimination. In their attention to infringements of the rights of trans* persons, the UN mechanisms have yet to adequately provide a critique of gender binary norms, risking leaving behind those who reject the binary altogether, and failing to truly address the root causes of gender-based violence and discrimination.

"Antidiscrimination law is founded upon the idea that sex, conceived as biological difference, is prior to, less normative than, and more real than gender. Yet, in every way that matters, sex bears an epiphenomenal relationship to gender; that is, under close examination, almost every claim with regard to sexual identity or sex discrimination can be shown to be grounded in normative gender rules and roles."
—Katherine Franke (1995)[1]

INTRODUCTION

While both the expert and political human rights mechanisms of the UN are increasingly addressing the global and systemic infringements of the rights of trans* persons (in response to heightened civil society organising and reporting at the international level), there remains some disjuncture in how the various bodies place violations against trans* persons in a broader critical framework of gender-based violence and discrimination.[2]

This article will argue that, in their attention to infringements of the rights of trans* persons, the UN mechanisms have yet to adequately provide a critique of gender binary norms. In this, they risk leaving behind those who reject the binary altogether, and fail to truly address the root cause of violations against women, trans*, genderqueer, and gender non-conforming people, as well as intersex, gay, lesbian, and queer people, and others who transgress gender norms.[3]

NORMATIVE FRAMEWORK

The Universal Declaration of Human Rights (UDHR) was adopted by the UN General Assembly in 1948, and defines human rights and fundamental freedoms as referenced in the UN charter.[4] It serves as a basis for international human rights law, covenants, and treaties, and provides the cornerstone of advocacy for the rights of minorities and marginalized groups.

The first article of the declaration states, "All human beings are born free and equal in dignity and rights."[5] Article 2 further states that "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."[6]

The use of "all human beings", and "everyone" in the text of the UDHR reflects the intention of the drafters to address all forms of discrimination in human rights law, and the phrase "or other status" indicates the grounds listed in the text were intended to be non-exhaustive.[7] International jurisprudence has since enunciated gender identity as a ground for protection from discrimination in the application of international human rights law, with calls for an end to gender-based discrimination and gender stereotyping in the fulfillment of state obligations under core international rights treaties.

The human rights treaty bodies, comprised of independent experts, monitor state party implementation of the relevant core international human rights treaty to which they are assigned. Since 2008, treaty bodies have increasingly recognized the need to explicitly address human rights concerns affecting trans* people worldwide, through references in general comments (authoritative guides for states on interpretation of the conventions) and concluding observations (treaty body summation of state reviews with recommendations).

A number of the treaty bodies have explicitly stated in general comments that gender identity is a ground for protection from discrimination and violence under the conventions. The Committee Against Torture (CAT), the Committee on Economic, Social, and Cultural Rights (CESCR), and the Committee on the Elimination of Discrimination Against Women (CEDAW) have all affirmed that gender identity is covered in state obligations under non-discrimination clauses of the relevant conventions.[8] Furthermore, CESCR used the Yogyakarta Principles as a source of guidance on the definition of gender identity, providing additional international human rights legitimacy both to trans* identities and to the Yogyakarta Principles themselves.[9] The principles affirm binding international legal standards on sexual orientation and gender identity with which all states must comply.[10]

UN general comments have also identified specific vulnerabilities of trans* persons to rights violations. For example, in its General Comment 13 document on the right of the child to freedom from all forms of violence, the Committee on the Rights of the Child (CRC) noted, "groups of children, which are likely to be exposed to violence include those who are . . . transgender or transsexual."[11] CEDAW General Comment 33 on women's access to justice highlights grounds for intersectional or compounded discrimination that make

it more difficult for women to gain access to justice, including being transgender women.[12] It further notes that transgender women are disproportionately criminalized due to their situation or status.[13]

In UN concluding observations, treaty bodies have affirmed the right to legally change gender without requirements of psychological assessment, surgery, or sterilization.[14] In addition, CAT, CESCR, and the Human Rights Committee have dealt more broadly with issues affecting LGBT people and on infringements of rights based on both sexual orientation and gender identity.[15] Such issues encompass discrimination (including discrimination in detention, social security, employment, housing, education, and health care, and discrimination against sex workers and people living with HIV/AIDS), harassment, incitement to violence, hate speech, hate crimes, ill-treatment, violence, and sexual abuse in both public and private settings and by law enforcement officials, including with impunity, access to antiretroviral and other health services, and the use of the Yogyakarta Principles as a guide to policy development.[16]

EVOLVING ATTENTION

Between 1997 and 2004, UN Special Procedures (human rights experts mandated by political/intergovernmental bodies to address specific thematic or country issues of concern) focused on killings and torture as the only mandates—indeed, the only UN rights mechanisms—to address violations of the rights of trans* persons, with these notably being the most egregious of rights violations. This is illustrative of both the nature of abuses committed and the fact that most extreme forms of violence are the least political for rights mechanisms to take up.[17]

These early reports show that while the mandate holders have sought to bring attention to specific cases and patterns of abuse, they have also had to evolve their use of appropriate language and terminology. For example, early reports made both mistakes of mis-gendering people and identifying the cause of the abuse as based on perceived sexual orientation rather than on gender identity, expression, or non-conformity.[18] Early reports also referred to "transvestites," "transsexuals," and "transgendered" persons, reflecting language used at the time.[19] In recent years, mandate holders almost exclusively refer to "transgender" persons and violations on grounds of "gender identity," following increased use of such terminology by civil society. While mandates have also occasionally been inclusive of non-Western (and non-Anglophone) identities, for example by addressing violations against meti and travesti, discourse in the mechanisms has predominantly centered on an LGBT (and more recently LGBTI) or sexual orientation and gender identity framework when referring to identity groups or grounds for protection, respectively.[20]

In the near twenty years Special Procedures has brought attention to infringements on the rights of trans* persons, the mandate has focused on torture and cruel and inhuman treatment, and has consistently shown leadership both in responding to violations and in providing conceptual and critical analyses of the patterns of abuses and state laws and policies. The first time the substance of the issues were addressed with any nuance by one of the

UN expert mechanisms was in the annual report of the Special Rapporteur on torture to the Commission on Human Rights (CHR) in 2001.[21]

In a chapter titled "Torture and Discrimination Against Sexual Minorities," the report refers to a pattern of reported torture and ill treatment of persons, relating to "their real or perceived sexual orientation or gender identity."[22] Although (mis)identifying trans* persons as sexual minorities, the report notes how discrimination based on gender identity "may contribute to the process of the dehumanization of the victim, which is often a necessary condition for torture and ill-treatment to take place," including by police and law enforcement. The report further states that silencing through shame, or threat by law enforcement officials, in order to publicly disclose the victim's sex assigned at birth, may keep a considerable number of victims from reporting abuses.

The subsequent mandate holder on torture drew attention to these findings in a report to the CHR in 2003, and further noted (in the context of violations based on gender identity) that because some persons are "perceived as transgressing gender barriers or challenging predominant conceptions of gender roles, seems to contribute to their vulnerability to torture as a way to 'punish' their unaccepted behaviour."[23] It is particularly noteworthy this observation was made in 2003, and with specific reference to violations based on gender identity. While the rapporteur did not draw the conclusion that societal subscriptions to gender norms were the problem, he acknowledged state and community-based policing of gender as problematic from a human rights perspective.

During the years following, a broader range of Special Procedures mandate holders (including those working on health, violence against women, racism, freedom of expression, and human rights defenders) started to issue thematic reports, urgent appeals, and letters of allegation to governments regarding cases of violence and discrimination based on gender identity. These dealt with family, community, and police sexual abuse, violence and killings (including against human rights defenders), obstacles to legal gender recognition, freedom of association and assembly, discrimination in the workplace, arbitrary arrest, detention and conditions of detention, and the criminalization of sex work. They stressed the importance of informed consent in health care settings, and of encryption and online anonymity.[24] Such reporting has highlighted the broad and systemic nature of infringements of the rights of trans* persons.

In a particularly noteworthy 2013 report to the Human Rights Council, focusing on abuses in health care settings, the special rapporteur on torture highlighted forced sterilization and surgery as prerequisites for legal gender recognition as unlawful. The rapporteur noted that "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."[25]

This report has supported advocacy against the medicalization of trans* identities by delinking "the performative character of gender with the physical 'fact' of sex," reinforcing the enlightened understanding that gender

and sex are indeed quite separate.[26] Such medicalization and pathologisation of trans* identities have repeatedly been criticized by treaty bodies in their general recommendations to state parties.

GENDER RECOGNITION

"The most critical of these moments was the intake interview at the gender dysphoria clinic, when the doctors, who were all males, decided whether the person was eligible for gender reassignment surgery."
—Sandy Stone (1987)[27]

In addition to general recommendations, concluding observations are a tool for treaty-monitoring bodies to illustrate the breadths of state obligations under the treaties, following a process of periodic state reporting, submission of information by civil society, consideration of lists of issues, and interactive sessions with the states under review.

While many references to the rights of trans persons or protection on the basis of gender identity are included in concluding observations in so far as they can fall under the LGBT umbrella, some of the treaty bodies have paid specific attention to issues of concern for trans persons. Such attention has almost entirely been limited to infringements on human rights in accessing legal gender recognition, including requirements of psychiatric assessments, sterilization, and surgery.

For example, in 2008 the Human Rights Committee recommended that Ireland ensure the right of transgender persons to a change of gender by permitting the issuance of new birth certificates.[28]

Furthermore, in a 2010 review of the Netherlands, CEDAW expressed "concern at specific health problems experienced by transgender women, in particular the compulsory sterilization they should undergo to get their birth certificates changed and the non-reimbursement by health insurance for surgical placement of their breast implants."[29] CEDAW made recommendations thereon.

CESCR, in 2011, noted with concern "that transsexual and inter-sexed persons are often assimilated to persons with mental illness and that the State party's policies, legislative or otherwise, have led to discrimination against these persons, as well as to violations of their sexual and reproductive health rights."[30] The committee urged the state party to step up measures, legislative or otherwise, on the identity and health of transsexual and intersex persons with a view to ensure they are no longer discriminated against and that their personal integrity and sexual and reproductive health rights are respected.[31]

The Human Rights Committee addressed infringements on rights to gender recognition in some detail in its review of Ukraine in 2013, namely noting that "transgender persons are required to undergo compulsory confinement in a psychiatric institution for a period up to forty-five days and [undergo] mandatory corrective surgery" as prerequisites to a legal change of gender.[32] The committee stressed that Ukraine should amend laws and regulations to ensure that (1) the compulsory confinement of persons requiring a change (correction) of sex in a psychiatric institution for up to forty-five days is replaced by a less invasive measure; (2) any medical treatment should be provided in the best interests of the individual with their consent, should be limited to those medical procedures

that are strictly necessary, and should be adapted to their own wishes, specific medical needs, and situation; and (3) any abusive or disproportionate requirements for legal recognition of a gender reassignment are repealed.[33]

In 2014, CEDAW recommended that Belgium lighten the procedural burden for transgender women to obtain legal gender recognition by making the procedure more expeditious, transparent, and accessible, and that it amend current laws and practices to abolish the requirements for a psychiatric assessment, sterilization, and surgery for transgender women who wish to obtain legal recognition of their gender.[34]

Thus, international jurisprudence rightly recognizes that requirements of physical and psychological conformity to medically prescribed norms of "maleness" and "femaleness" for a legal change of gender infringes on rights. It further recognizes gender stereotyping as an obstacle to equal fulfillment of rights, and a root cause of violence against those who transgress gender norms through gender policing—both by the state through laws and policies and by the community through violence and discrimination.[35] However, the expert mechanisms fail to question the gender binary itself, meaning they are failing to address the root cause of violations against women, trans*, genderqueer, and gender non-conforming people, as well as intersex, gay, lesbian, and queer people. As noted by Giuseppe Campuzano in *Reclaiming Travesti Histories*, "modern legal battles around transgender identity recognition are subject to and reproduce gender normativity."[36]

GENDER-BASED DISCRIMINATION

On the other hand, in the political bodies a number of states opposing advancements on issues of gender and sexuality have organized to actively and strategically oppose any reference to the word "gender," or the framing of "gender-based violence" in negotiated texts, insisting the UN must refer to "sex," (meaning male and female only) and "violence against women and girls."[37] Informal negotiations on human rights resolutions reveal that member states most invested in preserving restrictive gender roles and norms have shown themselves to be acutely aware of the implications of international human rights system exploring rights violations with a critical gender lens.

The push against gender in the political bodies, as well as against sexual orientation and gender identity (which are overly politicized and thus effectively siloed from other relevant thematic initiatives), means that expert mechanisms have a responsibility to ensure nternational human rights law is being applied equally to all persons, including those who don't conform to a gender binary.[38]

MOVING BEYOND THE BINARY

The results of a National Transgender Discrimination Survey carried out in the US in 2008, revealed that genderqueer individuals suffer discrimination and violence at similar, and sometimes even higher rates, than transgender-identified individuals.[39] As compared to transgender-identified survey respondents, genderqueer people were more likely to:

- Suffer physical assaults (32 per-

cent, as compared to 25 percent);
- Survive sexual assault in primary- to secondary-level education (16 percent, as compared to 11 percent);
- Face police harassment (31 percent, as compared to 21 percent);
- Be unemployed (76 percent, as compared to 56 percent); and
- Avoid health care treatment for fear of discrimination (36 percent, as compared to 27 percent).[40]

A Williams Institute report specifically analyzing the survey data to determine the experiences of those respondents who chose to write in their own gender, concludes that by "examining just a few of the key domains of the study, such as education, health care, employment, and police, it seems clear that gender variant respondents, including those who see their gender as hybrid, fluid, and/or rejecting of the male-female binary, are suffering significant impacts of anti-transgender bias and in some cases are at higher risk for discrimination and violence than their transgender counterparts in the study."[41]

Such a study highlights the need for the UN human rights mechanisms to critique state and community policing of the gender binary as a root cause of violence and discrimination, beyond acknowledgement there must be space for diversity in definitions of "man" and "woman." This was suggested in a 2013 report of the special rapporteur on violence against women to the general assembly, which noted that "those whose gender expression does not fall into exact categories of female and male, are vulnerable to targeted abuse" in detention.[42]

Without dismantling the binary, and while focusing policy recommendations on a legal *change* of gender rather than just *recognition* of gender (whether within or without the binary), the mechanisms do not relieve the pressure on trans*, genderqueer, and other gender non-conforming people to "pass" as male or female. The mechanisms thereby fail to adequately protect all people who are subjected to gender-based rights violations, including women and lesbian, gay, bisexual and intersex people.[43] As Viviane K. Namaste notes in *Invisible Lives: The Erasure of Transsexual and Transgendered People*, "The necessity of passing is directly related to the cultural coding of gender . . . Although nonpassing transsexuals would seem to be foremost among those at risk [of violence], other individuals experience similar harassment, such as non-transsexual people with seemingly transsexual characteristics."[44]

LEADERSHIP OF THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR)

It is worth noting that the two Human Rights Council-mandated OHCHR reports on sexual orientation and gender identity human rights issues have begun to provide this analysis. The reports have noted that those who transgress or defy gender norms, or who fail to conform to socially constructed gender expectations are disproportionately subject to violence, which aims to punish such transgressions.[45] The later report recognizes that homophobic and transphobic attacks "constitute a form of gender-based violence, driven by a desire to punish individuals whose appearance or behavior appears to challenge gender stereotypes."[46] The second OHCHR report also puts

"gender normalizing" surgeries on intersex children in this context. As the report notes, "Many intersex children, born with atypical sex characteristics, are subjected to medically unnecessary surgery and treatment in an attempt to force their physical appearance to align with binary sex stereotypes."[47]

The latest report from the high commissioner's office noted as positive developments that "Nepal and Bangladesh created a legal 'third gender' category, and new passport policies in Australia and New Zealand allow individuals to choose male, female, or indeterminate gender markers."[48]

Furthermore, the report showed leadership in explicitly referring to gender non-conforming people, although only in the context of youth.[49] Nevertheless, the report recommended states to address discrimination, *inter alia*, by "developing anti-bullying programs and establishing helplines and other services to support LGBT and gender-non-conforming youth."[50]

CONCLUSION

"Instead, Title VII should recognize the primacy of gender norms as the root of both sexual identity and sex discrimination, and thereby the law should prohibit all forms of normative gender stereotyping, regardless of the biological sex of any of the parties involved." —Katherine Franke (1995)[51]

It is clear that the international human rights normative framework is inclusive of gender identity and calls for an end to gender stereotyping. Expert mechanisms have drawn attention to patterns of violence and discrimination against trans* persons with increasing conceptual and critical analyses that violations are a form of gender policing toward those who challenge or transgress predominant conceptions of gender roles and norms. Through years of reporting, these mechanisms have further illustrated that rights infringements stemming from such gender policing is systemic and pervades multiple elements of a person's life, from security in public and private settings, access to health care, discrimination in education and the workplace, online security, and privacy.

Much of the dedicated attention to gender identity issues has focused on underscoring the right to legal gender recognition without prerequisites of making physiological changes or undergoing psychotherapy, meaning the expert mechanisms recognize and support the delinking of sex from gender.

Despite this, expert mechanisms thus far haven't explicitly questioned the gender binary itself, thereby failing to address the root cause of violations against all persons who are perceived to challenge or transgress restrictive societal gender norms. Political bodies have shown entrenched positions when it comes to recognizing gender as differentiated from sex, placing more weighted responsibility on expert mechanisms to show leadership in contextualizing the violations in a gender framework, through both dismantling the gender binary and ensuring inclusivity of all persons, regardless of conformity to the binary.

Such a positioning is necessary because, as affirmed by research, genderqueer and gender non-conforming individuals suffer violence and discrimination at similar, and sometimes even higher, rates than transgender-identified individuals. The ongoing existence of the gender binary as a norm in the in-

ternational human rights system places pressure on trans*, genderqueer, and other gender non-conforming people to "pass" as male or female, and additionally fails women, lesbian, gay, bisexual, intersex, and other persons who are perceived as challenging gender norms, whether through bodily characteristics, gender expression or performance, or sexual orientation.

The two UN human rights reports that provide dedicated attention to gender identity and sexual orientation issues have shown leadership in recognizing the gender binary as a root cause of violations. Unless states, UN mechanisms and agencies, and civil society build on this analysis in international advocacy and initiatives, ensuring that violations against trans* and gender non-confirming persons are placed firmly in the gender framework, the international system will only ever be able to address these issues on a surface level.

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ACKNOWLEDGEMENTS

Thanks to Micah Grzywnowicz for their invaluable advice and input, and to Mauro Cabral for agreeing to run another set of eyes over this paper.

ENDNOTES

1. Katherine M. Franke, "Central Mistake of Sex Discrimination Law: The Disaggregation of Sex from Gender," *The University of Pennsylvania Law Review* Vol. 144, Issue 1 (Philadelphia: University of Pennsylvania Law School, 1995): 2.
2. This article uses the definition of trans* as framed by Global Action for Trans* Equality (GATE). As GATE states, "Trans* people includes those people who have a gender identity different from their gender assigned at birth and/or those people who feel they have to, prefer to, or choose to—whether by clothing, accessories, cosmetics, or body modification—present themselves differently to the expectations of the gender role assigned them at birth. This includes, among others, transsexual and transgender people, transvestites, travesti, cross-dresses, [and] no gender and genderqueer people. The term trans* should be seen as a placeholder for many identities, most of which are specific to local cultures and times in history, describing people who broaden and expand a binary understanding of gender."
3. Sunish Gulati, "The Use of Gender-Loaded Identities in Sex-Stereotyping Jurisprudence," *The New York University Law Review* Vol. 78, No. 6 (New York: NYU School of Law, December 2003). Gulati uses the term "gender-loaded identity" as an umbrella in place of terms or labels that define people based on a failure to conform to sex stereotypes, and are in turn, used to deny such people sex discrimination protection. While this paper chooses not use this term, the concept is nevertheless relevant.
4. "The Universal Declaration of Human

Rights," *United Nations*, n.d.
5. United Nations General Assembly (GA), Resolution 217A/1, "The Universal Declaration of Human Rights," 10 December 1948.
6. Ibid, Resolution 217A/2.
7. Report of the Office of the United Nations High Commissioner for Human Rights, Resolution 19/41/7, "Discriminatory Laws and Practices and Acts of Violence against individuals Based on Their Sexual Orientation and Gender Identity," 17 November 2011.
8. CAT, Article 2/GC/2/21, "Transgender Identity," 24 January 2008; European Commission (E/C) Article12/GC/20/32, 2 July 2009; CEDAW Article 47/GC/2/18, 19 October 2010.
9. The Yogyakarta Principles are a set of principles on the application of international human rights law in relation to sexual orientation and gender identity. The principles affirm binding international legal standards with which all states must comply. The principles understand gender identity to "refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical, or other means) and other expressions of gender, including dress, speech and mannerisms."
10. E/C Article 12/GC/20, 2 July 2009.
11. CRC GC/13/72, 18 April 2011.
12. CEDAW GC/33/8, 23 July 2015.
13. Ibid, at para. 49.
14. See, for example CCPR C/IRL/CO/3/8, 30 July 2008; CEDAW C/NLD/CO/5/46-47, 5 February 2010; E/C Article12/DEU/CO/5/6, 12 July 2011; CCPR C/UKR/CO/7/10, 22 August 2013; CEDAW C/BEL/CO/7/45, November 2014.
15. This stands for lesbian, gay, bisexual, and trans people. UN mechanisms sometimes also use the acronym LGBTI to also include intersex persons.
16. E/C Article 12/PER/CO/2-4/5, 30 May 2012; E/C Article 12/IRN/CO/2/7, 10 June 2013; E/C Article 12/UKR/CO/6/10, 13 June 2014; E/C Article 12/JAM/CO/3-4/28, 10 June 2013; CAT C/MNG/CO/1/25, 20 January 2011; CAT C/KWT/CO/2/25, 28 June 2011; CAT C/PRY/CO/4-6/19, 14 December 2011; CAT C/NOR/CO6-7/21, 13 December 2012; CAT C/RUS/CO/5/15, 11 December 2012; CAT C/PER/CO/5-6/22, 21 January 2013; CAT C/GTM/CO/5-6/22, 21 June 2013; CCPR C/UKR/CO/7/10, 22 August 2013; CCPR C/URY/CO/5/12, 2 December 2013; CAT C/USA/CO/3-5/21, 26, 19 December 2014; CAT C/HRV/CO/4-5/8, 18 December 2014; CAT C/SWE/CO/6-7/15, 12 December 2014; CAT C/MNE/CO/2/23, 17 June 2014; E/C Article 12/ECU/CO/3/30, 13 December 2012; CAT C/FIN/CO/5-6/24, 29 June 2011.
17. This point is illustrated in that the UN General Assembly resolutions on extrajudicial, summary, and arbitrary executions are thus far the only UN resolutions inclusive of gender identity outside of the dedicated resolution on sexual orientation and gender identity.
18. For reference of police killing of a "transvestite," see EJEs, E/C Article 4/1998/68/1/41, 19 December 1997. For an urgent appeal regarding the killing of a "transvestite," who gave male and female first names and used masculine pronouns and was likely a victim of misgendering, see EJEs, E/CN Article 4/2001/9/1/175, El Salvador, 17 January 2001. For a letter of allegation regarding the abuse of a "transgendered woman" in detention in a male prison, who was "harassed, taunted, and threatened because of her sexual orientation," see E/CN Article 4/2002/76/1/1711, 14 March 2002. For a letter of allegation regarding the verbal abuse assault of a "transsexual woman" by the police, see E/CN Article 4/2001/66/1171, 25 January 2001.
19. See, for example, Juliet Jacques, "Trans People, Pronouns, and Language," NewStatesman 16 January 2013: "The definition of transvestite has been narrowed following the emergence of transsexual and genderqueer people, commonly referring to people who cross-dress for sexual pleasure without wishing for sex or gender reassign-

ment"), and; Aiden James Kosciesza, "I'm a Trans Man Who Doesn't 'Pass'—And You Shouldn't Either," The Advocate, 20 May 2015: "Words that seemed to be standard terminology as little as four years ago are now out of fashion, or even taboo. When I began my gender transition in 2011, for example, I called myself a 'transsexual,' a word I no longer use because of its implied connection between gender identity and sexuality. Yet, as words like 'tranny' slink out of circulation, 'passing' remains frustratingly well-used, even among the trans* community."
20. See, for example, A/64/211/23, 3 August 2009, which refers to metis; A/HRC/7/28/1/1492, 3 March 2008, which refers to metis; A/HRC/29/25/3/135, 27 April 2015, which refers to transgender, transsexual, and travesti persons; and A/HRC/17/26/1/95, 18 May 2011, which refers to transgender and travesti people.
21. E/CN Article 4/2002/76, 27 December 27, 2001.
22. Ibid.
23. E/CN Article 4/2004/56/64, 23 December 2003.
24. See, for example, A/59/319/60, 1 September 2004; E/CN Article 4/2005/64/1/648, 29 March 2005; E/CN Article 4/2005/72/1/232, 18 March 2005; E/CN Article 4/2006/61/1/1, 27 March 2006; A/HRC/4/34/1/28-29, 19 March 2007; and A/HRC/4/34/1/448-454, 19 March 2007.
25. A/HRC/22/53/36-38, 76-79, 88, 1 February 2013.
26. Sandy Stone, "The *Empire* Strikes Back: A Posttranssexual Manifesto," Sandystone, 9 April 2014.
27. Ibid.
28. CCPR C/IRL/CO/3/8, 30 July 2008.
29. CEDAW C/NLD/CO/5/46-47, 5 February 2010.
30. E/C Article 12/DEU/CO/5/26, 12 July 2011.
31. Ibid.
32. CCPR C/UKR/CO/7/10, 22 August 2013.
33. Ibid.
34. CEDAW C/BEL/CO/745, November 2014.
35. See for example, CCPR C/PRY/CO/3/9-10, 29 April 2013; CRC C/SYR/CO/3-4, 9/32 February 2012; CEDAW C/POL/CO/7-8/22-23, November 2014; CEDAW C/LKA/CO/7, 8/22, April 2011; and CEDAW C/ARG/CO/6/15, 16 August 2010.
36. Giuseppe Campuzano, "Reclaiming *Travesti* Histories," *Institute of Development Studies Bulletin* Vol. 37, No. 5 (Hoboken, New Jersey: Wiley, 2006).
37. See, for example, Jane Adolphe, "'Gender' Wars at the United Nations," *Ave Maria Law Review* Vol. 11, No. 1 (Naples, Florida: Ave Maria School of Law, 2012).
38. Sheherezade Kara, "A Policy Landscape of Sexual Orientation, Gender Identity, and the Internet," *Global Information Society Watch 2015: Sexual Rights and the Internet* (Mountain View, California: Creative Commons/APC and Hivos, November 2015): 17-21.
39. For example, those who answered "D" to the following survey question: "What is your primary gender identity today?" The selections were (A) Male/man, (B) Female/woman, (C) Part time as one gender, part time as another, or (D) A gender not listed here, please specify."
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41. Ibid.
42. A/68/340/58, 21 August 2013.
43. Viviane K. Namaste, "Invisible Lives: The Erasure of Transsexual and Transgendered People" (Chicago: University of Chicago Press, 2000): 144.
44. Ibid, 144-145.
45. A/HRC/19/41/20-21, 25, 34, 50, 59, 65-67; A/HRC/29/23/21, 36, 63, 4 May 2015.
46. A/HRC/29/23/21, 4 May 2015.
47. A/HRC/29/23/53, 4 May 2015.
48. A/HRC/29/23/73, 4 May 2015.
49. A/HRC/29/23/22, 55, 79(f), 4 May 2015.
50. A/HRC/29/23/79(f), 4 May 2015.
51. Frank, 95, which refers to Title VII of the US Civil Rights Act of 1964, prohibiting discrimination on the basis of "race, colour, religion, sex or national origin."

Human Rights Appropriation in the Development of Trans* Organizations' Membership: The Case of Honduras

By Enrique Restoy, PhD

ABSTRACT

Organizations in Honduras with trans* women as members play a significant role as promoters of human rights in a country ravaged by transphobia and impunity for crimes committed against trans* people. By appropriating human rights principles, members increase their self-esteem, while collectively demanding rights. Shared experiences of marginalization and human rights abuses explain the self-identification of members within their organizations as more than a sentiment of belonging to an LGBTQ community. As such, the government must end impunity around transphobia in Honduras, and supporters of LGBTQ rights should consider the unique human rights needs of trans* people.

INTRODUCTION

International human rights norms and principles are considered a major pillar in international relations theory and have a direct effect on the protection of individuals, as they constitute key instruments in influencing state behavior.[1] The process by which international norms, principles, and procedures diffuse into national systems is widely studied in norm diffusion literature.[2] However, there is relatively scarce research as to how these norms travel from the international level, where they are generated, to the grassroots level, where they are enforced. This paper studies the extent to which members of organizations of trans* women in Honduras have appropriated and used human rights principles and norms, and the impact such appropriation has had on their lives.

The paper offers two main contributions to analysis of the diffusion of international human rights norms from global to local levels. First, the article describes the crucial role human rights appropriation plays in the development of membership in community-based organizations (CBOs) of trans* women in Honduras. This appropriation occurs in a context of acute violence and extreme marginalization for this community due to transphobia, most members' being employed as sex workers, and high HIV rates among trans* people. These norms play an important role in increasing self-esteem and a sense of solidarity among members. The empowerment

effectively translates to trans* women benefitting from the application of international human rights norms by their CBOs through interventions which, although limited in scale and resources, provide physical security and physiological support, as well as means to denounce and seek redress for violations of their rights. If indeed the role of norm diffusion theory is to study how international norms affect people on the ground, this paper shows how local actors other than states can ensure, albeit in a limited way, the application of international human rights norms when the state is unwilling or unable to enforce such norms.[3]

The second main contribution is that identification through common experiences of violence and human rights violations may constitute stronger bonding among trans* women than does a sentiment of a shared LGBTQ identity. The construct of an LGBTQ community with a shared identity— largely entertained among key actors of the human rights system and the global HIV response— is not necessarily relevant to understanding the way members develop their bonding with the trans* organizations studied in this paper.[4]

The article concludes with two main policy recommendations. Firstly, the Honduran government should enforce international and regional human rights standards for the protection of trans* people and other LGBTQ people, putting an end to violations of trans* persons' human rights and to widespread impunity for transphobia-related violence and discrimination. Secondly, key actors in the international human rights system and related areas, such as development and global health, should identify the unique needs and characteristics of the trans* population in order to specifically address the human rights-related vulnerabilities of trans* people.

METHODOLOGY

The main source of information for this article was field observation and forty-two interviews with members and leaders of five trans* organizations in San Pedro Sula, El Progreso, and Tegucigalpa (all statistical analyses shown in this paper will appear in parentheses), as well as an additional twelve interviews with non-governmental organizations (NGOs), representatives of intergovernmental agencies, government officials, members of the judiciary, law enforcement agencies, and other key actors. This field research was carried out between 7 and 21 July 2012. It received ethical approval from the Social Science Research Ethics Committee of the University of Sussex in March 2012. The research was carried out with the support of the *Colectivo Unidad Color Rosa*, a member of Network of Trans* Organizations in Latin America and the Caribbean, otherwise known as Redlactrans.

The most commonly utilized format of interviewing was semi-structured, which facilitated interaction with a diversity of people, regardless of their educational background. This format is flexible enough to adapt to various cultural and educational backgrounds, to explore what human rights terms mean for various actors, and to allow interlocutors to express themselves in their own words.[5] The field research adhered to confidentiality, prior informed consent, and security protocols of University of Sussex, as well as the International HIV/AIDS Alliance (IHAA), which funded the visit.

CONTEXT: TRANS* WOMEN IN HONDURAS, VIOLENCE, AND HIV RISK

The situation of trans* women in Honduras is one of maximum HIV exposure, extreme violence, discrimination, and social rejection. Reports show that trans* girls and women are often expelled from their homes at a young age. They are often subjected to violence at the hands of neighbors, other individuals, or families when disclosing their sexual orientation. Most trans* people in Honduras do not attend, or are expelled from, secondary school because of prejudice against their sexual identity. They subsequently end up on the streets, where violence against trans* people is widespread.[6] Honduran LGBTQ rights organizations often describe this as a hate crime, defined as violence soley committed for fear or hatred of trans* people, also known as transphobia.[7]

> "The origin of generalized violence against trans* women is a triple assumption that causes repulsion in society: trans* women are homosexuals, prostitutes, and HIV-positive. That puts us at the bottom of society." —Trans* leader, San Pedro Sula.[8]

Up to 95 prercent of trans* women in Latin America engage in sex work, and 93 percent of members of trans* organizations interviewed for this paper are sex workers.[9] This occupation usually takes place in the streets at night, often in neighborhoods controlled by the pandilleros or maras (armed neighborhood gangs). These groups extort part of the profit obtained by businesses and individuals (referred to as impuesto de guerra, or war tax).[10]

The national HIV prevalence rate in Honduras is an estimated 0.66 percent.[11] However, prevalence rates among trans* women range between a startling 8.2 percent in urban centers and 16 percent in larger cities such as Tegucigalpa and San Pedro Sula.[12] Discrimination and persecution, violence, and sex work often push members of the trans* population into more risky sexual practices and impede their access to HIV prevention programs, rendering the HIV response highly challenging.[13]

HUMAN RIGHTS APPROPRIATION AMONG MEMBERS OF TRANS* ORGANIZATIONS

Appropriation of human rights principles and norms as a response to collective experiences of violence and discrimination is a key factor explaining the identification of trans* women with the organizations representing them in Honduras. The vast majority of the trans* women interviewed (90 percent) considered themselves as human rights activists, and the work of their organizations to promote human rights as the main reason for becoming members (85 percent).

Almost all informants (39) spoke about police violence and impunity for crimes committed against trans* people, referring to the main threats to their community. Over half of trans* women interviewed spoke of a feeling of self-rejection, which manifests as an internalization of social rejection and prejudice against them.[14] Most informants (81 percent) received human rights training in seminars provided by trans* organizations, often through peers. The main

international norms on which these organizations focus their training are the right to non-discrimination in accessing health care, employment, and education; freedom from torture and cruel, inhuman, and degrading treatment by law enforcement officers; and a right to justice and redress.[15] When discussing which of their human rights was most valuable to them, rather than intuitive responses such as a right to life, to not be tortured, or to not be subjected to cruel, inhuman or degrading treatment, the most common responses were a right to employment and education, and in some instances, freedom from discrimination.

> "The thing I fear the most is being killed by a client or by the police, or that another trans* sex worker attacks me on the street." —Trans* sex worker, Tegucigalpa[16]

> "The right I think we need most is the right to work. I always wonder what is going to become of me when I can no longer work as a sex worker. I graduated in IT, but I know I could never work in that as a women. I have decided to revert back to having a masculine appearance because I know I will never, ever get a job as a trans* woman in Honduras. It would be a miracle." —Trans* sex worker, San Pedro Sula[17]

Respondents showed various degrees of assimilation of violence against trans* people, from total outrage to the point of seeing it natural and hard to change. This is the case even among some highly empowered women.[18]

> "I know I have all the same rights as everybody else. For me, the right that is least guaranteed is the right to health care, because I know that if I go to a hospital as a woman, the doctors will treat me badly and will think I am HIV positive. After that, the right to education and to employment [are least guaranteed] because I will never get a job as a woman. As for the right to life and not to be harassed by the police, I know that is one of the main rights, but we are so used to [being victims of harassment and violence], that we almost take violence against us for granted . . . One of my main worries when I am putting my makeup on before going out in the night is whether a policeman will beat me or kill me." —Trans* sex worker, San Pedro Sula[19]

Most of the trans* women interviewed (81 percent) stated they felt safer belonging to a trans* organization, even if some acknowledged that the human rights work of these organizations may be exposing them retaliation by police officers or members of organized crime syndicates (35 percent). This sense of security is closely associated with higher self-esteem and social empowerment to confront prevailing social, cultural, and religious norms.[20] Most respondents considered knowing about their human rights had increased their self-esteem, particularly in relation to family or friends (74 percent), in their rapport with the police (71 percent), when seeking public health care service (62 percent), and when dealing with other civil servants (60 percent).

> "Knowing about my human rights, and also my obligations, has helped me to feel more respected socially. But also within my own family, who used to reject me. My parents are illiterate, and it has been hard to explain to them that as a trans* woman, I should also be considered as a human being worthy of respect. I haven't been able to convince my dad, but my mom accepts me now. I even work with her in her shop dressed as a woman." — Trans* activist, San Pedro Sula[21]

PROMOTING THE HUMAN RIGHTS OF TRANS* PEOPLE FACING VIOLENCE AND IMPUNITY

As described earlier, the membership of the trans* organizations studied for this paper has largely been developed through the appropriation of human rights norms and principles among their members. Such appropriation is facilitated by the role trans* organizations play in the promotion of the human rights for trans* people, through the provision of essential human rights programs, such as "know your rights" and access to justice and redress. Organizations of trans* women provided legal counseling and accompaniment to lodge complaints at policy or prosecutors' offices to almost two-thirds of the trans* women interviewed for this paper (26). These organizations' practices of promoting trans* women's human rights are of particular relevance in the context of Honduras, where not only are the government and other state institutions failing, but are also often the cause of these very human rights violations.[22]

Honduras has ratified all relevant international standards protecting individuals against discrimination and torture, including the International Covenant on Civil and Political Rights (ratified in 1997), the International Covenant on Economic, Civil, and Political Rights (ratified in 1981), the Convention Against Torture (ratified in 1996) and the Convention on the Elimination of All Forms of Discrimination against Women (ratified in 1983).[23] Honduras has also ratified the American Convention on Human Rights, which includes provisions for the right to privacy and equal protections that have been interpreted to cover sexual orientation and gender identity.[24] Honduras, along with other countries in the region, signed four Organization of American States (OAS) resolutions between 2008 and 2011 on human rights and sexual orientation, whereby governments in the region acknowledged the high level of targeted violence against the LGBTQ population across Latin America and expressed their commitment to protect LGBTQ people.[25]

In a context of weak state structures, the incapacity of Honduran authorities (both government and judiciary) to enforce international norms may not mean the state is unwilling to implement such norms.[26] However, as far as the Honduran trans* population is concerned, international norms protecting their human rights are not reaching them.[27] The state is not only failing to protect the human rights of trans* people; according to human rights reports, state actors are actively violating these human rights directly, through the action of law enforcement officers and widespread impunity for crimes committed against this population.[28]

The case of Colectivo, the largest trans*, HIV, and human rights organization operating in and around San Pedro Sula, is illustrative. Institutions of the international human rights system recognize Colectivo; in fact, in 2009 and 2010, representatives of the organization were chosen to speak to the OAS General Assembly prior to the passage of resolutions on sexual orientation and gender identity. However, in Honduras, Colectivo is registered with the authorities, not as a human rights organization, but as a sports club, since LGBTQ rights organizations are reportedly illegal.[29]

Between 2009 and 2012, at least fifteen members of Colectivo were killed—nearly 25 percent of the organization's total membership. In none of these cases were the perpetrators identified. Nevertheless, organization members accompany victims of violence and human rights violations allegedly committed by police officers and civil servants. They have helped lodge dozens of complaints the past few years. However, between 2009 and 2012 no law enforcement agent was prosecuted for any of the cases filed.[30] Senior Colectivo members have allegedly received death threats, including by police officers, and as a result, cannot meet in the premises of the organization.[31]

Some representatives of the police and judiciary consider trans* sex workers a group that poses a threat to social peace and security, as they "scandalize the population, with attitudes that are not sociably acceptable, and are often linked to the illegal drug market and the organized crime."[32] The substantial power and discretion given to the police in provisions of the Law on Police and Social Affairs (Ley de Policía y de Convivencia Social) facilitates police abuse and arbitrary detentions of trans* women, and serves as a tool for police officers to use when extorting money from trans* sex workers and their clients.[33] One common pattern of police corruption is seen when a trans* sex worker enters a potential client's car. One or several police officers will stop the car and take out the client and sex worker separately. They will blackmail the client, threatening him with public exposure, while they beat the sex worker, either on the street or at the police station, where she is retained for up to twenty-four hours unless she pays a bribe.[34] This pattern reflects wider social rejection and discrimination to which the police actively contribute.[35]

The high level of impunity associated with violence against trans* people, along with weaknesses of law enforcement and judiciary systems, underpin how discrimination against trans* women penetrates legal structures. Out of the fifty-one murders of trans* women and hundreds of cases of attempted murder and other acts of violence against trans* women reported between 2004 and 2012, only one person was reportedly convicted.[36] This situation reflects poorly on the prosecution office, which lacks protocol to identify trans* victims and renders the disaggregation of trans* women among broader LGBT victims impossible. The trans*-disaggregated statistics and official analyses of trans*-related violence are lacking because police do not regard trans* people as a separate subpopulation from other constituents of the LGBTQ population.[37] Confusion around gender identity also extends to the judiciary itself, which regards trans* people as transvestites, or men dressed as women.[38]

There is also little interest for action among external actors such as other states, donors, or international NGOs, whose support for these international norms is necessary for their effective adoption and enforcement in Honduras. An illustrative example is the behavior of international HIV donors. Trans* organizations are often encouraged by donors to carry out HIV interventions and human rights work. This empowerment encourages women to be vocal in their attempts to influence the state, thereby exposing them to violence and harassment by the state itself. However, no provisions are usually made among HIV donors as to the safety of these people and the longer-term sustainability of these organizations.[39]

> "I am an HIV specialist. I worked between 2004 and 2008 at the Center for Education and Prevention for Sexual Health and HIV, and between 2008 and 2010 at the Pan-American Association of Social Marketing in HIV Prevention. During that time I felt safe. When funding for HIV prevention programs drained, I had to go back to sex work. In October 2011, I was shot at four times by two individuals who were waiting for me outside a cafe. It was the fourth attack in just over ten years. I know the police are after me because I witnessed policemen killing a trans* sex worker. I testified against some of them. Now I am terrified of denouncing this situation. The system has failed to provide me with a sustainable job that gives me security." —Trans* HIV and human rights activist, San Pedro Sula[40]

LGBTQ IDENTITY AND MEMBERSHIP OF ORGANIZATIONS OF TRANS* WOMEN

Larger Honduran LGBTQ organizations often include trans* women in their ranks. However, some trans* organizations began to break away from these larger, broader organizations in the late 2000s. All the women interviewed belonged uniquely to trans* organizations, either as leaders, volunteers, or regular members. The management and governance structures of these organizations are extremely weak due to the lack of resources to pay full-time staff and the difficulty of forming dedicated boards.[41] Turnover is high, largely due to high morbidity from violence and AIDS prevalence in the trans* community.[42]

The key role these organizations play in the diffusion of international norms originates the CBOs' ability to foster a sense of identification among trans* people. There is a widespread assumption in literature and among civil society that such identification is largely based on a sense of belonging to a larger LGBTQ community.[43] However, most Honduran trans* women interviewed did not strongly identify with other parts of the LGBTQ population (76 percent of informants), mostly referring to perceived discrimination against trans* women among the larger LGBTQ community as a main reason for not identifying with other LGBTQ people (25).

> "For most gays, trans* women are just pathetic souls, prostitutes pumped up with hormones." — Trans* HIV peer-educator, San Pedro Sula[44]

> "I realize that there is a lot of resentment among the trans* community against the larger LGBT rights movement. It is often the same people who control the movement—gay men mostly—who control the funding, the programs, and the political spaces." —Trans* HIV and human rights activist, Tegucigalpa[45]

Few trans* women interviewed saw themselves as belonging to a community of trans* women (28 percent of informants). Responses to the question about which community or communities to which they thought they belong considerably varied across geographies, families, the LGBT community, sex workers, and even religious communities.

> "I have always believed that I belonged to my parish [evangelical church]. I was very integrated in the church activities. One day, the pastor came to me and asked me to take a one or two years' break to make up my mind, hinting that I should go back to being a man . . . I never went back." —Trans* sex worker, San Pedro Sula[46]

Informants' responses underscore that the construct of an LGBTQ community is not particularly relevant as a key element of membership development among the trans* organizations analyzed for this paper, even while this construct is often used by key actors of the human rights system and other global governance systems, such as the HIV response.[47] This paper shows that, in In the absence of a strong sense of belonging to an LGBTQ community, the appropriation of human rights principles and norms as a response to collective experiences of violence and discrimination emerges as a key factor explaining the development of membership of trans* organizations in Honduras.

CONCLUSION

This case study presents evidence of the role the appropriation of international human rights norms and principles plays in the development of membership in trans* organizations in Honduras. This appropriation is facilitated by a context of widespread discrimination, violence, and violations of the human rights of trans* people. Members of trans* organizations often share experiences of such violations and see their organizations as a way to respond to abuses. This study has the limitations of being circumscribed to the study of members of trans* organizations in three locations and being based upon interviews with a small relative sample size. However, through their interventions these organizations play a substantial role in generating local human rights practice based on international human rights. This activity provides evidence in support of norm diffusion literature in further analyzing the role of non-state actors in the dissemination of international norms at the grassroots level. It also generates an important policy recommendation for the Honduran government to guarantee the respect, protection, and fulfillment of the human rights of trans* people and other LGBTQ people, ending widespread impunity for violence and discrimination rooted in transphobia.

Furthermore, this paper highlights

the need to further analyze and nuance the concept of an LGBTQ community in order to better understand relations among various populations within the LGBTQ construct and accommodate the specific needs of each population. As far as key actors in the human rights system and related areas such as HIV and wider development are concerned, a considerable but essential challenge is to address the specific human rights-related vulnerabilities of trans* people in contexts like Honduras, where social rejection of gender identity, sex work, organized crime, HIV, and many other factors converge to threaten both the wellbeing of individual members of trans* organizations and their work.

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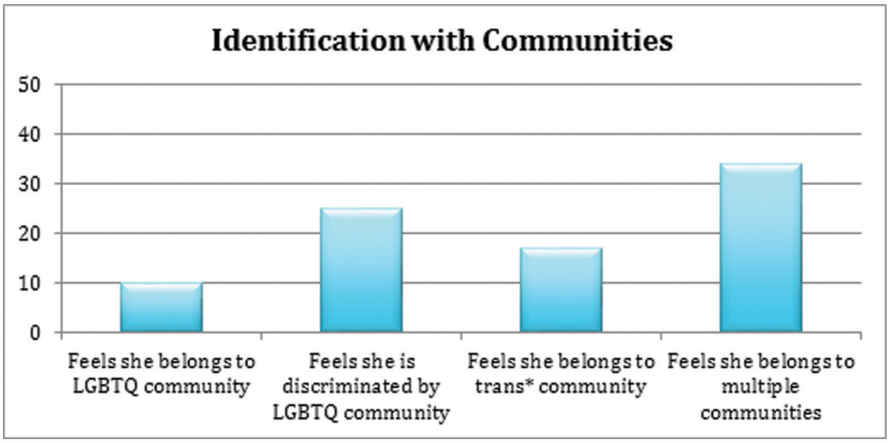
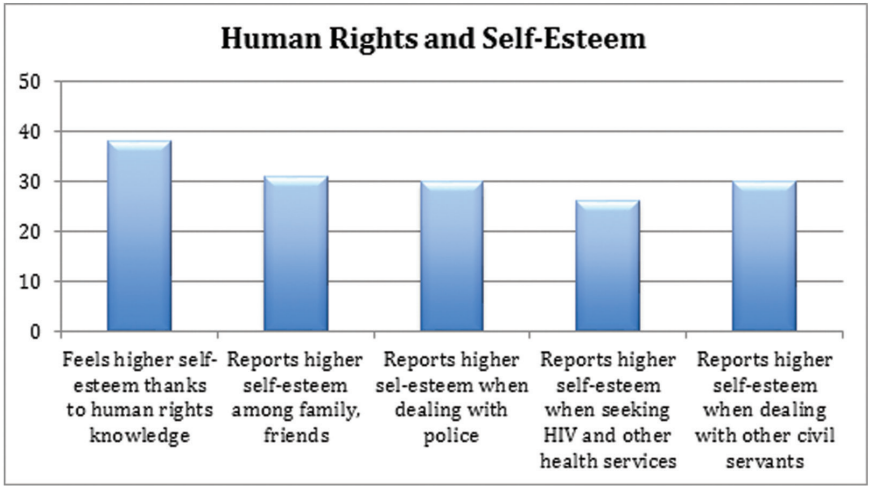
ANNEX: SELECTED DATA ANALYSIS CHARTS





Sex Reassignment Therapy and the Right to Health

By Ignatius Yordan Nugraha

ABSTRACT

Many trans people all over the world are refused access to sex reassignment therapy under the pretext it is merely cosmetic and unnecessary. However, this paper will demonstrate that under international human rights law, the right to health entitles them to such therapy, since evidence-based medicine demonstrates it is one appropriate treatment for gender dysphoria. Thus, this paper will conclude international human rights law mandates governments to provide sex reassignment therapy for trans people who are medically in need of it.

In many parts of the world, the right of trans people to obtain sex reassignment therapy is still denied. They are forced to conform to one of the binary gender identities assigned to them at birth. As an illustration, according to a survey by Transgender EuroStudy on the healthcare experiences of trans people in the European Union, more than 80 percent of respondents are refused coverage for hormonal treatments or sex reassignment surgery by the state.[1] One of the reasons it is often invoked to deny this right is sex reassignment therapy is regarded as unnecessary, as compared to other treatments required to save lives, such as kidney dialysis for people with kidney failure or chemotherapy for cancer. Following this premise, it is argued priority should be given to life-threatening diseases like congenital heart disease or leukemia, which undermine the underlying determinants of health, and as a result, the right to sex reassignment therapy is neglected.[2]

However, this paper intends to demonstrate such an argument is misapprehension. This piece will demonstrate sex reassignment therapy is a necessary treatment for trans people, since evidence-based medicine suggests gender mismatch may lead to mental problems such as severe depression. It will investigate current scientific literature on the issue to support its argument. Eventually, it will conclude that since sex reassignment therapy is one of the essential treatments to ensure the mental health of trans people, governments are obliged under international human rights law to ensure trans people have access to it. For countries without the facilities or legal provisions to ensure sex reassignment therapy, the paper will reiterate the reasoning of the European Court of Human Rights in the case of L v. Lithuania, in which the court ruled that states are required to cover the cost of sex reassignment surgery abroad. In sum, this paper will contribute to the discourse by

incorporating evidence-based medicine to establish that trans people have the right to sex reassignment therapy under the right to health within international human rights law.

SCIENTIFIC FINDINGS ON THE MEDICAL NECESSITY OF SEX REASSIGNMENT THERAPY

Today's world is still rather hostile to trans people. As a marginalized community, it faces discrimination in various sectors, including legal and health care institutions.[3] The Institute of Medicine reported in 2011 that "LGBT individuals face financial barriers, limitations on access to health insurance, insufficient provider knowledge, and negative provider attitudes that can be expected to have an effect on their access to health care."[4] Moreover, in many jurisdictions legal recognition of trans people is still lacking, and consequently, they face legal challenges in expressing their gender identities.[5] Meanwhile, transphobic violence remains a serious problem.[6] As reported by trans activist and researcher Carla LaGata, trans people face "severe forms of hate violence, including hate killings, rape, and torture; criminalization and prosecution of so-called cross-dressing, so-called cross-gender behavior, and gender reassignment surgery; and prosecution that especially targets trans/gender-variant people without legal basis or based on legislation and legal measures designed for other purposes."[7] In 2001, Human Rights Watch even reported that in the United States alone, trans people are subject to discrimination, harassment, and violence in schools, which is exacerbated by the failure of the state to address such problems.[8]

In addition to these difficulties, many societies all over the world still stigmatize LGBT individuals.[9] This contributes to the development of various mental health problems, including anxiety and depression.[10] Although the Institute of Medicine observed in 2011 that "these symptoms are socially induced and are not inherent to being transsexual, transgender, or gender-nonconforming," trans people still have to grapple with the gender dysphoria that they experience.[11] Gender dysphoria is defined as "discomfort or distress that is caused by a discrepancy between a person's gender identity and that person's assigned sex at birth."[12] This condition is classified as a mental disorder by the World Health Organization (WHO) in the ICD-10 and by the American Psychiatric Association in DSM-5.[13] Such pathologization is controversial since there is a consensus that trans identity is not related to any psychopathology.[14] Despite the controversy, the distress of gender dysphoria remains a problem that might affect the mental health of trans people.[15]

In relation to this, there is a consensus among researchers that sex reassignment therapy is one appropriate treatment for gender dysphoria. The American Psychological Association officially stated in 2012 that "appropriately evaluated transgender and gender variant individuals can benefit greatly from medical and surgical gender transition treatments."[16] Moreover, various follow-up studies demonstrate this treatment is effective.[17] A study by Green and Fleming in 1990 showed that "satisfaction rates across studies ranged from 87 percent of male to female (MtF) patients to 97 percent of female to male (FtM) patients, and regrets were extremely rare (1 percent to 1.5 percent of MtF pa-

tients and less than 1 percent of FtM patients)."[18] Another post-operative study of 162 adults demonstrated patients who underwent sex reassignment no longer experienced gender dysphoria and that "the vast majority functioned quite well psychologically, socially, and sexually."[19]

Although some patients experienced distress, anxiety, or depression at the beginning of therapy, during the therapy there is "a marked reduction is psychopathology."[20] Furthermore, the denial of access to sex reassignment therapy might result in "serious health complications, including anxiety, depression, suicide ideation, and self-induced genital mutilation," while "refusing timely medical interventions for adolescents might prolong gender dysphoria and contribute to an appearance that could provoke abuse and stigmatization."[21] Consequently, as was emphasized by the Standard of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, "hormone therapy and surgery have been found to be medically necessary to alleviate gender dysphoria in many people."[22] However, it should be noted the appropriate treatment varies between individuals, since "gender-confirming health care is individualized treatment that differs according to the medical needs and pre-existing conditions of individual transgender people."[23] Some individuals might require surgery or both hormonal and surgical treatments, while others can express their cross-gender feeling within the assigned sex at birth.[24]

THE RIGHT OF TRANS PEOPLE TO SEX REASSIGNMENT THERAPY AND THE RIGHT TO HEALTH

The previous section outlined various important scientific findings on the medical necessity of sex reassignment therapy for trans people. The issue now is whether this result can be invoked to determine, if under international human rights law, the right to health requires states to ensure access to sex reassignment therapy. Before assessing if this is the case, it is first important to note the 1945 WHO constitution defines health as not merely the absence of diseases, but also "a state of complete physical, mental, and social well-being."[25] Consequently, states are called to undertake "adequate health and social measures" to this end.[26] Moreover, Article 12(1) of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) emphasizes that "the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health," and Article 12(2) of the ICESCR also requires states to take steps to achieve the full realization of the right to health.[27] This was affirmed by the United Nations Committee on Economic, Social, and Cultural Rights (CESCR) in General Comment 14, which maintained the right to health "embraces a wide range of socioeconomic factors that promote conditions in which people can lead a healthy life."[28]

In short, the right to health requires states to undertake measures in order to achieve the highest attainable standard of health. Based on this starting point, it can be argued that the right to health also covers the right to sex reassignment therapy. As part of the obligation under the right to health, Article 12(2d) of the ICESCR requires states to take measures necessary for "the creation of conditions, which would assure to all

medical service and medical attention in the event of sickness."[29] Since the evidences outlined above support sex reassignment therapy as necessary to treat gender dysphoria and to enhance the wellbeing and mental health of trans people, it falls within the category of "medical service and medical attention in the event of sickness." Thus, states are obliged under Article 12(2d) of the ICESCR to provide treatment for those who require it. This may include sex reassignment surgery, chest reconstruction surgery, or hormonal treatment, whose applicability depends on the individual requirements of a patient.

The right to health itself consists of the tripartite obligation to respect, protect, and fulfill, which also applies to sex reassignment therapy.[30] The obligation to respect requires states to refrain from infringing on the right to health by denying sex reassignment therapy, while under the obligation to protect states must prevent third parties from interfering with the right of trans people to sex reassignment therapy. With regard to the obligation to fulfill, the CESCR holds that it consists of adopting "appropriate legislative, administrative, budgetary, judicial, promotional, and other measures towards the full realization of the right to health."[31] In addition to this, the CESCR has ruled the right to health in all of its manifestation must be geared towards the availability, accessibility, acceptability, and quality of health care.[32] These obligations imply the denial of sex reassignment therapy or the limitation of such treatment would be contrary to the right to health. By denying or limiting treatment, various psychopathologies such as anxiety or depression might be inflicted, as was highlighted in the previous section.[33] This constitutes not only a regressive step in the determination to achieve the highest attainable standard of health, but also a direct contravention of the obligation to respect.

The obligation to respect, protect, and fulfill also indicates the exclusion of sex reassignment therapy from health insurance coverage can be considered a violation of the right to health. Some trans people are disenfranchised and are not endowed with abundant resources. Without health insurance reimbursement, access to sex reassignment therapy as a medically necessary treatment is severely impeded—which is contrary to the accessibility element of the right to health. As was held by the CESCR, "payment for health care services . . . has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups."[34] Thus, under Article 12 of the ICESCR, states are mandated to ensure sex reassignment therapy as a medically necessary treatment is included in health insurance coverage in order to ensure access for those who require it.

It should be noted that the obligation under the right to health is subject to progressive realization under Article 2(1) of the ICESCR, since some states do not possess sufficient resources and capabilities to achieve this right.[35] The CESCR has further held in General Comment 3 that "any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources."[36] This implies the right to sex

assignment therapy is subject to pragmatic policy consideration in light of available resources. Nonetheless, it does not mean that states are excused to ignore the right to sex reassignment therapy, since they are still obliged to take the necessary steps to achieve the full realization of that right. The has CESCR ruled states that are constrained economically from full compliance "have the burden of justifying that every effort has nevertheless been made to use all available resources at its disposal in order to satisfy as a matter of priority the obligations."[37]

At the European level, although the ruling per se is concerned with the right to privacy, the European Court of Human Rights (ECHR), in the case of *L v. Lithuania* ordered the state of Lithuania to pay 47,680 euro for the applicant to undergo sex reassignment surgery abroad due to the lack of proper medical facilities in Lithuania.[38] In this respect, the ECHR utilized pragmatic consideration by considering the potential budgetary burden of such an operation, which was deemed not to be "unduly heavy."[39] At the international level, such a measure may also be one of the possible steps states might take in order to fulfill the right to health of trans people, particularly for those who do not yet possess the necessary medical equipment or facilities to perform sex reassignment therapy. While this step is still subject to pragmatic consideration of the economic capability of a certain state, it demonstrates that states cannot hide behind the veil of lacking appropriate medical facilities to deny sex reassignment therapy for trans people, since there is a possibility of financing sex reassignment therapy abroad, provided the budgetary requirement is not "unduly heavy" for the state concerned.

As a note, the approach linking sex reassignment therapy with the right to health cannot be conflated with pathologization of trans identity. Sex reassignment treatment is a medically important treatment for psychopathologies associated with gender dysphoria. The incorporation of this treatment under the right to health is intended to enhance the health and wellbeing of trans people by removing barriers to it, since this right requires governments to take measures to ensure the availability, accessibility, acceptability, and quality of medically necessary treatments. It does not suggest pathologization of trans people in any way. In fact, the pathologization of trans identity would be contrary to human rights in general. As was observed by the special rapporteur on torture Sir Nigel Rodley, pathologization of sexual minorities might result in involuntary confinement "to State medical institutions, where they could be allegedly subjected to forced treatment on grounds of their sexual orientation or gender identity, including electric shock therapy and other 'aversion therapy,' reportedly causing psychological and physical harm."[40]

SEX REASSIGNMENT THERAPY AND THE ISSUE OF LEGAL GENDER CHANGE

Various jurisdictions currently impose the requirement of sex reassignment therapy or surgery for legal gender change.[41] For instance, the Californian Health and Safety Code enshrines that "the State Registrar shall issue a new birth certificate reflecting a change of sex without a court order for any person born in this state who has under-

gone clinically appropriate treatment for the purpose of gender transition."[42] Meanwhile, the state of Massachusetts demands proof of sex reassignment surgery in order to institute legal gender change, and this is also the case for many other states as North Carolina and Arkansas.[43]

This requirement poses a problem for trans people who do not wish for sex reassignment therapy and would prefer to express their cross-gender feeling within their assigned sex at birth, as they would be forced to undergo such a procedure in order to be able to change their official gender. At the same time, such a requirement ignores the individualized nature of sex reassignment therapy, and the imposition of an undesired therapy might have serious repercussions to health and well-being. This is contrary to the right to health. Although the previous section has elaborated the applicability of the right to health for trans people who are in need of sex reassignment therapy medically, the right to health also has another dimension, which is "the right to control one's health and body . . . and the right to be free from interference, such as the right to be free from . . . nonconsensual medical treatment."[44] This implies the right to health does not only require states to ensure medically necessary treatment, but also obliges states to refrain from imposing nonconsensual treatment. Consequently, trans people who do not wish for sex reassignment cannot be forced to undergo such a procedure. Since the requirement of sex reassignment therapy or surgery for legal gender change has the impact of forcing unwilling trans people to undergo nonconsensual treatment, this constitutes a breach on the right to be free from nonconsensual medical treatment under the right to health.

CONCLUSION

This paper has demonstrated that since sex reassignment therapy is medically necessary for trans people, the right to health obliges states to ensure access to such treatment, albeit subject to pragmatic consideration over available resources due to the "progressive realization" aspect of the right to health. At the same time, the right to health cannot be abused to impose the requirement of sex reassignment therapy for legal gender change. This contradicts not only the right to privacy of trans people, but also the right to health itself, since this right includes the right to be free from interference, including nonconsensual medical treatment.

Thus, it can be concluded international human rights law provides a double-edged protection for trans people vis-à-vis their right to health. On one hand, it requires states to ensure access to medically necessary sex reassignment therapy and to refrain from limiting it. On the other, it protects them from nonconsensual and arbitrary decisions to force surgery or hormone therapy for trans people who do not consent for it. The applicability of each of these aspects depends on the individual case of a trans person. If that person is in need of sex reassignment therapy, the right to health assures this, while those who do not are also fully protected by this right.

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34. ICESCR, "General Comment No. 14," 12(b).
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The Forced Sterilization of Transgender and Gender Non-Conforming People in Singapore

By Vanessa Ho, Sherry Sherqueshaa, and Darius Zheng

ABSTRACT

Singapore's current gender recognition law allows trans people to change the sex marker on their identification cards, only on the condition of full removal of reproductive organs. While some people are relatively satisfied, there are many trans and gender non-conforming people who feel frustrated, as they do not want or cannot afford to undergo a full sex reassignment surgery. This means they are left in a state where their identity documents are not aligned with their gender identity and expression. This paper intends to tease out the specific barriers and challenges that transgender and gender non-conforming people face in Singapore in relation to gender recognition.

TERMS AND DEFINITIONS

For the sole purpose of this paper, we define the terms below as such. The definitions presented apply here, and are limited to this report.

Sex reassignment surgery (SRS): Surgical procedures that change one's body to better reflect a person's gender identity. This may include different procedures, but for the purposes of conceptual tidiness, we define SRS in this paper to the surgeries that one undergoes to qualify to change the sex markers on their identification cards in Singapore. For an individual who is assigned male at birth, SRS means removal of the penis and reconstruction of a vagina. For an individual who is assigned female at birth, SRS means removal of the uterus.

Transgender people / Trans people: A term for people whose gender identity, expression, or behavior is different from those typically associated with their assigned sex at birth. "Trans" is shorthand for "transgender."

Trans man: An individual who was assigned female at birth, but whose gender identity is male.

Trans woman: An individual who was assigned male at birth, but whose gender identity is female.

Gender non-conforming people: Individuals whose gender identities and expressions are different from societal expectations related to gender. For the purposes of this paper, we exclude people who identify as trans men and trans women in this category. Gender non-conforming individuals include genderqueer, genderfluid, non-binary, agender, and others. The list of catego-

ries here are not exhaustive—they are determined based on what respondents indicated in their survey forms.

Pre-operative people: Individuals who identify as trans men, trans women, or gender non-conforming, and have not undergone SRS at the point of the data collection for this paper. However, these individuals have also indicated their desires to go through SRS in due time.

Post-operative people: Individuals who identify as trans men, trans women, or gender non-conforming, and have undergone SRS at the point of the data collection for this paper.

Non-operative people: Individuals who identify as trans men, trans women, or gender non-conforming, and have not undergone SRS at the point of the data collection for this paper. These individuals have also indicated that they would not be going through SRS.

INTRODUCTION

"Though the movement is sometimes referred to colloquially as LGBT, I excluded transsexual and transgender individuals from my study. They deal with different laws and issues in Singapore, and gay activists also do not address their concerns or do so more as an afterthought." —Lynette Chua

"Every person's self-defined sexual orientation and gender identity is integral to their personality, and is one of the most basic aspects of self-determination, dignity, and freedom. No one should be forced to undergo medical procedures, including sex reassignment surgery, sterilization, or hormonal therapy, as a requirement for legal recognition of their gender identity. No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person's gender identity." —Yogyakarta Principles

"Because as a person of southeast Asian heritage, I want to honor the third gender status that is culturally normative to our societies and cultures before British colonialism. For example, the Bugis people had a five gender system."
—Thirty-year-old non-binary genderqueer survey respondent[1]

On 30 July 1971, Professor S.S. Ratnam, Associate Professor Khew Khoon Shin, and R. Sundarason conducted the first male-to-female sex reassignment surgery (SRS) in Singapore.[2] A total of 413 sex reassignment surgeries were conducted in Singapore from 1971 to 1990, and because of this, Singapore was known internationally for being one of the leading countries for such operations.[3]

In 1973, Singapore allowed post-operative transgender people to change the sex marker on their National Registration Identity Card (NRIC), a card that is used in many day-to-day activities including going to the bank and signing up for the gym.[4] This policy change was considered a progressive move, especially considering this was not possible in any other country in the southeast Asian region.[5]

In 1991, a landmark court case, *Lim Ying v. Hiok Kian Ming Eric*, gave the transgender and gender non-conforming communities a reality check as Hiok's marriage was nullified due to his identity as a transgender man. Even though he had undergone the required surgeries and had changed the sex marker on his NRIC, his birth certificate still stated he was female. Birth certificates cannot be changed, and as such the judge ruled that "the personal

particulars on a person's identity card when it was considered alone were not conclusive evidence of the sex of that person for the purposes of marriage."[6] However, despite this setback, in 1996, the Women's Charter was amended to recognize the (heterosexual) marriage rights of a post-operative transgender person. The Women's Charter is a legislative act that was passed in 1961 and was meant to govern matters relating to marriage, divorce, sex work, sex trafficking, and the rights of the child. The relevant section of the statute reads (emphasis added):

Avoidance of marriages between persons of same sex

12.

(1) A marriage solemnized in Singapore or elsewhere between persons who, at the date of the marriage, are not respectively male and female shall be void.

(2) It is hereby declared that, subject to sections 5, 9, 10, 11 and 22, *a marriage solemnized in Singapore or elsewhere between a person who has undergone a sex re-assignment procedure and any person of the opposite sex is and shall be deemed always to have been a valid marriage.*

(3) For the purpose of this section—

(*a*) the sex of any party to a marriage as stated at the time of the marriage in his or her identity card issued under the National Registration Act (Cap. 201) shall be prima facie evidence of the sex of the party; and

(*b*) *a person who has undergone a sex re-assignment procedure shall be identified as being of the sex to which the person has been re-assigned.*[7]

Some respondents to our interviews, who have undergone sex reassignment surgery (SRS), indicated that they are satisfied with this law, as it allows them to be who they are, thus resolving their gender identity dysphoria. Furthermore, this seems to be a rather progressive piece of legislation, especially when compared to neighboring country Malaysia, where after a high-profile four-year legal battle that ended in 2014, cross-dressing is still considered illegal.[8]

However, many transgender and gender non-conforming people cannot afford or choose not to undergo SRS for a variety of reasons that will be explored in this paper. As their gender identity and expression do not match their legal documents, this poses many problems including homelessness, unemployment, discrimination, and violence. Sex work also remains a reality for many trans women, and while it is somewhat tolerated in Singapore, prejudice and violence persists in the industry.[9]

As such, this paper seeks to examine the impact of the current gender recognition laws on the lives of transgender and gender non-conforming people in Singapore. In particular, we aim to better understand the impact of being able to change one's sex marker on their NRIC only on the condition of SRS and the inability to change one's birth certificate. We do this firstly by presenting findings from our survey that illustrate the diversity of the trans and gender non-conforming communities in Singapore, as well as their opinions on the current gender recognition laws. We then move on to analyzing the barriers to SRS for people who want to undergo the procedure, and the difficulties that people who do not wish to undergo SRS face. We conclude by presenting our

thoughts for a more inclusive future.

METHODOLOGY

Survey

The team conducted a survey from 4 to 22 of December 2015 to find out the views of the transgender and gender non-conforming communities. This was a follow-up to the pilot, which was previously circulated by Project X in May 2015. The more significant survey questions center on respondents' gender identities, whether they have gone for SRS, what sex marker they would prefer to be stated on their identity cards and birth certificates, and a remark column to elaborate on the reasons. There were a total of seven questions in the survey. For each of the questions, participants were allowed to fill in their responses in the open-ended column if any of the options did not accurately reflect their identities and opinions.

The survey was a Google form, which was distributed online via LGBTQ community organizations, as well as personal contacts. The decision to use the Google form was based on the ease of distribution, but more importantly, it allowed survey respondents the option to remain anonymous, thus reassuring individuals who may be worried about being outed. Many community organizations shared a link to the survey through their online platforms. Assistance was rendered to individuals who approached us and were not well-versed in technology.

The team also organized eight focus group discussions from the 14 to 23 December 2015 to follow up with survey respondents on their answers. Twenty-one individuals participated in the focus groups, and each of them were given an option to have their real names published in this report, remain anonymous, or adopt a pseudo-name to attribute to what they have shared. A final follow up was conducted via email and Whatsapp in February 2016 with the focus group respondents, and twelve individuals responded.

Results

The survey received an initial total of 283 responses. Inclusively, 249 valid survey responses were compiled and used for the analysis below—thirty-four of the responses were invalid for multiple reasons, which included incomplete information and foreign participation. Out of the valid survey responses, 51.6 percent of the respondents were individuals aged twenty-five and below.

The survey results below are classified according to their current status in relation to SRS, whether they are pre-operative, post-operative, non-operative, or undecided. Four of these charts reflect the choices made for their preferred sex markers on their identity cards, while the remaining four reflect their preferred sex markers on their birth certificates. There are seven different groups of individuals in each chart: trans men, trans women, genderqueer, non-binary, agender, genderfluid, and all others (see Table 1). Within these groups, for the purpose of this report, the choices of individuals for their preferred sex markers are also categorized into "self-identified" (preferred sex marker as opposite of their assigned sex at birth, strictly either male or female), "assigned at birth" (preferred sex marker is the same their assigned sex at birth, strictly either male or female), "no sex marker required," "third gender," and "x."

TABLE 1

	Gender Identity	Number of Respondents	Percentage of total Respondents
Transgender	Trans Woman	93	37.4%
	Trans Man	80	32.2%
Gender non-conforming	Genderqueer	20	8.0%
	Genderfluid	13	5.2%
	Non-binary	12	4.8%
	Agender	7	2.8%
	Others	24	9.6%
	Total	249	100%

On a macro level, responses are fairly concentrated into two main subgroups, namely trans men and trans women. In these two subgroups 23.1 percent are non-operative, 49.7 percent are pre-operative, 4.1 percent are undecided, and 23.1 percent are post-operative.

In the rest of the subgroups (genderqueer, non-binary, genderfluid, agender, and others)—with the exception of one individual who has undergone SRS—the rest of the respondents have all not gone through with the surgery. Although responses as to whether they will go through SRS are mixed, 81.1 percent of the individuals in these subgroups have expressed they have no plans to go through SRS. This is something we will discuss later.

SURVEY FINDINGS

In summary, a clear majority exists among the transgender and gender non-conforming communities who would like to be able to self-identify on their identification documents. That said, as can be seen in Figures 1a and 1b, there are more individuals who would like to self-identify on their identification card (65.6 percent), as opposed to on their birth certificate (50.8 percent). Additionally, 18.2 percent of total respondents indicated they would like to have third gender on their identification card and 27.4 percent of total respondents said they would like to have their sex assigned at birth on their birth certificate. The charts on the following pages will break down these results according to the various subgroups in order to tease out the specificities of each community.

FIGURE 1A

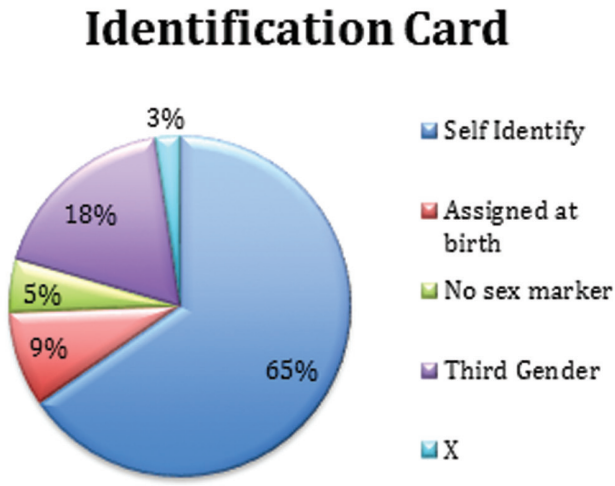
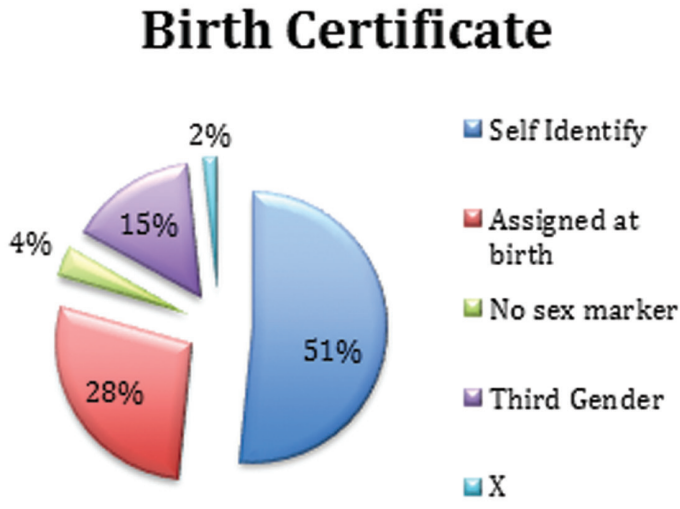


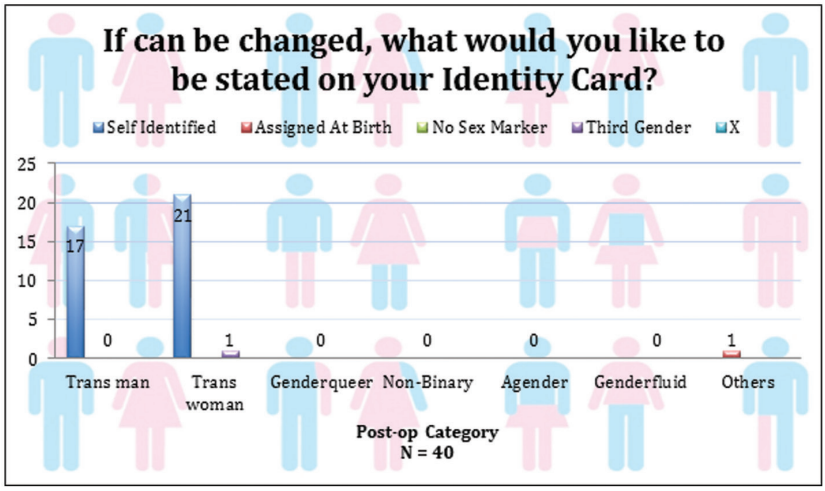
FIGURE 1B



Preferred Sex Markers on Identity Cards

Every Singaporean owns an identification card (IC) from the age of twelve. Cards are used for numerous things, such as registering for school, applying for a job, reporting to the police, signing up for loyalty card, and so on. As such, it is of utmost importance that one is comfortable with the way they are represented on their IC. The charts that follow illustrate the desires of the different groups with regard to what sex marker they would like on their IC.

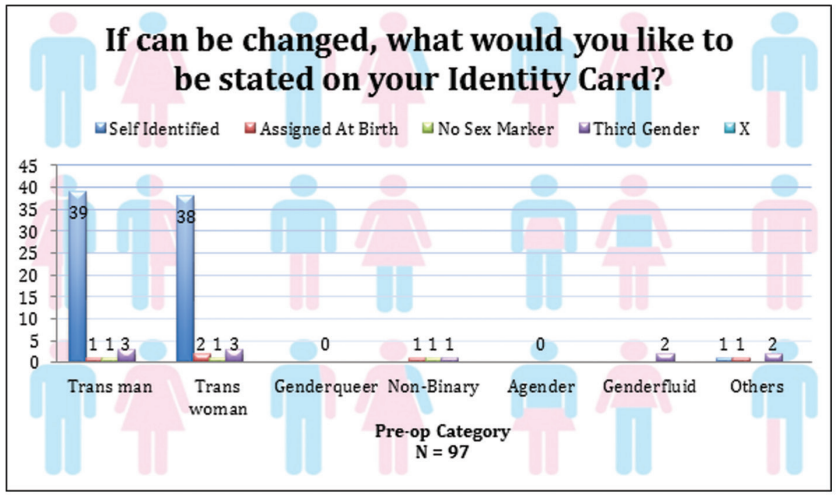
FIGURE 2.1
Post-operative Transgender and Gender Non-conforming Individuals



From Figure 2.1, we can see that out of all the respondents, 20 percent of trans men and 23.7 percent of trans women have undergone SRS. There was just one person who identified as "others" who has undergone SRS. Of all post-operative individuals, 95 percent reflected they would like to be able to self-identify on their IC. To explain their choice, a thirty-seven-year-old trans woman wrote, "I do not wish to raise eyebrows if people see you are a female and your NRIC is stated male. It will have administrative problems, and lead to discrimination in job hunting."[10] Another respondent, a thirty-two-year-old trans man highlighted that "I do not want to be singled out by my gender marker on my IC or birth certificate. I would like to have the option of 'coming out' when I'm comfortable to."[11]

FIGURE 2.2

Pre-operative Transgender and Gender Non-conforming Individual



From Figure 2.2, we can see that of all the respondents, 50 percent of trans men, 47.3 percent of trans women, and 7.8 percent among all others are pre-operative. Pre-operative individuals make up the majority of respondents in this survey, and 80.4 percent of them chose "self-identified" as their preferred sex markers on their identification cards. In the next section, we will spend more time exploring the views of pre-operative individuals; however, suffice it to say now that being unable to have one's gender identity reflected on official documents can have dire consequences.

> "When I was admitted into IMH on the grounds of suicide risk (due to distress over gender dysphoria), I was placed into the women's ward and treated as a woman, despite the hospital staff having been informed of my male gender identity. The entire ordeal was tailor-made to worsen my dysphoria, and yet the staff asserted they were justified in their actions because my legal documents still stated "female." If I were not yet ready to commit suicide . . . I would have jumped off the tallest story of my HDB [Housing Development Board] building the moment I got home. I was given neither help nor support." —Twenty-two-year-old pre-operative trans man[12]

Of the pre-operative individuals, 11.3 percent would like to have third gender, 5.2 percent would like to have their sex assigned at birth, and 3.1 percent would like to have no sex markers on their identification cards. Here are some quotes from people who chose third gender:

> "I choose third gender because I feel that I'm different in [a] unique way, so I should be addressed as how I feel I am." —Twenty-four-year-old pre-operative trans woman[13]

"It's easier to fight for a ruling of third gender than to change our gender on the NRIC without having to go through surgery."
—Thirty-one-year-old pre-operative trans woman[14]

FIGURE 2.3A

Non-operative Transgender and Gender Non-conforming Individuals

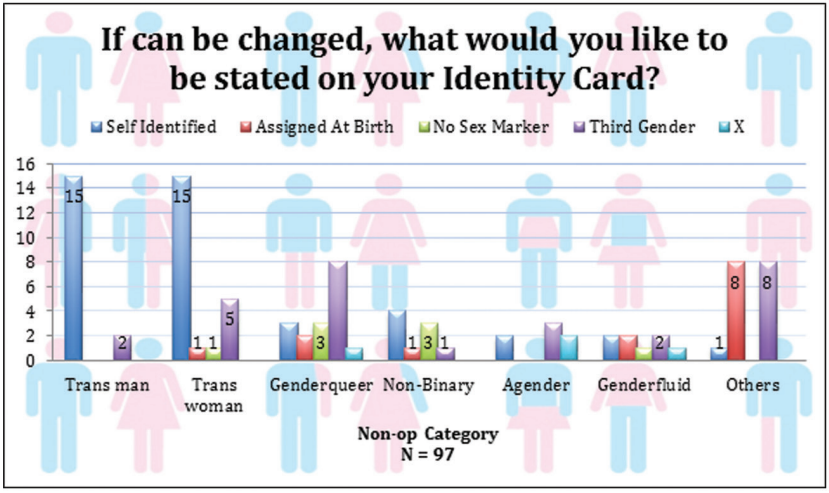
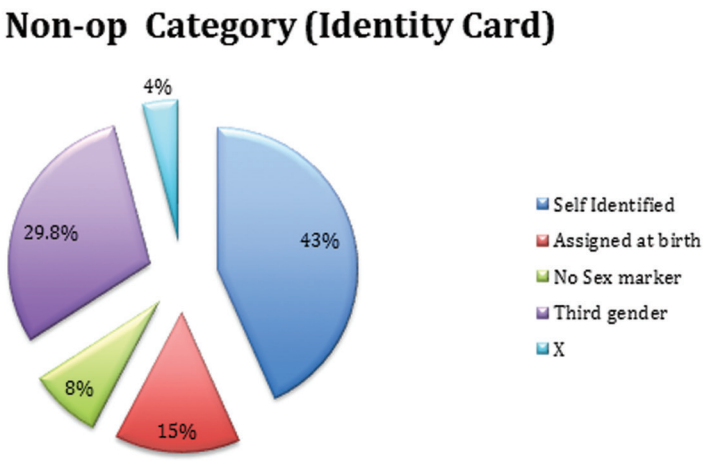


FIGURE 2.3B



Of all the respondents, 30 percent of trans men, 29 percent of trans women, and 90.9 percent of all others are non-operative. In other words, they have no plans to undergo SRS. From Figure 2.3a, we can see that for this particular group of individuals, there are a variety of choices made across the seven available categories. That said, there is still a clear majority, as can be seen from Figure 2.3b—43 percent of non-operative individuals would like to self-identify for the sex marker on their IC:

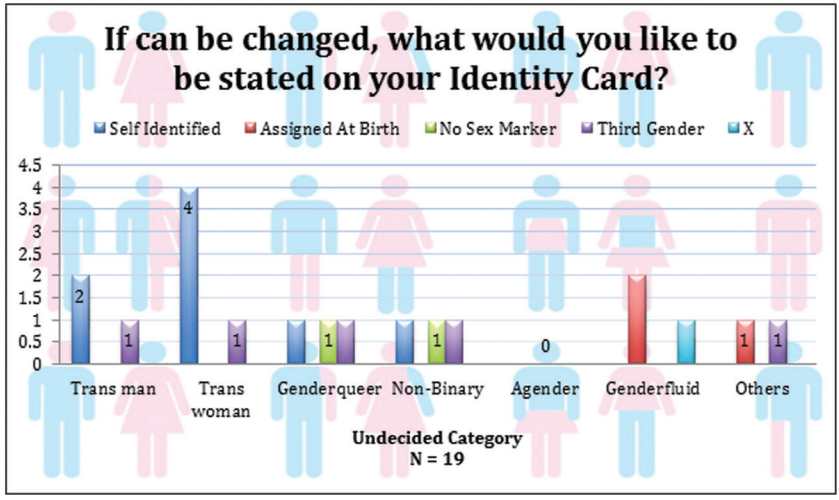
> "I want to be a female because I wanna be my own true identity. I don't want to lie to the society, my family and friends." —Nineteen-year-old trans woman[15]

> "Because I identify as a man." —Twenty-year-old trans man[16]

The second-most popular choice made was to have "third gender" on their IC (29.8 percent). An interesting thing to note is that all agender individuals surveyed have no plans to undergo surgery, thus the lack of response as shown in Figures 2.1, 2.2, and 2.4.[17] This is something we will explore further in the "Limitation 5" section.

FIGURE 2.4

Individuals who were still undecided on whether to go for SRS



This category was made for respondents who have not undergone SRS and are undecided due to various limitations, which will be elaborated on in the next section. They make up 7.6 percent of the total number of respondents surveyed.

Of the individuals who are undecided, 26.3 percent of them are trans women, 15.8 percent are trans men, and 57.9 percent are gender non-conforming individuals (see Figure 2.4).

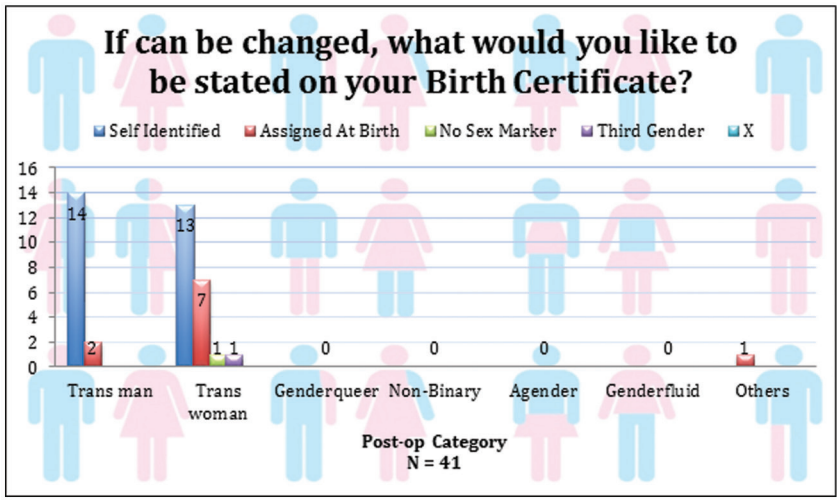
Preferred Sex Markers on Birth Certificates

Birth certificates, while used less than ICs in day-to-day activities, are still important in occasions like applying for an IC, marriage, having or adopting a

child, and immigration. It is important that one is comfortable presenting such documents when required to. The right to amend one's birth certificate should not be seen as less important and as such, we dedicated equal weight to the following questions.[18]

FIGURE 3.1

Post-operative Transgender and Gender Non-conforming Individuals



Of all post-operative transgender individuals, 65.9 percent would like to self-identify for the sex marker on their birth certificates (see Figure 3.1).

> "It will definitely make me feel equal to the other people, and showing my birth certificate would not be an issue." —Twenty-five-year-old trans woman[19]

> "I feel that Singapore still has gender identity discrimination. If someone were to see that my documents do not match the gender I represent and identify with, I will be discriminated against, whether verbally in public or in private. I feel it would affect my workplace standing and other's opinions of me. If this were not the case in Singapore, then I wouldn't mind that my birth cert[ificate] still states female as a way to celebrate my identity as a transmale and my journey through transition." —Twenty-two-year-old trans man[20]

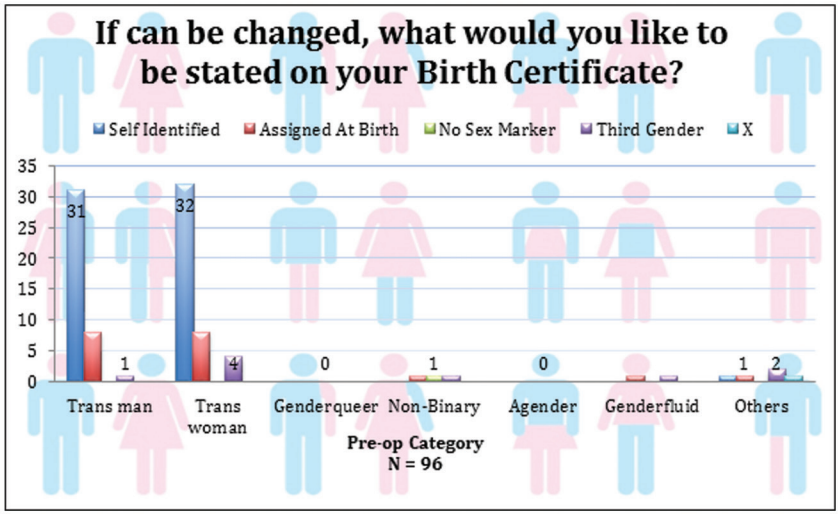
This is significant, as according to Figure 2.1, 95 percent of post-operative transgender people would like to be self-identified on their identification cards. In other words, fewer post-operative trans individuals want to self-identify for the sex marker on their birth certificates.

Of transgender and gender non-conforming individuals, 24.4 percent would like to have their sex assigned at birth reflected. One twenty-three-year-old

post-operative trans man shared that "I don't need to change birth certificate[s] since technically that's what I was born as."[21]

FIGURE 3.2

Pre-operative Transgender and Gender Non-conforming Individuals



From Figure 3.2, we can see that 66.7 percent of the pre-operative transgender and gender non-conforming community prefer to self-identify for their sex markers on their birth certificates, while 19.8 percent would like to keep their sex assigned at birth indicated on their birth certificates. This is a marked difference from what they prefer to have on their ICs (see Figure 2.2), with a 13.7 percentage point drop in respondents who would like to be self-identified on their identification cards.

"[My] birth certificate can remain as it is (male), just a memory of who I was." —Thirty-five-year-old trans woman[22]

"I can't change my past, but I can change my future . . . That by accepting ourselves, one day others will accept us too, for who we are." —Sixteen-year-old trans man[23]

FIGURE 3.3A

Non-operative Transgender and Gender Non-conforming Individuals

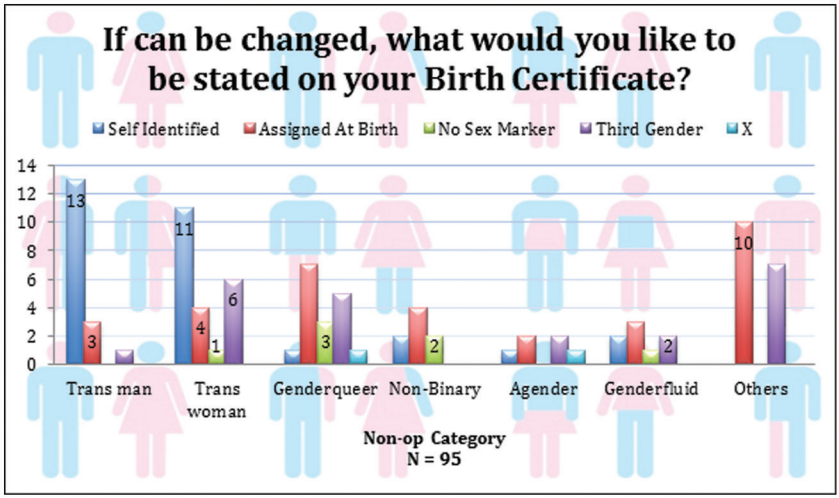
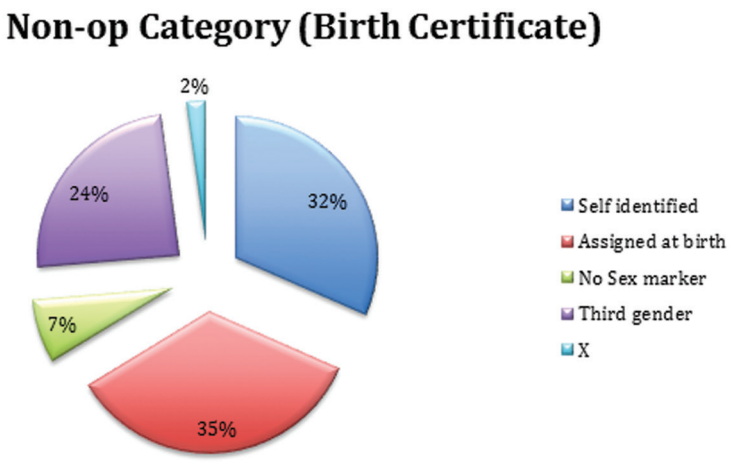


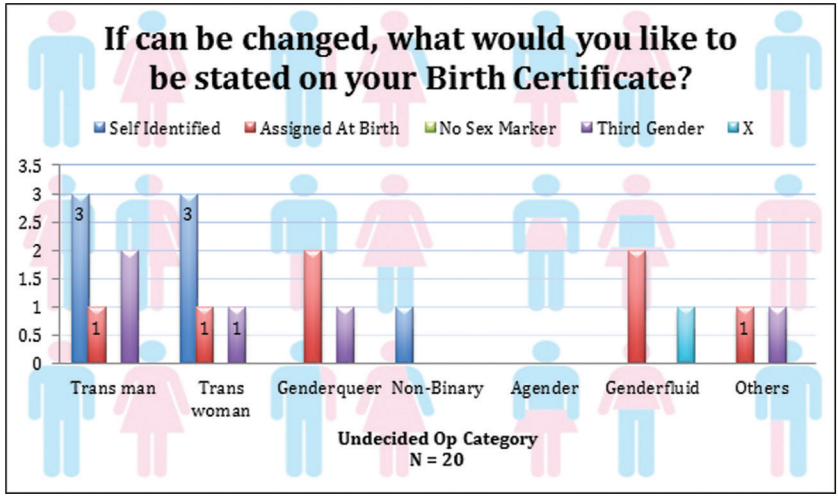
FIGURE 3.3B



Similar to Figures 2.3a and 2.3b, non-operative transgender people vary widely in their opinions as to what should be stated in their birth certificates (see Figure 3.3a). From Figure 3.3b, we can see that most people would like their birth certificate to reflect their sex assigned at birth (35 percent), but those who would like to self-identify came in a close second (32 percent). The least number of people chose to have "X" as the sex marker on their birth certificate (2 percent).

FIGURE 3.4

Individuals who were still undecided whether to go for SRS



Finally, as can be seen in Figure 3.4, except for agender individuals (none of whom falls under this category), the other six categories of transgender and gender non-conforming individuals made their choices between self-identified (35 percent), assigned at birth (35 percent), and third gender" (25 percent). There was one person who opted for "X" as their sex marker.

ANALYSIS

It is clear from the survey results that even while there are distinctive majorities, there are still many differing opinions in the community. There are a variety of views, all of which should be respected. From our findings, it is clear that it is important for transgender and gender non-conforming individuals to be able to self-identify on their documents. Self-identify not just in the sense of how we have been using the term, but also in the sense they would like to be able to define themselves from a broad spectrum of possibilities. For some, the current gender recognition law is sufficient.

> "I did SRS to change my gender marker on my identity card. Of course, doing SRS is also to reduce inconveniences such as binding, and awkward situations such as having to go swimming. Wearing clothes are also much easier now. It's a great relief." —Kieran, a thirty-three-year-old post-operative trans man[24]

> "Yes, I would still go through SRS [even if there is no requirement to do so]. It is more than just a documentation record. It is the life and body I want to live in." —Benson, a thirty-one-year-old pre-operative trans man[25]

> "The operation [SRS] wasn't a means to an end. If that is what it takes to be a woman, I want

> to go through it. I would still go for SRS even if [my] IC can be changed without SRS. Physicality has to match up for legality." —Natalyn, a forty-seven-year-old post-operative trans woman[26]

However, this raises the question as to the availability and accessibility of trans-specific healthcare, as well as the obstacles one has to face in order to undergo SRS. For many transgender individuals, the decision to undergo SRS or not lies more than just in a change of sex marker on their identity cards—it ultimately boils down to other factors, such as family, religion, and surgical fears. These factors may severely impede both abilities, and desires, of individuals to undergo SRS. Here we narrow down and focus on five limitations to SRS that transgender and gender non-conforming people face.

Limitation 1: Financial Concerns

Many of those surveyed or interviewed identified financial considerations as one of their topmost concerns when deciding to go through SRS.

> "I just really don't like the idea of paying a few thousand dollars to remove healthy internal organs that are part of the regular functioning and upkeep of my body." —Twenty-six-year-old trans man, undecided on whether or not to go through SRS[27]

> "Can't afford. Unsupportive family. Still studying. Can't even use my hard-earned CPF (Central Provident Fund) or Medisave." —Twenty-four-year-old pre-operative trans woman[28]

> "Pending [a] money drop from sky."—Thirty-five-year old pre-operative genderfluid individual[29]

> "As the cost for bottom surgery can involve a huge amount of money, it's good to be able to change the identity card before bottom surgery. However, I will still do it after I feel that my financial situation allows me to do so. Because it's awesome to have the transition completed fully." —Nat, a twenty-one-year-old pre-operative trans man[30]

Nat raises an important point, which is that SRS is a long-term goal for some transgender people. According to the Asia Pacific Transgender Network, "If legal gender recognition requires such medical steps, trans people can be forced to spend many years, or all of their lives, with no legal verification of their gender identity."[31]

Another overarching theme reflected in the data is that of family dependency, where it is a norm in Singapore for younger members of the family to be economically dependent on older members of the family. This is usually the case until younger members of the family graduate, get married, and buy their own house. For twenty-five-year-old post-operative trans woman Jenn, the hefty cost of SRS is compounded if the threat of being kicked out of her parent's place becomes real. Renting a room is rare, as it is a huge cost given the high standard of living in Singapore. Secondly, the current policies in Singapore only permit single individuals to purchase their own flats from the age of thirty-five, unless they buy with their

parents, or if they are orphaned.[32] In other words, only married heterosexual couples are eligible to buy built-to-order (BTO) government housing regardless of age, so long as they are registered with the Registry of Marriages (ROM) in Singapore.

Another topic touched upon by one of the respondents is the use of the Central Provident Fund (CPF) and Medisave to pay for SRS. The CPF is a social security savings plan for Singapore citizens, where a certain percentage of each individual's salary is deducted from the gross monthly salary and put into a special government account, with similar contribution from the individual's employer. Part of this money is channeled into Medisave, a medical savings scheme which helps individuals put aside part of their income to meet their future personal or immediate family's hospitalization, day surgery, and certain outpatient expenses. The savings can be withdrawn to pay hospital bills of the account holder and their immediate family members. However, the Medisave account is unable to be used to pay for fees for SRS. Furthermore, Medisave is only for hospitalization costs accrued in Singapore.

Limitation 2: Concerns from People Around Transgender Individuals

Another important concern affecting individuals' decisions to have SRS is the possible negative responses from immediate and extended family members, friends, schoolmates, colleagues, and even spouses. This discovery is not surprising, but warrants some reflection, given what we have talked about in the previous section about younger family members being economically dependent on older family members and having to bear the consequences if anything unfavorable happens. Some, like twenty-fiveyear-old pre-operative trans woman Jason, have previously been threatened by parents that she will get chased out of the house if she goes through SRS. For Jason, this fear is very real. In fact, it constituted her top-most consideration in her decision-making process of whether or not to go through SRS.[33]

In the workplace, individuals who are considering undergoing SRS are also at a disadvantage, both in terms of getting a job and surviving in the workplace environment. Many respondents were concerned and feared disclosing their trans identities to coworkers and bosses alike. For Vittorio, she feels that it is difficult to gain coworkers' acceptance for her decision to go through with SRS, even if her superior gives her permission to do so. According to Vittorio, her coworkers have already started to "see her as a freak" and have even gossiped and formulated untrue assumptions about her—all based on her looks due to her ongoing hormonal therapy.[34] For others, like twenty-three-year-old non-operative trans man Tiky, being bound to the public service sector means his career could be in jeopardy if he undergoes SRS. Tiky does not feel the public service favors, in any way, transgender individuals—and that may affect his chances of a promotion, as well as increase the risk of paying for liquidated damages should the scholarship be revoked.[35] Thus, for these individuals, declaring their desires to go through SRS may have very devastating effects on their lives.

For others, like trans man Kieran, ithe nfluence of people around him is so

great that considerations to go through SRS only began to materialize after his mother—who opposed his decision—passed away. To add on, Kieran's ex-girlfriend broke up with him because of this very desire to undergo SRS.[36]

Other consequences that transgender individuals have to face, include possible counter-proposals. One such account given was by nineteen-year-old pre-operative trans woman Jaclyn, whose father—while telling her to "wait for ten years before deciding whether to transition"—simultaneously brought her around to different psychiatrists to determine if anything was mentally wrong with his child.[37] Similarly, Cass, an eighteen-year-old genderfluid individual was asked to go see a "bomoh," or a Malay shaman, for exorcism when they tried to come out as gay to their parents.[38] Parents' influence can never and should not be undermined. Jason's parents were similarly insistent that Jason's desire to undergo SRS is merely "a phase," causing Jason to also not attend family gatherings the past several years for fear of being pressured into a cis-heterosexual marriage.[39] In the words of a twenty-four-year-old non-operative trans man, "I really think that any change should start from the family level. If parents or siblings could be more understanding of this situation, it would help so much."[40]

For others, like thirty-year-old pre-operative trans woman Amanda, there is also a fear of violence—as the closest friends she currently has are also those who call transgender individual names, as well as intend to inflict harm onto them. Amanda has not come out to them yet.[41]

Limitation 3: Fears Related to Surgery

According to the World Professional Association for Transgender Health (WPATH), "Transsexual, transgender, and gender-nonconforming people need health care throughout their lives."[42] However, the full range of resources required is not readily available in Singapore since the only SRS-specific facility in one of the local hospitals was shut down in 2001. Many who have intentions to go through SRS have expressed the most reliable and inexpensive venue to undergo the surgery would be in Thailand. Some, however, would have preferred to do the surgery in Singapore—comparing the health care systems between both countries. For some, like a thirty-nine-year-old trans man, the shutdown of the facility led him to decide to not undergo SRS, because of the precise lack of such healthcare facilities in Singapore.[43] One respondent made a connection between the lack of resources with the current gender recognition laws:

> "Trans care in Singapore is lacking in many, many ways, [and] this is among one of them. Especially when any form of actual medical care is so difficult for many trans people to obtain in Singapore, the requirements for changing gender in official documents are made even more ridiculous." —Twenty-three-year-old non-operative trans man[44]

There are also some others, like one twenty-two-year-old trans woman who is undecided on whether to go through SRS because she "do[es] not agree with

the idea that one must go through so much pain, in body, and emotionally for the rest of your life just to be who you want to be."[45]

Limitation 4: Faith Community

One of the greatest oppositions to the decriminalization of homosexuality comes from Christian and Islamic groups. Of significance lately is the WearWhite Campaign, which "is an informal grassroots movement" with the purpose of "reminding Muslims not to participate in" Pink Dot, Singapore's annual LGBTQ event.[46] Numerous churches in Singapore have also encouraged their members to wear white on Pink Dot, an event where participants turn up in pink.[47]

Religion, or one's faith community, has a strong presence in Singapore. One's faith can have a role affecting decisions to undergo SRS. For example, a forty-two-year-old pre-operative trans woman who indicated that she would like her sex assigned at birth on her birth certificate explained that "I believe I should not forget how I was born, and as a Muslim I would want to be buried as a man following my religious practice."[48] It is a practice where they are to be buried without modifications to their bodies.[49] Furthermore, there is anecdotal evidence of trans people being turned away from burial services, leaving them discriminated even in death.[50]

Another factor could be social pressure stemming from coworkers', families', and spouses' religious affiliations indirectly affecting a transgender individuals' choices to undergo SRS. For instance, for nineteen-year-old pre-operative trans man Alex, his entire family (including Alex) identifies as Buddhists. Even though, according to Alex, nothing in Buddhist scripture talks about opposing the idea of SRS, his mom speaks to him about "attaching himself to his gender" all the time. This idea of non-attachment forms a foundation of the Buddhist faith, though, interestingly, one of the Buddhist deities Guan Yin, or the Goddess of Mercy, is sometimes thought of as androgynous or transgender.[51]

Limitation 5: Non-binary/Fluid Identities

Of all respondents, 30.4 percent identify as genderqueer, genderfluid, agender, non-binary, and others (excluding trans men and trans women communities). Of this group, 90.9 percent of individuals have also indicated they are non-operative. Many gender non-conforming individuals feel that gender in itself is a social construct and defined by humans ourselves. To be "agender," for instance, is to be "without gender." As such, participants may not feel the need to undergo SRS, as that means adopting either gender for themselves.

> "I do not like to be placed in a specific gender and I don't feel like I'm fully a girl or a boy. And sometimes I feel like I'm a girl, and at times a boy. Most days I feel gender neutral/non-binary and I hope that I could be accepted as myself and not be forced into the gender binary because gender is a spectrum." —Sixteen-year-old non-operative genderfluid individual[52]

For others, they desire physically altering their bodies, but also express there isn't a strong desire for them to choose to undergo SRS. Responses for many in

these groups of individuals as to their desired gender identities on their ICs are mixed, with some preferring to be able to self-identify on their documents and others being comfortable with their sex assigned at birth. It is of interest to note the emergence of a "third gender" or the request for removal of sex markers—of which this option appears more for such groups of individuals who are gender non-conforming, as opposed to the trans men and trans women communities. For these groups of individuals, it is unfair to request them to go through SRS to indicate their preferred gender identity on their cards.

> "It is how I identify my gender identity to be and has no relationship to any surgery." —Forty-year-old non-operative trans man[53]

> "I have no plans for any surgery because I am not exactly youn, and besides, it is just a glorified plastic surgery procedure because it is not going to give me a womb or the capacity to bear children." —Fifty-eight-year-old non-operative trans woman[54]

> "I do not think having a penis makes me any less of a woman." —Jaclyn, a nineteen-year-old non-operative trans woman[55]

> "I don't see SRS as important. It's true that there was a time I considered SRS—I thought that it was the only way to be complete. But SRS is essentially the reconstruction of something fake, which is not necessary, especially when my life is about living out the truth and I recognize that I will always be a trans woman, and not a woman." —Tricia, a sixty-year-old non-operative trans woman[56]

There were also individuals who had stronger feelings about this and feel that SRS is in some ways, unnecessary and a form of state coercion.

> "I do not want to undergo forced sterilisation just to have the gender marker on my official documents changed." —Twenty-three-year-old non-operative trans man[57]

CONCLUSION

For many, changing the sex marker on their ICs means more than mere administrative ease. To have control over how one is represented gives many a sense of security, affirmation, and acknowledgement. This would also create greater ease in other areas of their lives, such as job applications, visitations to hospitals, and the checking of travel documents at airport departure gates. For some, there would be an added level of psychological security, as they would be free to be who they are without contradictions and without judgement.

It is heartening that the Singapore government allows individuals to change the sex markers on their identity cards, though only on the condition they have undergone SRS. However, as shown in the above sections, not only are there material limitations and challenges to go through the operation itself, for some who don't identify as one gender, the idea of SRS does not apply. The government needs to take this into

account when drafting such future policies. This is a complex topic of which there exists a vast diversity of views, even within the communities itself. As one twenty-six-year-old pre-operative trans woman wrote, "At the end of the day, if people don't accept trans people, the discrimination and violence will happen even if our IC states F, M, or X."[58] On the other hand, a seventeen-year-old genderfluid individual wrote that "Unless it is formally recognized, gender non-conformity and trans people will be taken as a joke."[59] Both views reflect the need to have more platforms and discussions in society and with policymakers in order to ensure that such laws of forced sterilization can be amended, and more importantly, that Singaporeans, no matter who they are, have a voice and have the space to be who they want to be.

Vanessa Ho *is the project director of Project X, a local non-governmental organization that advocates for the rights of sex workers of all sexual orientations and gender identities. This is a full-time position she has held since 2011, and one where she is responsible for documenting and reporting on the various human rights abuses sex workers face. She has written and spoken on sex work, human trafficking, rape culture, and LGBTQ rights in Singapore.*

Previously, Ho was part of Sayoni, a queer women's organization, and was a volunteer for its Convention for the Elimination of all forms of Discrimination against Women (CEDAW) reporting team. As part of her assignment, she traveled to the United Nations (UN) in New York to present a shadow report on queer women's issues for Singapore's session.

Ho was also one of the key organizers of SlutWalk Singapore, a movement that aimed to raise awareness about rape culture, victim blaming, and slut shaming. Simultaneously, she was a curator at Post-Museum, where she organized a series of talks and events to examine sex, gender, and sexuality in Singapore. Ho was awarded the Young Activist Award by the Association of Women for Action and Research (AWARE) in 2014 for her work on various human rights issues.

Ho graduated with a bachelor of science in economics from the University of Warwick, and a master of arts in gender, society, and representation from University College London. She is also a part-time associate lecturer at the Singapore Institute of Management University (UniSIM), teaching modules in film and gender theories. Ho holds the view that if people can speak about sex, gender, and sexuality in open and in non-judgmental ways, society will become a safer place for everyone.

Sherry Sherqueshaa *is a former transgender sex worker turned activist. As a Muslim, she also aims to inspire the transgender community. She joined local non-governmental organization Project X initially as a youth program coordinator, working closely with trans women via events and workshops in the community center. Having found deep interest through her involvement in plenaries, interviews, and interactions with academics and others, Sherqueshaa then moved on to be the organization's researcher and writer, championing and advocating for the rights of sex workers in Singapore.*

Sherqueshaa is currently with the National University of Singapore (NUS) as a research facilitator and consultant, assigned to be a peer leader. Her role is to execute a campaign called the Project Stiletto and a survey that address issues concerning transgender sex workers' health, sex reassignment, insurance, and social support.

A year and still counting, being with Project X has taught and allowed Sherqueshaa to educate and advocate for changes in Singapore's marginalized community. Being frequently exposed to the issues and concerns of sex workers not only motivates her but also pushes her to be optimistic. Sherqueshaa has attended human rights conferences and seminars in Chiang Mai, Taipei, and Kuala Lumpur, where she gained experiences and learned various advocacy strategies. She believes that with small steps, effort and perseverance, hope will translate into reality. Sherqueshaa also feels that if one cannot accept transgender people and sex workers, the least they can do is give respect like they would to any other person.

Darius Zheng *is an LGBTQ activist, whose work started in 2012 when joining the steering committee of Pink Dot SG, organizing the nation's annual de facto LGBTQ rally (27,000 supporters attended in its seventh year in 2015), where the LGBTQ community and allies gather at a park dressed in pink. In his three years with Pink Dot SG, he has worked with numerous community groups, students and youths, media, corporate and individual sponsors, event ambassadors, performers, and commercial partners.*

Since late 2015, Zheng has moved on to look at intra-community issues. He is currently a volunteer para-counselor under Action for AIDS Singapore's Pink Carpet Initiative to advise high-risk young men-who-have-sex-with-men on the importance of safe sex. As part of the initiative, he is also responsible for outreach efforts to gay bars and clubs. As a journalist, Zheng regularly contributes to one of Asia's leading LGBTQ publications, including Element Magazine, and currently works for international LGBTQ media company GayStarNews as its Asia-Pacific correspondent.

Zheng is similarly active in transgender advocacy work. As part of Free Community Church, Singapore's only LGBTQ-inclusive church, he helms a team to organize monthly donation drives for the T Project, Singapore's only transgender shelter. This collaboration with Project X's Vanessa Ho and Sherry Sherqueshaa for the LGBTQ Policy Journal is also in part to raise awareness for transgender issues on a global scale.

Zheng is also a personal advocate for LGBTQ rights. In 2013, he was awarded a grant by Manila-based B-Change Foundation, supported by the UN Development Program, to produce his own coming-out film, which was subsequently featured on local and international media outlets. He was also invited by the Beijing LGBT Center and the Human Rights Campaign (HRC) to talk about the work he has done.

Zheng was also involved in the HRC's global advocacy efforts as a global equality innovator, speaking at the organization's first Global Innovative Advocacy Summit held in Washington, DC, in March 2016. Zheng graduated with a bachelor of communication studies from Singapore's Nanyang Technological University, specializing in journalism, and will be embarking on a master of arts in a human rights studies program at Columbia University in August 2016.

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"Like a Stray Dog on the Street": Trans* Refugees Encounter Further Violence in the Cities Where They Flee

By Jennifer S. Rosenberg

ABSTRACT

LGBTI refugees have historically remained invisible within larger refugee populations, and systematically overlooked in international humanitarian interventions. Against this backdrop, the importance of current efforts to raise awareness of LGBTI refugees and their needs cannot be understated. At the same time, however, LGBTI refugees are not a homogenous group, and within humanitarian response, trans*-specific information and guidance remains virtually nonexistent. What little information does exist, in the form of research or policy recommendations, is often folded into broader discussions about LGBTI refugees generally. Yet, trans* refugees are arguably more at risk of violence than any other refugee subpopulation. Hence, as conversations around LGBTI refugees gain momentum and humanitarian actors, and even some host governments take steps to enhance their protection, it is crucial that policymakers pause to separately consider the experiences of trans* refugees and how to respond to the particular rights violations they face every day.[1] This article discusses the particular issues faced by trans* refugees and summarizes suggestions for responding to those issues.[2]

INTRODUCTION

The migration of Syrian refugees into Europe has drawn much-needed attention to the plight of refugees everywhere. Even a handful of Syrian LGBTI refugees have been profiled in mainstream media outlets, and last August two gay men—one Syrian, the other Iraqi—who had fled ISIS testified before the United Nations Security Council, revealing their stories as part of the council's first-ever meeting on gender and sexual minority rights.[3]

In December 2015, the United Nations High Commissioner for Refugees—the UN refugee agency—released a report highlighting some of the protection concerns facing LGBTI individuals who have fled violence in their home countries, only to encounter it again in places where they have sought refuge.[4] The report, based on information provided by UNHCR field operations, notes how LGBTI refugees and asylum-seekers face a variety of threats every day in their host communities, ranging from persecution by authorities to abuse

while looking for accommodation. The report calls for better services for LGBTI refugees, and for more guidance for humanitarian workers in the field, most of whom have little experience working with LGBTI individuals.

These are positive developments. LGBTI refugees have historically remained invisible in larger refugee populations, and systematically overlooked in international humanitarian interventions. Against this backdrop, the importance of current efforts to raise awareness of LGBTI refugees and their needs cannot be understated. At the same time, however, LGBTI refugees are not a homogenous group, and within humanitarian response, trans*-specific information and guidance remains virtually nonexistent. What little information does exist, in the form of research or policy recommendations, is often folded into broader discussions about LGBTI refugees generally.[5]

This tendency to subsume trans* issues into LGBTI ones is, to some extent understandable, on theoretical and practical levels—discrimination against individuals of diverse sexual orientations and gender identities has always been embedded within systems of power, policymaking, and service delivery, including within the humanitarian system. This discrimination has produced gaps in knowledge and service delivery affecting all LGBTI refugees, gaps that are now coming to the forefront and rightfully starting to be addressed. Yet, this tendency to talk about all L, G, B, T, and I refugees in one breath can itself be dangerous, obscuring critical differences between them, including the types of rights violations they face and distinctions in the appropriateness of interventions for each subgroup.

Trans* refugees are arguably more at risk of violence than any other refugee subpopulation.[6] They encounter violence and persecution in their countries of origin; this includes physical violence such as rape and sexual torture, as well as emotional violence in the form of verbal abuse and exile from their families. This is why many flee their home countries in the first instance. But they also face transphobia, isolation, and extreme violence in the places they travel to seeking safety and asylum. Many often arrive alone in foreign cities, knowing no one and having nowhere to sleep. Typically shunned by other refugees, they are unable to take advantage of the informal refugee social networks that are often lifelines for new arrivals, key to learning what services exist and how or where they can access basic necessities, like food and emergency shelter. All the while, trans* refugees, who are often already survivors of sexual and gender-based violence, are targeted for additional violence conducted by members of the host community and fellow refugees. They also risk and experience violence when attempting to access mainstream refugee services, the very services put in place to assist refugees.

Hence, as conversations around LGBTI refugees gain momentum and humanitarian actors—and some host governments even take steps to enhance their protection—it is crucial policymakers pause to separately consider the experiences of trans* refugees and how to respond to the particular rights violations trans* refugees face every day.[7] Doing so properly will require building the capacity and skills of agency staff to engage trans* refugees and developing operating procedures and sample interventions specific to trans* refugees'

needs. It will also require prioritizing and channeling funding toward tailored programming for trans* refugees. Proactive outreach will be essential, along with facilitating the meaningful participation of trans* refugees in designing, implementing, and monitoring this programming. On a broader level, trans* issues must be "mainstreamed" throughout humanitarian response, so trans* refugees can enjoy safe and nondiscriminatory access to all the services and supports to which all refugees are entitled.

TRANS* REFUGEES IN CITIES

Today, nearly 60 percent of all refugees (persons who cross borders fleeing conflict or crises) seek safety in cities, rather than the refugee camps we often envision as hubs of humanitarian assistance. Indeed, in countries where refugees are legally able to move freely (not all national governments allow this), camps are becoming a relic of the past. This urban migration is causing nothing less than a monumental shift in how humanitarian actors—especially UNHCR and its local partner organizations—must operate on the ground.

In 2014, the Women's Refugee Commission (WRC), with support from the US's Bureau of Population, Refugees, and Migration, embarked on a multiyear project to learn how humanitarian actors can improve their programming in cities. More specifically, the project seeks to build a knowledge base around urban refugees' exposure to gender-based violence (GBV), and how humanitarian actors can strengthen GBV prevention and response services for at-risk refugees—including trans* individuals.

Being mindful that refugees' own perspectives are essential to this endeavor, in 2015 WRC met with trans* refugees in three cities: San Lorenzo, Ecuador; Beirut, Lebanon; and Kampala, Uganda. Consultations were conducted through focus groups and individual interviews, at the option of the refugee, and in a location and time of their choosing.[8] In Beirut, WRC conducted two transwomen-only group discussions, with fourteen and seven participants, respectively. In San Lorenzo, WRC met with four transwomen, three of whom participated in a group discussion hosted in a hair salon where one worked. In Kampala, WRC conducted two group discussions with ten and eight LGBTI refugees, respectively; participants were a mix of lesbian, gay, bisexual, transgender, and intersex individuals who chose to meet as a group and who were not asked to self-profile. As follow-up to these discussions in Kampala, individual interviews were conducted with three participants who self-identified as transwomen and another who self-identified as being along the transgender spectrum.

Information provided by refugees was triangulated through consultations with organizational stakeholders in each city, including refugee service providers, LGBTI civil society groups, and others with expertise serving local trans* communities. The findings and policy recommendations discussed below are a product of these direct consultations.[9]

SURVIVING IN THE CITY: VIOLENCE AT EVERY TURN AND A LACK OF ACCESS TO BASIC NECESSITIES

Trans* refugees are especially likely to

migrate to cities, given the risks of violence and social exclusion they face in camp settings.[10] Cities, in contrast to refugee camps, offer greater anonymity. They offer the potential for safe harbor within a more cosmopolitan community—or at least a better chance of hiding or "passing" among strangers. Some make their way to particular cities because they've heard, through word of mouth or social media, of other trans* refugees living there.

Masha, a transwoman from the Democratic Republic of Congo, traveled to Kampala following a savage beating in a refugee camp in northern Uganda. She came to Kampala after hearing about a local activist advocating for gay rights there. Shilah, another Congolese transwoman, was raped by five men in her village in the DRC. Still bleeding from those injuries, she fled to a refugee camp in western Uganda where she tried to seek medical care, but was refused. "Workers at the camp hospital were horrendous," she said. "They didn't believe 'a man' could be raped." A friend told her about a local LGBTI group for refugees in Kampala, and helped her arrange transport to get there.[11]

Trans* refugees face higher and more severe GBV risks in their cities of refuge than other refugees, including other sexual minorities. This is widely agreed among LGBTI refugees and LGBTI-friendly refugee service providers.[12] In Beirut, for instance, although gay Syrian men and women reported feeling unsafe when walking around certain areas of the city, they do not, on average, experience anywhere near the level of daily violence encountered by transwomen. This discrepancy owes to trans* refugees' visibility, where their dress or outward appearance breaks traditional gender rules, as well as the strong transphobia that exists in many host countries and refugee communities, and even within LGBTI communities. Trans* refugees also highlighted that where a gender marker on their identity documents does not match their physical gender presentation, they are especially likely to be refused a job or service, or be detained by police, which in turn exposes them to physical and sexual violence while in custody.

The violence faced by trans* refugees ranges from verbal abuse while walking down the street to being denied housing and employment, and even physical abuse and rape perpetrated by neighbors, strangers, other refugees, and state actors. Transwoman refugees in Beirut reported being stopped by police at checkpoints throughout the city, who asked them to show their papers and offered a choice between lifting up their shirts to prove their gender or being taken straight to jail for processing.

Transwomen refugees in Kampala and Beirut shared stories of being beaten while in police custody, and in Kampala, being raped in custody. In general, within their communities, rape occurs regularly; attackers are land-

"There is no place to host us. I was like a stray dog on the street."

—Transwoman refugee in Kampala, speaking about having been kicked out of her apartment without forewarning, and not knowing anywhere safe she could go to, even for a night.

lords, neighbors, strangers, police, and sex work clients. Transwomen in both cities, as well as in San Lorenzo, also reported being verbally harassed and physically attacked when simply going into a shop to buy small items like cigarettes or while crossing an intersection. In short, every public space is a site of violence for trans* refugees, and experiencing violence in some form is a regular, if not daily, occurrence.

What makes the risks of violence faced by trans* refugees higher than those faced by local or host community trans* persons is their additional vulnerability as outsiders—outsiders whose legal status in the country is often unsettled or contingent. Perpetrators take advantage of this vulnerability, betting that trans* foreigners are even less likely than local trans* persons to go to the police, or to have friends, family, or other ties to the community that could help them seek recourse. Too afraid to do anything that may put them at further risk, or draw attention to themselves, trans* refugees silently endure violence.

Trans* refugees across these cities also recounted stories of peers being murdered—fellow trans* refugees who had fled persecution in their home countries, only to be killed later in their cities of asylum. Some of these murders made the local or regional news, while others were never officially reported.

GBV Risks Related to Lack of Access to Shelter

"We live in fear and anxiety and we don't leave the house very much."—Syrian transwoman

"Where I was renting the landlord started to fall in love with me and he used to come every evening and talk with me . . . One day he came in the evening and wanted to have sex . . . I started to fight back . . . he threw me out with all of my things . . . he called the police and they beat me . . . [Now] I don't have a home, I often don't have food to eat. Even at [friend's] it's so crowded. There are nights without food. I don't know what to do."—Congolese transwoman refugee, Kampala

Trans* refugees reported cyclical homelessness in their cities of refuge, especially upon arrival. Unlike other refugees who often take up temporary shelter with family, friends, or fellow refugees, most trans* refugees arrive in cities knowing no one and having little information about trans*-friendly organizations or social networks—potential access points for finding a safe place to sleep.

Refugees who flee to other cities are largely responsible for finding and affording their own shelter, and even those who are cisgender face significant challenges landing safe and stable accommodation.[13] For trans* refugees this task is nearly impossible. Even if they could somehow afford rent, they are reflexively turned away by landlords and encounter violence while looking for potential housing. As one interviewee reported, "It's difficult here to get a shelter. Whenever I'd go to look for a place to rent, I'd be in trouble. I was beaten extensively. [Locals] threw stones at me and beat me." Other trans* refugees reported being pressured by landlords or others to have sex in exchange for a place to sleep, or being kicked out of their housing overnight and without warning.

Some refugee service providers are aware of the extreme difficulties trans*

refugees face in trying to obtain housing, but struggle with not knowing how to help them. They are unsure what solutions or safe referrals exist, and this is true even during emergencies where a trans* refugee is in imminent danger. Whereas cisgender refugee women and children are able to access local shelters for GBV survivors in some cities, such as in Beirut and Quito, neither of these cities have trans*-friendly shelters available for refugees. The result is a scramble to find a one-off, makeshift solution that varies case by case. Trans* refugees with nowhere to go might be invited to sleep on the floor of a service provider during closing hours, or the home of a staff member.

GBV Risks Related to a Lack of Safe Livelihood Options

"Because we are living in Kampala and everything is expensive. You have to pay rent, you also need to dress yourself and feed yourself. Also, as an LGBTI, who will accept you or give you another job? Automatically you can be judged so it's hard to find a job."—Transwoman refugee sex worker

Refugees in cities look for jobs alongside their host community's urban poor. Even in countries where refugees are not legally permitted to work, as in Lebanon, many work informal jobs as manual laborers, domestic workers, street peddlers, or garbage collectors. Yet, even informal sector jobs are out of reach for trans* refugees. In Ecuador, Lebanon, and Uganda, trans* refugees reported that, for "our kind," only two employment options are possible: working in hair salons or sex work. Those working in hair salons shared that although the work itself is relatively safe, it is unstable and the small number of available positions far outweighs demand.

The majority of trans* refugees consulted reported doing sex work, either currently or in the past, in order to earn money. In Beirut, for instance, twenty out of twenty-one transwomen focus group participants identified as current or former sex workers. In Kampala, all three transwomen who gave individual interviews self-identified as sex workers. These women did not speak with one voice about sex work; rather, their experiences, motivations, and feelings around it are diverse. Some expressed a strong desire to exit sex work, noting they do it because it is their best, or only, option for earning enough money to survive in the city. Others primarily expressed sadness and frustration that working in the sex industry carries a lot of stigma and related risks of violence. Yet, nearly all shared an interest in learning protection strategies, and in being able to access safe and friendly health care providers and peer support.

> *"If I don't sleep with people I cannot get enough money to feed myself."*
>
> *—Transwoman refugee sex worker in Kampala*

Sex workers everywhere experience high GBV risks related to their work. They face direct risks of violence from clients and police, as well as a myriad of indirect risks due to discrimination, stigmatization, and the criminalization of sex work.[14] Yet, because of trans* refugee sex workers' intersecting identities, they face not only exceptionally high risks of violence, but also unique barriers to mitigating those risks and

"They will negate your experience because they accuse us and tell us that the problems we have—we are the roots. 'You can change, you can change your manners, your dress code' . . . They say this is the solution to shift. There is no prevention."

— Transwoman refugee in Kampala

seeking support as survivors. Reporting violence or threats to the police, for instance, could put them at risk of arrest not just twice—once for being trans* and second for selling sex—but a third time once their legal status and/or identity documents are scrutinized.[15]

Hence, although trans* refugee sex workers regularly encounter violence, they are especially reluctant to seek any kind of support (including legal or psychosocial), fearful that doing so will bring additional violence or jeopardize their status in the country. So once again, taking advantage of the fact that refugees are highly unlikely to report violence, clients and other perpetrators are able to exploit and abuse trans* refugee sex workers with impunity.

GBV Risks When Trying To Access Services

"When you go to services you are asked questions that reduce your dignity. You move around the office and every person looks to see who you are. It's a shame to move around. Me, I'm wondering if it's not something I've created myself, but this is my nature. So I don't see where to go. Even if it can be possible to take me out from here, just outside where I can be safe, it would be my wish." —Transwoman refugee in Kampala

Trans* refugees reported being discriminated against and experiencing various types of violence when attempting to access mainstream services, whether the service providers are humanitarian actors, like UNHCR partners, or local service providers like hospitals. They also reported overall feelings of fear and vulnerability when traveling to providers' offices and waiting in line or in common spaces for appointments.

Trans* refugees shared that based upon their own experiences, as well as stories they'd heard from peers, they perceive certain humanitarian actors (staff members at refugee organizations responsible for their protection) as being transphobic and unwilling to serve them. For these reasons, trans* refugees avoid visiting these organizations even if they need assistance; the exception is instances where they believe doing so is essential to keeping their refugee status or advancing their application to be resettled in a safer country.

Transwomen refugees shared stories of being stigmatized and emotionally abused at points of service by other refugees, as well as organization staff, including security guards. One transwoman, in response to being asked whether she would ever report a threat of violence to a case manager at a refugee service provider, said, "For what? It's dangerous, and they only want to intervene after we have been beaten up and raped." Another transwoman shared that a social worker at a UNHCR

partner organization accused her of being lazy, for "not getting a job like a man." Another transwoman was told by a case manager, "I can't help you because you don't want to leave that life." Transwomen refugees also have little faith in referrals from service providers, given past instances where transwomen were referred out of hand to temporary shelters and organizations that cater to straight men, which they (transwomen) knew would be dangerous for them.

> *"They don't take care of you because they see you as abnormal."*
>
> *—Transwoman refugee in Kampala, describing her experience trying to get medical treatment at a local hospital*

RECOMMENDATIONS

Many cities hosting refugee populations have social and legal norms that are risk factors in and of themselves for trans* refugees. Even where non-conforming sexual orientation or gender expression is not explicitly criminalized, laws of general application are often used to detain, prosecute, and penalize trans* persons. They may be targeted, for instance, under impersonation, loitering, or public debauchery laws.

This legal situation is all the more reason for humanitarian actors to develop guidelines and protocols for helping trans* refugees navigate their way around these cities, which are foreign to them in every way. Within the humanitarian community, this is known as expanding the protection space for refugees: providing them with access to information, services, and programming enabling them to live safer and realize their rights in the communities where they seek refuge.

Even where local, social, and legal frameworks condone or enable transphobia, humanitarian actors should take the minimum steps listed below to enhance protection for trans* refugees in urban areas.[16]

- Ensure that all individuals working in urban response have appropriate training and guidance to serve trans* refugees, with trans*-specific materials being a compulsory part of training for all gender, protection, and GBV focal points.[17] Furthermore, just as transphobia persists in many urban communities hosting refugees, these biases exist among UNHCR staff at field offices and local partner organizations. Consistent with UNHCR policy and humanitarian non-discrimination principles, all staff must be held accountable for meeting standards of care and professionalism, and treating all refugees with dignity and respect, regardless of personal beliefs on gender and appropriate gender roles.[18]
- Within each city, identify all trans*-friendly service providers and trans* peer networks, such as community-based organizations led by and for trans* individuals, as well as LGBTI organizations and trans*-friendly health clinics. Reach out to them as potential partners and allies, and coordinate with them to establish referral or information-sharing pathways relevant to trans* ref-

ugees' protection. Support local trans*-friendly organizations in expanding their reach to include trans* refugees, working with them to identify and overcome obstacles (e.g. language and cost barriers) to refugee inclusion.

- Develop protocols to guide practitioners in addressing emergencies faced by trans* refugees, for instance, where a trans* refugee is arrested by police, evicted overnight, or in need of urgent medical assistance. Although local LGBTI organizations sometimes become de facto rapid responders in these situations, coordination between them and humanitarian actors is often ad hoc, informal, and reactive. This creates confusion on appropriate interventions and available resources in urgent moments; it also leaves it murky as to who has relevant responsibility or authority to act in such cases.
- Ensure trans* refugees in urgent situations have access to emergency cash assistance. A handful of trans* refugees said they had received emergency cash assistance at some point in time from a humanitarian organization, and that these funds had been critical to their immediate survival. Additional resources are needed to ensure these funds are available to trans* refugees in emergencies. Cash assistance is especially important given the lack of mainstream shelters and services available to refugees. This gap, combined with their estrangement from traditional networks of support (e.g. family networks), leaves trans* refugees without access to protection at times when they need it most.
- Investigate and evaluate a range of potential safe shelter and livelihood options for trans* refugees. Field staff should compile a range of potential alternatives, be they comparatively trans*-friendly neighborhoods, apartment buildings, landlords, or shared housing, as well as employers or informal employment possibilities. Trans* refugees and members of the host community should be meaningfully consulted in this process, with the result being an ever-evolving menu of potential referral options or suggestions, regularly updated.
- Where possible, hire a trans* refugee or trans* host community member to coordinate efforts to enhance protection for trans* refugees and/or all LGBTI refugees, and to lead proactive outreach to trans* refugees, engage local organizations, develop tailored interventions, and consult trans* refugees along the way.
- Explore ways of providing trans* refugees with options for accessing services—such as alternative locations and times for accessing a particular service—in order to ensure it is provided in a safe space by someone who they regard as respectful and knowledgeable about trans* issues. For instance, where trans* refugees tend to live in a particular area of the city, or even live together, investigate ways of bringing services to them, rather than insisting they visit refugee service providers' offices

individually, which exposes them to higher risks of violence while in transit and at points of service.

At the global level, key UNHCR staff should participate in all inter-agency conversations about the appropriate design and implementation of policies and interventions engaging trans* individuals. An important example is the ongoing development of the Trans Implementation Tool, a practical guide to implementing programs based on the specific health needs of trans* populations.[19]

Outside the humanitarian sphere, there is a role for policymakers and donors to play in providing tangible support to trans* refugees. Private foundations that fund grassroots trans* movements and community-based organizations can, for instance, explore opportunities to support local trans* groups that are led by, or inclusive of, trans* refugees. International development and public health actors who engage trans* communities in cities with sizeable refugee populations can inquire as to whether their programs are reaching, or could reach, trans* refugees.

CONCLUSION

The majority of all refugees now live in cities, a trend that will continue as refugee camps are made into a last resort. This new reality necessitates a transformative shift in humanitarian response, requiring policymakers, donors, and practitioners to overhaul their approach to programming, and interrogate past assumptions about how to engage and strengthen protection for urban refugees.

Attention to trans* refugees must become part of this overhaul. Not only are they especially likely to flee to cities, but once there, face extraordinary risks of violence and isolation, and even exclusion from mainstream refugee services. The humanitarian community still has some distance to go in understanding the needs and risks facing trans* refugees, and also in learning how to reach out to them in ways that build trust, affirm their rights, and encourage them to come forward to seek the various types of support to which they are entitled. Closing this distance will require considering the "T" separately from the L, G, B, and I, and proactively working to ensure trans* refugees have meaningful access to services and protective peer networks. A fundamental component of these efforts will be directly consulting with members of the trans* community in the development and implementation of programming that is tailored to their singular needs, responsive to the daily realities of their lives as trans* refugees.

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fairs, with a concentration in sexual health and human rights from Yale University. She also holds a JD from the University of Pennsylvania and a BA in political science from Columbia University.

ENDNOTES

1. See, e.g., Jessica Chasmar, "Germany Opens First Shelter for Gay Refugees," *The Washington Times*, 1 February 2016.
2. This article draws upon research findings first reported in "Mean Streets: Identifying and Responding to Urban Refugees' Risks of Gender-Based Violence," Women's Refugee Commission, February 2016. Some of the experiences and perspectives of transwomen refugees described herein are included in the LGBTI chapter of the report.
3. This article uses LGBTI as shorthand for lesbian, gay, bisexual, transgender, and intersex persons, while being mindful the rising dominance of the acronym poses conceptual and programmatic challenges, including within humanitarian response. Notably, it contributes to the conflation of the two analytically distinct concepts of sexual orientation and gender identity. It also fails to adequately distinguish between the different realities faced by, say, transgender refugees compared to intersex refugees. Tailored programming and outreach is necessary to identify and address the protection risks faced, respectively, by L, G, B, T, and I refugees. That said, in addition to being a useful abbreviation, most refugees with diverse sexual orientations and gender identities or presentations whom WRC consulted in its research self-identified as LGBTI. Many of the organizational stakeholders consulted—from community-based organizations to refugee service providers—also use and have a common understanding of the term. Use of the "Q" was not common. See, e.g., J. Lester Feder, "This is What It's Like to be an LGBT Syrian Fleeing for Your Life," *Buzzfeed*, 22 October 2015; and Lucy Westcott, "Gay Refugees Address UN Security Council in Historic Meeting on LGBT Rights," *Newsweek*, 25 August 2015.
4. "Protecting Persons with Diverse Sexual Orientations and Gender Identities: A Global Report on UNHCR's Efforts to Protect Lesbian, Gay, Bisexual, Transgender, and Intersex Asylum-Seekers and Refugees," *UNHCR*, December 2015.,
5. While most of the information and recommendations set forth in the UNHCR report pertain to LGBTI refugees generally, the report acknowledges that "further efforts to understand the plight of transgender and intersex persons of concern are necessary, considering that the majority of [field] offices indicated that these two categories are not represented in the data" offices reported to headquarters, on which the report was based; ibid, at 55. More specifically, of the 106 UNHCR global offices that participated in the study, over 60 percent noted that bisexual and transgender persons were "not represented in the data they reported"; ibid, at 8.
6. "Mean Streets," Women's Refugee Commission. Gay and lesbian refugees consulted in WRC's research acknowledged transgender refugees face higher risks of violence due to a variety of factors, from having identity documents that discord with their gender presentation to encountering transphobia at every turn, in refugee and host communities, as well as in larger LGBTI communities. Also note that LGBTI refugees experience more isolation, violence, and restricted access to justice than other refugees, and that transgender refugees are especially at risk. See also "Protecting Persons," *UNHCR*, at 15, noting that "In some contexts, transgender and intersex individuals may also be subject to greater degrees of hostility than others of a diverse SOGI," and citing as an example the higher number of murders of transgender persons in certain regions.
7. See, e.g. Chasmar, "Germany Opens First Shelter for Gay Refugees."
8. Most consultations were conducted through an interpreter of local languages, as needed. In most settings, transportation

or an allowance was provided to refugees to facilitate access to the location of the group discussion or interview. Participants were provided with background information about WRC, the nature of the project, and the aims of the field assessments. Participation was voluntary, with opportunities for refugees to learn about the project before deciding whether or not to participate. Everyone who participated gave verbal consent at the start of each session, as well as permission for a note-taker to transcribe what was said. Participants who expressed an interest in receiving counseling or medical treatment were referred to appropriate service providers.

9. For more information on the project, including research methodology and findings related to other refugee subpopulations—e.g., cisgender women, men, children, and adolescents; persons with disabilities; and refugees engaged in sex work—see "Mean Streets," Women's Refugee Commission.

10. See also "Protecting Persons," *UNHCR*, at 27-28: field offices report LGBTI refugees are likely to face lower "levels of acceptance" in camp settings, manifesting in greater vulnerability to violence and discrimination.

11. Names have been changed.

12. See "Mean Streets," Women's Refugee Commission.

13. Ibid. The WRC concludes that, in general, urban refugees are frequently turned away for housing or forced to pay above-market rents by landlords who do not want to rent to "foreigners," and that due to resource limitations only a tiny fraction of refugees are eligible to receive cash assistance for rent and/or assistance in scouting housing options.

14. Public health and social science literature establishes the prevalence and typology of GBV risks encountered by those working in the commercial sex industry. See, e.g., K. Shannon and J. Csete, "Violence, Condom Negotiation and HIV/STI RiskAamong Sex Workers," *Journal of the American Medical Association* Vol. 304, No. 5 (Chicago: American Medical Association, 2010): 573-74; "UNAIDS Guidance Note on HIV and Sex Work," UNAIDS, 2012; Deering, K.N., A. Amin, J. Shoveller, et al., "A Systematic Review of the Correlates of Violence Against Sex Workers," *American Journal of Public Health* Vol. 104, No. 5 (Washington, DC: American Public Health Association, 2014): 42-54; and World Health Organization, "Violence Against Sex Workers and HIV Prevention," *Information Bulletin Series* No. 3 (2005): 1-2 (citing Cler-Cunningham, L., and C. Christerson, "Studying Violence to Stop It," Research for Sex Work Vol. 4 (Edinburgh, Scotland: NSWP, 2001): 25-26). See also World Health Organization et. al, "Addressing Violence Against Sex Workers," *Implementing Comprehensive HIV/STI Programs with Sex Workers: Practical Approaches from Collaborative Interventions* (Geneva, Switzerland: World Health Organization, October 2013).

15. In urban centers, host nation laws and social norms for sexuality and gender play a critical role in trans* refugees' exposure to violence. Even where having a diverse gender identity is not explicitly criminalized or proscribed by statute, laws of general application, such as public debauchery laws, are often used to detain, prosecute, and penalize trans* persons.

16. Consistent with humanitarian "do no harm" principles and UNHCR's overall protection mandate, some of these recommendations may be more suitably cast as minimum requirements. Additional recommendations can be found in "Mean Streets," supra note 2, including concrete recommendations for enhancing protection for all LGBTI refugees and for refugees engaged in sex work, as well as for improving the longer-term mainstreaming of trans*, lesbian, gay, and intersex refugees' rights, needs, and participation throughout humanitarian response.

17. In December 2015, UNHCR and the International Organization for Migration released a comprehensive, five-module, multi-day training package, *Working with LGBTI Persons in the Humanitarian Context*,

for all staff working with refugees, migrants, displaced persons, stateless persons, and other emergency-affected individuals. The extensive package includes a wide range of learning materials, webinars, and guidance for both participants and facilitators. As a next step, UNHCR must ensure these training materials are used and learning takes ground at the field level. At the same time, a shorter, practical directive is needed to guide staff currently struggling with how to approach day-to-day operational protection issues affecting trans* and other sexual and gender minority refugees. Appropriate responses to protection concerns will of course depend upon local contexts, but a concise blueprint of concrete steps to take—such as mapping referral pathways with trans-friendly host community organizations, adapting sample interventions, and vetting shelter options—is needed.

18. See "Age, Gender and Diversity Policy: Working with People and Communities for Equality and Protection," *UNHCR*, 1 June 2011: "UNHCR acknowledges and reaffirms that the complete realization of gender equality is an inalienable and indivisible feature of all human rights and fundamental freedoms. The systematic promotion of this principle in measurable results is essential to ensuring protection and durable solutions for . . . [persons] served by the Organisation."; "Age, Gender and Diversity Mainstreaming Forward Plan 2011-2016," *UNHCR*, 5 June 2012: affirming UNHCR's commitment to "addressing discrimination and inequality where we find it and to ensuring that we do not inadvertently contribute to further discrimination and injustice through the use of procedures and practices that fail to respond to inequalities caused by gender . . . " See also "Guidelines for Integrating Gender-Based Violence in Humanitarian Action," *Inter-Agency Standing Committee*, 2015: articulating a series of governing principles "linked to the overarching humanitarian responsibility to provide protection and assistance to those affected by a crisis," including the centrality of humanitarian actors using a "human rights-based approach" that promotes beliefs and norms that foster respectful, non-violent gender norms and a "survivor-centered approach," in which all survivors of GBV are treated with dignity, without feeling shamed or stigmatized.

19. A consultative meeting regarding the TRANSIT was held in Bangkok in July 2015, supported by USAID, UNFPA, UNDP, and the International Reference Group on Trans* and Gender Variant and HIV/AIDS Issues; In September 2015, UNHCR signed on to a joint statement with eleven other UN agencies, calling for an end to violence and discrimination against all LGBTI persons and affirming their rights.

The Other Side of the Mirror: Eating Disorder Treatment and Gender Identity

Evelyn Deshane

ABSTRACT

When transgender men and non-binary people are treated for an eating disorder, they are often not recognized as transgender since most treatment centers assume the patient is a cisgender woman. Because of this, transgender men and non-binary people are either forced to suppress their identities in order to receive treatment, or their gender dysphoria is misdiagnosed as distorted body image (also known as body dysmorphia). Dysphoria means "negative feeling" and links the patient's concerns with their body, whereas dysmorphia concludes the patient's problem is a delusion where they see something that is not there, such as fat. The diagnosis of body dysmorphia (rather than gender dysphoria) characterizes the patient's feeling of bodily discomfort as a problem of thought to be solved through a regime of therapy aimed at correcting body image and weight gain through a regimented meal plan. By not acknowledging other reasons why a patient may feel bodily discomfort, institutions risk a patient's future health and effectively erase transgender identity inside their walls.

As I illustrate through case studies and primary materials from North American clinics, eating disorder treatment and gender transition both use talk therapy and medical intervention as methods of treatment. Because of this similarity, amending policy forms for eating disorder clinics to neutral gendered language can be a way to diminish monolithic ideas of the eating disorder patient. By isolating the direct cause of each patient's bodily discomfort, a better understanding of future options—whether that includes gender transition or gender therapy—can be made available to them.

INTRODUCTION

When Kyle Lukoff called an eating disorder clinic, he was told they do not take men. When he disclosed he was a female-to-male transgender man who had started hormone therapy, one clinic finally accepted him for treatment. As he documents in his essay, "Taking Up Space," in the anthology *Gender Outlaws*, even after his arrival, the doctors at the clinic did not know what to do with his "special case."[1] After several conferences, they decided it was better for him not to disclose his gender identity and pass as a woman in the facility. After all, one of the doctors asked, "What does

this [transgender identity] have to do with eating disorder treatment?"[2]

Lukoff's essay demonstrates his inability to separate his eating disorder and his gender identity disorder, and the reluctance of the medical community to see the issues as related. For Lukoff, the typical transgender narrative of being born in the wrong body blurs with the stereotypical eating disorder narrative of wanting control. As Lukoff writes, "I wanted to lose weight, somehow believing that a loss of five, ten, or maybe fifteen pounds would soothe the discomfort I felt being present in my own skin."[3] When Lukoff tried to describe his urge to not be in his female-coded body, most doctors saw a woman who had become too thin and had low self-esteem, thereby trumping all feelings of gender dysphoria with instances of body dysmorphia.

These two psychiatric conditions are very similar; they both deal with the patient's relation to their body and how they perceive it. However, the treatments are different enough to cause significant damage to a transgender person's understanding of their own body, gender, and ultimate identity. For instance, later in Lukoff's life, after figuring out his identity and making the steps to transition, in order to receive treatment for his unhealthy eating habits, he was stripped of his masculinity inside institutional walls. As Lukoff writes, "When the director of the eating disorders ward told me not to disclose, I shut up. I ate my 'therapeutic snack' and participated in yoga, drew an ourorboros in art therapy, and didn't talk much about the eating disorder that landed me in there."[4]

Lukoff is not the only transgender person who has experienced this treatment and fundamental misunderstanding of their eating disorder. Canadian singer Rae Spoon documents similar feelings to their body in their memoir *Gender Failure*. "I stopped eating," Spoon writes. "I started to like the euphoric feeling I got when I threw out my lunch and ran on adrenaline the rest of the day."[5] As Spoon documents, not eating was their way of saying "I don't want to be here," where 'here' was the body they were in and the expectations that came with it.[6]

Spoon, like Lukoff, was declared female at birth (DFAB), but currently does not identify as either male or female. Spoon documents how transitioning in the typical way (female-to-male, using masculine pronouns, and accessing healthcare for trans men) did not fit in with their sense of self the way they'd hoped. Because of this experience, they titled their memoir *Gender Failure* in a tongue-and-cheek way to reclaim a sense of loss in not being able to find something that matches who they are inside. Their eating disorder symptoms and need to feel "lighter" reconceptualizes the typical gender dysphoria into something where the body is literally too heavy to bear.[7] Both Lukoff and Spoon demonstrate the significant disconnect between self and body that can occur in a patient with gender dysphoria, but they also document the medical institution's inability to see the complex nuances of gender and identity. Both of these factors together form the perfect storm of misdiagnoses and mistreatment in mental health practices for eating disorders and transgender health care alike.

In this essay, I explore the question that Lukoff's doctor posed: "What does [transgender identity] have to do with

eating disorder treatment?" My short answer is much like Lukoff's, where I can simply say "everything." In order to understand how someone responds to their body and its larger place in the world, examining gender is a must—especially when most symptoms of an eating disorder in DFAB people, such as amenorrhea and the loss of breasts and hips, mimic what hormone therapy can do for them during transition. Most medical practices in eating disorder clinics approach gender from a cisgender perspective, and without understanding the complex nuances of what gender identity means in relation to the individual who experiences it.

When a patient presents significant distress about their body, be it from the body being too fat or too feminine, they are often diagnosed as having a "disturbance of body image," also called body dysmorphia.[8] As I document, this diagnosis compromises the patient's perspective by removing their bodily autonomy, which is ultimately damaging for both transgender and cisgender patients alike. Treatment for both gender dysphoria and eating disorders is often a combination of medically sanctioned tests, scientific observations, and surgical procedures, in addition to talk therapy and other psychological approaches. As much as medical practitioners can objectively treat these serious symptoms and their effect on the body, the assumptions a practitioner or therapist has about gender will always influence the kind of treatment a patient is given, as Lukoff's and Spoon's cases both illustrate throughout this essay.

By dismantling the binary system of gender division that takes place in many eating disorder treatment centers, the underlying assumptions health care professionals have about gender—and subsequently, their patients—can be called into question. If we want to have a better grasp of eating disorders and how they affect people, we need to broaden our understanding of what it means to have a gender and to have a body, and the possible futures available to patients after recovery. Much of this means changing the language we use to describe eating disorders to terms that do not pathologize the patient's perspective and strive to use neutral terms when dealing with gender so it is not inherently linked to biology. If doctors and health care practitioners can go beyond treating the surface symptoms of an eating disorder and interrogate the functionality of the patient's actions, alternative methods of treatment (which may include gender transition) can be listed as an option in the future.

DIAGNOSING THE PROBLEM

Most depictions of eating disorders surround a monolithic idea of a perfection-seeking, usually white and upper middle class, type-A personality, young woman. She starves herself by eating little and/or counting calories because she wants to be "perfect." Her idea of perfection usually surrounds beauty, though there are other cases where achievement and perfection are linked. In *The Best Little Girl In The World* by Steven Levenkron, Kessa longs to be a perfect ballerina and starves herself excessively to achieve this goal.[9] Marya Hornbacher's *Wasted* demonstrates the need for obtaining perfection through achievement, both bodily and intellectually.[10] It is no surprise these two books remain some of the most popular nonfiction reads about eating disorders, since they

both fit both these paradigms so nicely.

Doctors and medical institutions create and facilitate treatments based on this idealized perfection-seeking patient. For instance, most eating disorder treatment centers do not allow magazines because it could be damaging or triggering for the patients undergoing treatment, effectively acting as "thinspiration" for beauty-seekers.[11] Many treatment centers give lessons about media-manipulated images and parrot back daily affirmations about how beautiful the patient is on the outside, as well as on the inside. Many of the treatments in eating disorder clinics, like the type Lukoff visited, use yoga or relaxation therapy to help calm patients with type-A personalities who may associate thinness with productivity. Many treatment centers shape their practices with a unilateral idea of what it means to be an anorexic: white, thin (dangerously so), and a cisgender woman

The "trans" in transgender means "across" or "beyond," and designates a difference in identity than what a person has been declared at birth. Cisgender is the opposite of transgender; the term is derived from the Latinate prefix "on the same side of." Earlier in this essay, I referred to Rae Spoon and Kyle Lukoff as having been declared female at birth (DFAB). This term, along with its counterpart declared male at birth (DMAB), designates the first instance of misgendering in the medical institution for many transgender people. Saying "declared" affirms that these people did not get the chance to choose their gender, but consequently had that gender thrust upon them.[12] Lukoff and Spoon, though they are both DFAB transgender people, do not have the same gender identity. Lukoff is a transgender man, meaning he has gone "across" to the other gender, whereas Spoon identifies as non-binary, as something "beyond" what they were declared at birth. Both have had the same perception of their birth sex (female) thrust on them. As a result, Lukoff notes, "While I didn't *like* being read as female, it was at least predictable and understandable."[13] To the larger outside world, both of them appeared female, until they began speaking up and voicing their discomforts.

These differences are important to understand in order to differentiate transgender people from those who are intersex or cisgender. Intersex people are born with physical differences in their genitals and/or chromosomes, and must deal with another level of medical intervention and social issues. Cisgender and transgender people, however, look physically the same when they are born. As a transgender person grows older, the disconnection between their internal sense of gender and their physical body grows and becomes more obvious to them. A transgender person must declare they are transgender or long to be a different gender; without that declaration, it is impossible for the outside world to tell they are different.

In transgender author Julia Serano's book *Whipping Girl*, she documents the nuanced way transgender people experience their internal gender difference. Instead of a typical sex-gender dichotomy, Serano posits a threefold approach, where there is sex, gender, and something she calls "subconscious sex," which is an "intrinsic, self-understanding" of one's sexual embodiment.[14] To Serano, "cissexuals tend not to notice or appreciate their own subconscious sex because it is concordant with their physical sex (and therefore, they tend to

conflate the two)."[15] In contrast, a transgender person is constantly at odds with their subconscious sex, since it does not match up with their outside body. These feelings of disconnect fuel the "wrong body" narrative as Serano explains. For Lukoff, his subconscious sex is of a man. For Rae Spoon, it is of something else entirely.

With these differences in mind, let us imagine Lukoff when his eating disorder first manifested in his teen years. He dwindles away to a size zero and shows up for treatment. However, as for most transgender people in their teens—especially during the 1990s when this occurred—there was little access to the word "transgender" and what it meat; all Lukoff had was a "discomfort [from being] present in my own skin."[16] Lukoff's discomfort is felt by many transgender people and categorized as gender dysphoria, the leading symptom when diagnosing gender identity disorder (GID).[17] However, for gender-variant teens or adults in eating disorder treatment centers, the dysphoria can be categorized as "disturbed body image," one of the leading symptoms for anorexia nervosa.[18]

To a medical practitioner, these feelings of discomfort appear the same because transgender people and cisgender people physically appear the same before transition. But by failing to question why someone like Lukoff feels discomfort in his own skin and therefore resorts to restricting, the medical practitioner, and the institution as a whole, have made a sweeping assumption that everyone they treat is a cisgender woman with a distorted body image. It's here—where dysphoria is categorized as dysmorphia—that the problem begins.

DYSPHORIA AND DYSMORPHIA

The root of the word dysphoria is Greek and translates to "difficult to bear." When a patient is presented with "gender dysphoria," it means their gender is causing them distress, to the point where they are unable to function as they currently are. There are several ways to categorize dysphoria. Social dysphoria is distress caused by how others view the transgender patient's body; misgendering from being unable to pass as the desired gender is a common examples, where passing is the act of being read as cisgender. Body dysphoria is distress caused by the state of a transgender person's body, usually because their genitals or other secondary sex characteristics do not match the typical view of what a man or woman possess. These dysphorias end up demonstrating how the patient's subconscious sex is at odds with their physical body, and like Serano notes, are the major reason why transgender people pursue surgery and gender transition.

In her essay "Undiagnosing Gender," Judith Butler notes that in order to receive treatment for gender transition, patients *need* to be diagnosed with dysphoria.[19] Butler critiques the medical system for this requirement, since it forces transgender people into a perpetual dilemma. In order to obtain treatment for surgeries that will align their "subconscious sex" with their physical ones, transgender people must undergo intensive, and often invasive, therapy before they can be diagnosed. This diagnosis is often quite necessary, as these surgeries are expensive and require institutional approval for governments or insurance providers to help share the cost. Some doctors also refuse

to perform the surgeries, even if the patient has the funding, unless a psychiatric doctor has signed off. In order for the transgender patient to be physically seen the way they wish to be, they must first admit that they are mentally unhealthy—which, as Butler notes, can have devastating psychological consequences, especially in the hands of the transphobic.[20]

The term dysphoria differs greatly from dysmorphia. Body dysmorphic disorder (BDD) is a mental illness in which a patient is "preoccupied with their appearance, thinking that they look abnormal, ugly, or deformed," and often seeks to soothe this feeling of distress through repeated tasks.[21] In much of medical literature, however, BDD is separated from eating disorders. This may seem counterintuitive since most of western's cultural perception of anorexia nervosa stems from a component of body dysmorphic disorder called "disturbed body image."[22] When a patient sees themselves as fat, but are actually underweight, doctors refer to this as the same "disturbed body image" that Jon E. Grant and Katherine A. Phillips acknowledge in their article about BBD.[23]

The connection between body dysmorphia, disturbed body image, and eating disorders has not been forgotten in popular media. In *The Best Little Girl in The World*, Kessa consistently and repeatedly confronts a fatter vision of herself when she looks in the mirror.[24] Her reality—in Steven Levenkron's depiction and the medical institution's assessment of it—is inaccurate. Her perception cannot be trusted and is therefore labeled as pathological. The image of the eating disorder patient in front of a mirror that displays two separate realities is so common in public service announcements (PSAs) for anorexia (as seen in Figure 1) that it has become its own trope.

All of these depictions posit the patient in the same way: as the wrong party, the "crazy" party, and ultimately,

FIGURE 1

A screencapped image from a PSA on anorexia called "The Mirror." One of many examples of the eating disorder mirror trope, where the patient sees the fat self on one side and the audience is shown the waifish reality on the other.

the person/perception to be "fixed." The other side of the mirror, where the "real" picture of the patient resides, is represented by an underweight physique. The underweight body is not the same one we see in glossy magazines or depicted in fashion shoots wearing a size zero. Instead, the underweight body is a malnourished one that needs to be saved by a medical institution and treatment centers. The negative connotations for the other side of the mirror are never questioned because it is assumed to represent reality.

Many eating disorder treatment centers focus on both therapeutic and medical treatments; they diverge away from a sole talking cure, instead blending it with a number of other medical tactics, such as heart monitoring, blood testing, and weight management. Lukoff notes the hybridity of these treatments when he describes his "therapeutic snack."[25] In Lukoff's example, the eating disorder center treats food, which must be taken into the body, the same way as therapeutic confession, where negative thoughts and attributes of the disorder must be dispelled. To treat an anorexic patient, their body and mind is turned inside out; they are expected to explain why they have become this way and at the same time confess how they were able to accomplish it. Patients are also told when, where, and what to eat and usually do so under intense supervision. Many facilities have timed eating schedules and strict caloric requirements. When a patient is unable to ingest all of their food, they are forced to eat through a gastrointestinal tube that covers the mouth and goes into the throat.[26]

Many eating disorder treatment programs require that patients undergo both a psychiatric evaluation and a medical one before being discharged. The medical diagnosis usually corresponds to a healthy heart rate and blood work, along with a specific weight goal, determined through body mass index calculations. The institution's focus on numbers and weight privileges one version of reality, or side of the mirror. Weight control and constant measurement—usually seen as the domain of the eating disorder patient—are now handed over to the doctors, nurses, and care workers. Their opinions of weight and measurement are what is approved, not the patient's. Therefore, in order to achieve a clean bill of health, a patient must step to the other side of the mirror in order to be discharged. The patient must take on the medical institution's version of reality and accept it without thought, or else pay a heavy price in bodily autonomy.

The diagnosis of dysphoria, for all its problems in relation to gender transition (as I will discuss later), represents a better diagnostic label for the symptoms of eating disorders, simply because it privileges the patient's point of view. If we take a transgender patient and put them in the same PSA mirror trope, the ad would look very different. It would be Kyle Lukoff standing in front of a mirror. On reality's side, he is in a woman's body. On the other side, representing his point of view, he is a man. Gender transition takes the reality side and conforms it to Kyle's image of himself. Hormone therapy and surgeries can do this, but so can different clothing, name changes, and sex marker changes on licenses, birth certificates, and other government documentation. Transition allows the disconnection between self and body to heal, and it does so by privileging the patient's perspective.

TREATMENT OPTIONS

As Butler notes in her essay, the medical system creates an idealized transgender patient through its vetting process. A transgender person who wants to transition from male to female, or female to male, and is willing to "perform" that gender in all the culturally appropriate ways will end up receiving the needed diagnosis and the proper treatment within the medical system. Butler writes that this diagnosis

> makes assumptions about fathers and mothers, and what normal family life is, and should have been. It assumes the language of correction, adaptation, and normalization. It seeks to uphold the gender norms of the world as it is currently constituted and tends to pathologize any effort to produce gender in ways that fail to conform to existing norms (or, fails to conform to a certain dominant fantasy of what existing norms actually are). It is a diagnosis that has been given to people against their will, and it is a diagnosis that has effectively broken the will of many people, especially queer and trans youth.[27]

In this passage, Butler points out the way in which medical transition essentializes gender roles. She does not critique this to delegitimize the desire that drives people to transition, but instead to call out the medical system as the responsible party. It is not the patient's desire that is wrong, but rather how that desire is treated. Until the medical system develops new procedures and policies to treat transgender patients, Butler suggests embracing transition via the medical system "strategically."[28] Though patients should continue to use the model as it currently is because they have no better options, they should be fully aware of its problems and tendency to only promote the typical "success stories" of gender transition.[29]

These medically sanctioned transgender narratives, where the ending is always surgery, are often not obtainable or even desirable by many members of the transgender community. For transgender men in particular, the bottom surgery, in which doctors construct a penis and testes through implants and skin grafts, is often too expensive and invasive to be achievable—or desirable—as only 3 percent of transgender men have had the operation.[30] Many prefer to allow testosterone injections to elongate the clitoris instead, which will function as a suitable phallus. In some states and provinces, though, the bottom surgery must be completed in order for sex markers on social papers to change from female to male. Those who do not, cannot, or will not have the surgery are left in an incomplete limbo of gender. Some may be able to pass as men in daily life, but are unable to obtain a proper license.

For transgender people who do not identify as either male or female, they may not have a need for surgery whatsoever, which makes easing gender dysphoria, in a world determined to see two only genders, especially fraught. As Lukoff notes, "when my eating disorder resurfaced, both my life and my gender were indefinable."[31] Because an eating disorder can be a way to take control of life, when distressing gender symptoms came back—for example, an inability

to pass as a man in several instances—Lukoff returned to his prior habits. His state of feeling "indefinable" is common for transgender people, especially those who are DFAB and even more so to those who are denied treatment options for their gender. Low body weight due to anorexia and other disordered eating habits often lead to thinner hips, smaller breasts, and amenorrhea. Sometimes body hair can even become darker. Many of these symptoms are similar to the effects that testosterone has on the body. In typical eating disorder treatment centers, the lack of signs or onset of puberty in anorexic people is indicative of their fear of growing up. But this logic again assumes a cisgender woman patient.[32] If we broaden our definition of who an anorexic patient could be, then deliberately avoiding the signs of puberty can be synonymous with gender dysphoria and a way to either solve—or put off thinking about—what their gender could mean to the outside world and to their future.

Currently, the treatment of eating disorders by diagnosing a distorted body image actively works *against* the patient's perspective—and to their detriment. Treating eating disorders often makes the patient feel as if they cannot talk, that all the thoughts in their head are wrong, and in order to get out of the treatment center they must conform. When Lukoff states, "I shut up" in his treatment center, he speaks about his gender being stripped from him in the institutional walls, but he also articulates the deeply suppressing atmosphere of most eating disorder treatment centers, where even cisgender patients are silenced in similar ways. In an excerpt from a journal, a fifteen-year-old remarks on her treatment:

> Group ended five min[ute]s early and after I went to the washroom Kayla [a counselor] called me over. She's like "Oh no, don't worry, you're not in trouble. I just wanted to tell you something face-to-face." We were in the weight room and she pulled the green chairs closer together and we sat down. She went on at first about how she saw a part of me in group that she had never seen before. How I was a tough person but it's [sic] okay to cry and stuff. It was weird she was actually being nice and I didn't feel that authoritativeness when we talked. She was actually treating me equal, or it felt that way for a little at least. She asked me if I was okay and I said "Yeah . . . but I'm a bit upset about my weight." I started crying again at this point. And then she got on about me asking if I was scared to gain weight. I'm scared to lose weight—I don't wanna lose my summer by being in this place! And I want to be healthy. And she's like "I know you know you want to be healthy, but are you scared of gaining?" I paused and in a way I am because everything I've read says weight gain is hard but for me [but] it's good. She then said I was petrified of weight gain. I'm not petrified. I tried to tell her that I'm more worried about my weight now because I never used to run to the scale, so numbers don't really mean much to me. It's more so how I looked. She asked me how I looked and if I liked it. I said no, but she kept pushing it.

> It was like she wanted me to say yes, but I don't know anymore. I like my stomach flat but, gah, my bones stick out. I know that's not good or attractive. I don't know anymore. I'm so confused about what I feel or why or when. I just don't know.[33]

The entire exchange documented in this passage represents the anorexic patient's view on the world being torn from her. When the patient, who used the code name Diana, stated that she didn't want to look as thin as she was, the counselor Kayla repeatedly challenged this assertion until Diana caved. The exchange occurred in an empty room after group therapy, when Diana was already vulnerable, and while the patient "was crying again at this point."

By the end of the ordeal, there was no healing—only confusion—as the constant refrains of "I don't know" indicate. At its core, the diagnosis of a distorted body image distrusts the anorexic's view on the world with damaging consequences. If we start to view the discomfort felt by all eating disorder patients as dysphoria rather than dysmorphia, and label it as such, the patient's perspective on their condition will be given fair consideration. A simple change of terminology will allow for a more inclusive atmosphere for a transgender patient, but also allow for people's, like Diana's, perspective on their own body to be appreciated and heard, hopefully allowing them to be more responsive and receptive to medical and psychological treatments.

CONCLUSION

In this essay, I have argued that DFAB people who exhibit symptoms of eating disorders are often misdiagnosed with body dysmorphia or distorted body image, rather than gender dysphoria, and that their subsequent treatment often ends up further disconnecting them from the body they possess. A way to solve this is by having more doctors and treatment specialists trained to recognize when patients may have issues with their gender. Since many eating disorder treatment centers require an intake interview in which they question the patient on their bingeing/purging or restricting behavior, it would be easy to adapt the interview to include a gender history as well. That way, if a patient is present with gender dysphoria, which triggered their restrictive eating, they can be given access to the proper channels for gender transition and/or gender therapy. Moreover, eating disorder programs should be required to have a basic preliminary class or workshop on gender identity, similar to those many places already run on body image or the beauty myth.

Patient education could also play a key role. Both Lukoff and Spoon note that they had no idea there was a term for how they felt about their bodies until much later in their life, and after they did, were able to articulate their feelings with sudden clarity. This is a common experience for transgender people, especially those who are DFAB, since there is little representation of transgender men or non-binary identity. If we can educate younger teens who are hospitalized with eating disorders about gender and give them better language to express their feelings, they may be able to replace their feelings of being too fat with feelings of being too feminine (or alternatively, for transgender women

who are institutionalized, maybe not feeling feminine enough). This language may not solve their eating problems, but it will give them a new trajectory in their treatment. Furthermore, providing education to both health care providers and patients in an eating disorder program on the importance of hormones will help shape future treatment. DFAB patients experiencing amenorrhea often suffer from bone loss because hormones are needed for proper maintenance. Though many pamphlets discussing osteopenia (bone deterioration that is not as severe as osteoporosis) in eating disorder patients state that estrogen is required to maintain bone mass, this is technically not true—any hormone can be used to maintain bone mass.[34] Using neutralized language, hormones, rather than estrogen, will help to disentangle the biologically determined nature of most eating disorder treatment centers.

No one wants anyone to have an eating disorder. Eating disorders are one of the deadliest mental health illnesses and can affect people for years afterward. But for a young transgender kid still figuring out who they are, starving themselves into amenorrhea may be the only way they think they can escape the terrible dysphoria they feel when they get their period. If they see neutralized language explaining the importance of hormones, they might be more willing to engage in treatment with the understanding that in the future they may not have estrogen flowing through their body, but rather testosterone. Neutral language on admission, policy, and intake forms should also be used. In the west, an eating disorder is a heavily gendered condition and one of the ways to deconstruct our assumptions on who that patient is and what treatment they will need is to not divide patients up in the first place, be it a transgender man or woman, cisgender man or woman, or none of the above.

As both Rae Spoon and Kyle Lukoff illustrate, their eating disorders were both a coping mechanism for the world and a symptom of their gender dysphoria. By only understanding one motivation for an eating disorder, we risk isolating an entire group of people. Moreover, I have been arguing that the way we treat eating disorder patients, cis or trans, is deeply flawed through its construction of distorted body image present, since a diagnosis of dysmorphia does not allow for the patient to express their discontent with their body or their place in the world. Rather, this diagnosis works on deliberately silencing them, sometimes through very traumatic means. The concept of dysphoria as a feeling difficult to bear shifts the attention from the patient's inherent error in reality or pathology to the pain they suffer. There is no doubt that anyone, cis or trans, with an eating disorder suffers from something. That much is easy to comprehend, even for those of us who have never experienced disordered eating. Undergoing treatment should not be about antagonizing the suffering as wrong or illogical, but instead about finding a way to bear its burden.

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ENDNOTES

1. Kyle Lukoff, "Taking Up Space," *Gender Outlaws: The Next Generation*, eds. Kate Bornstein and S. Bear Bergman (New York: Seal Press, 2010): 153.
2. Ibid.
3. Ibid, 155.
4. Ibid, 157-158.
5. Rae Spoon, *Gender Failure* (Toronto: Arsenal Pulp Press, 2013): 115.
6. Ibid.
7. Ibid, 157.
8. Joan Jacobs Brumberg, *Fasting Girls: The History of Anorexia Nervosa* (New York: Plume Books, 1989): 11.
9. Steven Levenkron, *The Best Little Girl In The World* (New York: Grant Central Publishing, 1989): 6.
10. Marya Hornbacher, *Wasted* (New York: HarperPeren, 2006): 6-7.
11. Diana, e-mail message to author, 01 December 2013.
12. DMAB or DFAB is also sometimes referred to as AMAB or AFAB, where the "a" stands for assigned rather than declared. I've opted not to use this version because of outcry from the intersex community over the terminology. Because intersex people have often been assigned a gender through surgical means, the use of "assigned" as a metaphor for transgender people can be offensive. Alternatively, to differentiate the terms, some people will say "coercively assigned" to indicate an intersex surgery.
13. Lukoff, "Taking Up Space," 153
14. Julia Serano, *Whipping Girl: A Transsexual Woman On Sexism and the Scapegoating of Femininity* (Berkeley, California: Seal Press, 2007): 78.
15. Ibid.
16.. Lukoff, "Taking Up Space," 155.
17. Butler's article was published in 2004, when a diagnosis of gender identity disorder was needed to medically transition. In 2012, the DSM-V dropped the "disorder" and replaced the diagnosis with gender dysphoria. I've continued to use Butler's article because her critique of the medical system is still valid. Even when dropping the "disorder," a diagnosis is still medically

necessary and relevant in order to transition, which makes the patient's place as fraught as before.
18. Grant, Jon E., and Katherine A. Phillips, "Is Anorexia Nervosa a Subtype of Body Dysmorphic Disorder? Probably Not, but Read On…" *Harvard Review of Psychiatry* Vol. 12, No. 2 (2004): 123-126.
19. Judith Butler, *Undoing Gender* (New York: Routledge, 2004): 75.
20. Ibid, 76.
21. Grant, Jon E. and Katherine A. Phillips, "Is Anorexia Nervosa a Subtype of Body Dysmorphic Disorder? Probably Not, but Read On…"
22. Ibid.
23. Grant and Phillips do examine several morbid cases of BDD and anorexia in the same patient, but ultimately argue that although "these disorders overlap in intriguing ways, and in some cases are hard to differentiate . . . they should be differentiated clinically, primarily because they seem to respond differently to treatment."
24. Levenkron, *The Best Little Girl In The World*.
25. Lukoff, "Taking Up Space," 153.
26. Diana, e-mail message to author, 01 December 2013.
27. Butler, *Undoing Gender*, 77.
28. Ibid, 91.
29. Dan Irving, "Normalized Transgressions: Legitimizing the Transsexual Body as Productive," *Radical History 100* (Winter 2008): 40-57.
30. Paisley Currah, "Expecting Bodies: The Pregnant Man and Transgender Exclusion from the Employment Non-Discrimination Act," *Women's Studies Quarterly* Vol. 36, No. 3/4 (2008): 330-336.
31. Lukoff, "Taking Up Space," 153.
32. It can be difficult to discern with accuracy the amount of transgender patients in treatment centers for eating disorders because, as Lukoff's story indicates, many treatment centers do not acknowledge transgender identity (either as part of treatment or on the intake forms themselves). There is no doubt transgender people do receive treatment for eating disorders, but on paper, they may be assigned their birth sex as their gender identity, therefore making gathering statistics nearly impossible. There are a number of treatment centers that provide care for both men and women who have eating disorders, but they still assume a cisgender identity and body. The assumption that all patients, men or women, are cisgender is one of the major components I argue should be revised when treating eating disorders.
33. Evelyn Deshane "Fractured Lives: A Narrative Account of Mental Illness," *Hoax Zine* Vol 10 (2014): 20.
34. Diana, e-mail message to author, 01 December 2013.

A Paradigm Shift for Trans Funding: Reducing Disparities and Centering Human Rights Principles

By Masen Davis, Sarah Gunther, Dave Scamell, and Mauro Cabral

ABSTRACT

Trans movements have grown exponentially in the twenty-first century, yet trans organizing is deeply under resourced. By providing a snapshot of the state of trans organizing and funding, exploring the barriers of funding, and discussing a collaboration among activists and funders to counter these barriers, we argue that a shift in the funding paradigm must take place in order to sufficiently resource trans movements and advance trans rights. In addition to increasing funding for trans movements, funding decisions should be put in the hands of activists through participatory grant-making that enables them to decide how to resource their work.

INTRODUCTION

Trans resistance has a long and rich history, and a vibrant present. Many experiences we would today identify as trans have been documented throughout different epochs and cultures.[1] Throughout history, people embodying these experiences have faced diverse social, religious, legal, and scientific reactions, including a range of adoration, integration into community life, persecution, criminalization, and efforts at extermination. Resistance has resulted in the founding of political movements to confront institutional violence, affirm self-determination, and expand access to human rights.[2]

In the twenty-first century, trans movements have grown exponentially. As a result of the success of trans activism, human rights violations based on gender identity and expression are increasingly recognized at national, regional, and international levels. Yet, trans-led organizing is significantly under-resourced.

This article provides a snapshot of the current state of trans organizing across the globe, paying particular attention to the role of funding. By exploring the barriers restricting access funding and the recent collaboration among trans activists and human rights funders to counter these barriers, we demonstrate that a shift in the funding paradigm must take place in order to sufficiently resource trans movements and recognize the rights of trans people across the world. In addition to increasing

the amount of funding for trans movements, funding decisions should be put in the hands of trans activists through collaborative, participatory grant-making that embraces the agency of trans people to make decisions about how to prioritize and resource their work.

The last decade has brought forth the emergence of trans-led organizations in most countries of the world; regional networks articulating collective strategies in Europe, Latin America, Asia and the Pacific, and Africa; and international initiatives addressing issues such as violence, depathologization, and HIV. For example, the European Transgender Network (TGEU), founded in 2005, now comprises eighty-nine member organizations from forty-two countries.[3] The same year, activists from Latin American and some Caribbean countries created the network Red Lac Trans.[4] In 2009, ten activists created the Asia Pacific Transgender Network (APTN).[5] In Africa, several national organizations initiated regional projects, such as Gender Dynamix (founded in 2005) and Iranti-org (founded in 2012).[6] In 2009, the first trans global organizations and initiatives—the Global Action for Trans* Equality (GATE) and the International STP (stop trans pathologization) Campaign—were established.[7] A year later, in 2010, GATE organized the first trans-led international conference.[8] These trans-directed regional and international formations have played a critical role in building trans political agendas and solidarity across the globe.

Trans activists have played a central role in identifying, reporting, and denouncing human rights violations based on gender identity, gender expression, and bodily diversity, as well as demanding an intersectional understanding of the lived experience of trans people.[9] Indeed, as trans organizing has strengthened over the last decade, international and regional human rights mechanisms have increasingly recognized rights violations against trans people.[10] National institutions have passed legislation and ruled in favor of protecting trans people's rights through legal recognition, anti-discrimination, access to healthcare and employment, and reparations.[11] Trans activists have played a leading role in bringing about these protections by collecting data, testifying to support human rights claims and submitting written evidence to international human rights bodies, and creating the normative framework to address their communities' needs.

However, despite increased visibility and recognition, trans people and their organizations continue to face systemic socioeconomic vulnerability. Institutional and social violence against trans people is widespread across the globe. TGEU's Transphobia v. Transrespect Project documented 1,933 transphobic killings in sixty-four countries between 2008 and 2015.[12] Anti-trans bias affects black and brown trans people, trans indigenous people, trans sex workers, trans people who use drugs, and trans people living with HIV with particular brutality.[13] Trans people who are young, survivors of domestic abuse, homeless, migrant, displaced, and living in conflict or disaster zones are also disproportionately vulnerable to stigma, discrimination, and violence.[14] These negative dynamics are produced and reinforced through social structures including families, schools, and religious institutions. They severely impact trans people's wellbeing and access to education, employment, health, and housing.[15] In

many countries, trans people who want to change legal gender markers in their identity documents must be diagnosed as mentally disordered and undergo legal and medical procedures such as divorce, sterilization, and/or surgery. Where available, access to gender-affirming medical procedures is typically subject to medico-legal authorization based on pathologizing diagnoses, and is frequently restricted by lack of health coverage.[16] Further, the militarized prison industrial complex makes trans people a constant and vulnerable target for surveillance, harassment, and detention. For example, trans people, especially black trans women, are disproportionally represented among incarcerated prison populations in countries like the United States.[17]

Compounding this, trans movements face a number of challenges stemming from their positioning within the LGBT umbrella. Trans issues and leadership are often eclipsed by gay and lesbian issues and organizations; when aggregated as "LGBT," trans issues tend to occupy a relegated position.[18] Naturalized as a single and homogeneous population, power imbalances within the LGBT community tend to remain invisible and those occupying hegemonic positions are recognized as representatives of the imaginary collective. In many cases, LGBT aggregation has negatively impacted trans activists' access to resources. This has been particularly true in the field of HIV, where the relegation of trans women into the men who have sex with men (MSM) population has rendered invisible key challenges facing trans women impacted by HIV and AIDS.[19] In addition, trans people occupy few seats of power in governmental agencies, funding institutions, and research organizations. This particular "glass ceiling" not only limits trans leadership by reducing opportunities for development and professionalization, but also reinforces inequality and a persistent lack of attention to trans issues.

The economic challenges facing trans people and the marginalization of trans activism and leadership within LGBT organizations directly impacts the funding, capacity, and sustainability of transgender organizations. With many trans people living at or below poverty levels, and few trans people in the field of philanthropy or in formal leadership positions in LGBT organizations, trans-led groups tend to be at an economic disadvantage compared to gay and lesbian counterparts.

UNDERSTANDING FUNDING DISPARITIES: THE STATE OF TRANS ORGANIZING

In order to better understand the state of trans organizing and support of trans movement building, in 2013 GATE and the American Jewish World Service (AJWS) conducted a survey of trans organizations' access to funding. The survey of 340 self-identified trans and intersex groups paints a picture of the recent explosion of activism described above.[20] The majority of trans groups surveyed were less than ten years old, and almost a third were founded in the three years prior to the survey.[21] While many of these groups build on long cultural histories of trans communities, as well as experiences of participation and leadership in other social justice movements, this rapid increase in the number of formal trans-led groups represents a new formation of trans organizing.

There are now trans-led groups in every region of the world, each with a distinct ecosystem of trans organizing and a rapidly evolving landscape with new groups forming all the time.[22] Strikingly, nearly half (45 percent) of the trans groups that responded to the survey are not independent organizations, but rather programs of larger organizations with broader mandates beyond trans work.[23] This has significant implications on the ability of trans activists to make autonomous decisions about their work, particularly about how organizational money is spent. Only a quarter (26 percent) of these groups make most or all of the financial decisions about their work.[24] Close to a third (32 percent) share financial decision-making with the broader organization, and a full 42 percent report that they have little or no say in financial decisions.[25] This means that a large number of trans activists are constrained in using knowledge of their communities' needs and priorities to make decisions about how the funding aimed at benefiting their communities can be used.

Trans activists may sometimes find it strategic to work within larger organizations in order to access support, security, or resources. Indeed, trans groups that are programs of larger organizations are more than three times as likely to have paid staff as groups that are autonomous.[26] However, it is clear that being part of a larger organization is a barrier for trans activists to set their own priorities. This has particular weight for trans groups in the Global South, which are the most likely to be programs of other organizations and not in control of making their own financial decisions. It also has significant implications for trans women, who are 2.6 times more likely to be able to make decisions when they work in autonomous trans groups, versus those that are in programs belonging to another organization.[27]

The vast majority of trans groups surveyed in 2013 worked on two main issues: changing social attitudes about trans people and doing legal and policy advocacy to promote trans rights.[28] These priorities line up well with those of human rights funders. One major area of disconnect, however, remains trans groups' desire to expand their work to provide direct services—including health care—to community members. For many trans groups, particularly those working in poor resource areas, it does not make sense to draw a strict boundary between community organizing and service provision. In order to build a strong base of constituents and effective movements, connecting community members with access to services, including psychosocial support and health care, is critical. Unfortunately, human rights and LGBT funders supporting trans work tend not to fund social services.[29] In particular, trans groups find it next to impossible to find funding for gender-affirming health care, which is a priority for their members, and crucial to building stable organizations and sustainable activism. Support for livelihoods, employment, and economic justice is another under-funded but critical area.[30]

State of Trans Funding Globally

Globally, trans groups operated on scarce resources in 2013. More than half of groups had an annual budget of less than US $10,000; nearly 20 percent had no budget at all.[31] There are regional differences, though; for example, trans organizations in Central America and

the Caribbean were most likely to report having no budgets (40 percent).[32]

In 2013, trans-led groups had a significantly worse financial picture than non-trans-led groups, with a median annual budget of US $5,000 to $10,000.[33] Contrastly, groups that were not led by trans people had a median annual budget of $20,000 to $50,000 for their trans work. The same disparities exist for staffing and financial stability. While 84 percent of non-trans-led groups had paid staff, only 44 percent of trans-led groups did, and while 47 percent of non self-led groups had no savings, a full 72 percent of trans-led groups had none.[34] Trans-led groups cannot do the work needed to address the human rights violations their communities face with such limited capacity.

Groups doing trans work are severely under-funded across the board, with only half of surveyed groups receiving external funding. Again, trans-led groups had significantly less access to funding. Of all types of funding, these disparities were largest for foundation funding, with only 27 percent of trans-led groups receiving foundation grants, as compared to 41 percent of non trans-led groups.[35]

Trans groups also face significant barriers to access the limited funding available to them. LGBT funding regularly goes to LGBT organizations, which often have few or no trans leaders and limited commitment to prioritizing trans community needs. Groups do not know where to look for funding or how to contact donors, and application procedures are often long, complicated, and only in English. Trans groups also may not have the capacity to manage grants once they are received, deterring them from applying in the first place. Donor priorities do not match groups' needs, with some trans groups and other groups ineligible for funding because of their location or constituency.[36] This is a particular challenge for groups in high-income countries, despite the reality that trans people in these areas may face similar life experiences as those in poorer countries. Tans-led groups headed by men also reported problems accessing funding, most likely because they are not considered a key population affected by HIV-focused funders.[37]

Institutional donors face both strategic and administrative barriers to funding nascent and emerging groups, particularly across borders. Strategically, institutional donors may not be willing or able to take a risk on funding an issue or movement that has a relatively smaller track record than more established and better-funded issues or movements. Administratively, it is hard for private foundations to make grants to small international groups, since they often cannot meet donor compliance thresholds. While there is a global ecosystem of public foundations that exist to resource grassroots groups, demand from groups far surpasses the funding supply. For instance, in 2013, total global foundation funding on trans* issues was approximately $8.8 million, which is vastly insufficient to support the hundreds of organizations advancing trans* rights across all regions of the world.[38] Further, there are very few trans people working in philanthropy. This, no doubt, has an impact on the relative priority accorded to trans issues, compared to others, as well as some of the mismatch between donor and activist priorities. Lastly, donors may not understand trans issues or see the connections to their funding portfolios, even if they are

clearly related to violations facing trans communities (e.g. health or violence).

A parallel survey of thirty-eight funders in 2013 revealed several trends about funding for trans groups, including significant funding gaps for groups with trans leadership.[39] Trans funding appears to be growing, with 71 percent of donors having added at least one new trans group to their portfolio and one-third having added three to four new groups in 2013.[40] Yet, a quarter of respondent donors do not track information about whether the organizations they fund are led by trans people. Of those who do track this data, nearly two-thirds of donors said that all (35 percent) or most (38 percent) of the groups funded were led by trans people.[41] However, within the donor community, there is not a shared definition of what it means to be trans-led, making it challenging to evaluate progress and to hold funders accountable.

Unfortunately, the provision of general support and multi-year grants, two types of funding that enable sustained investment in trans organizations, remains limited. While half of donors made at least 50 percent of their grants as unrestricted or general support, more than a quarter of donors give no general support grants at all. More than half of donors provide no multi-year grants to trans groups, with only 19 percent giving most or all multi-year grants to trans groups.[42]

Interestingly, the donors who gave the fewest resources to trans work (less than $50,000) were more likely to support autonomous trans groups, while donors with the most resources ($500,000 or more trans-related grants) were more likely to make grants to LGBT organizations to work on trans issues.[43] This is likely a reflection of the ability of smaller public foundations to make grants to smaller trans-led groups, and their more frequently held political commitments to supporting self-led work. Overall, funders showed interest in learning more about opportunities to support trans movements, presenting an opportunity for funders and activists to collaborate to develop strategies to address the barriers.

Our analysis of this data suggests the current funding paradigm must shift in order to sufficiently resource trans movements to advance trans rights. First, it is critical that donors provide support to trans-led groups, rather than assuming LGBT groups will reflect the needs and priorities of trans communities. The extent to which a group's leadership reflects the community is a crucial indicator of whether the group is building the power of trans people and enabling them to set their own agendas. This matters because autonomous movements are a key driving force in making progressive social change and institutionalizing norms for international human rights at national levels.[44] We believe that funding is most effective when it aligns with the priorities and visions of the communities it aims to support. In order to truly realize the rights of trans people, money must be put directly in the hands of trans activists.

In order to achieve these goals, donors must make their funding accessible to trans-led groups, including those prioritizing the leadership of trans people who are further marginalized based on race, class, and other axes of oppression. Large donors who have structural constraints in making funding available to trans groups, many of which are small and lack the administrative capacity to

receive large grants, can partner with public foundations and other intermediaries who can more easily support grassroots trans groups. Funders who are able to more flexibly donate should further simplify and streamline their funding procedures, provide technical assistance to applicants, and give multiyear general operating support.

Finally, donors should apply the human rights principles of participation and self-determination to their funding practices. This requires creating opportunities for trans activists to inform donors and set funding priorities designed to improve the lives of trans communities. This can include a range of options, such as mapping landscapes of trans organizing to understand movement dynamics, engaging with activists to inform grant-making strategies, and handing over philanthropic power to participatory funding mechanisms in which trans activists make decisions. Donors have an exciting opportunity to partner with trans activists to make their funding more responsive, and we believe, more effective.

A STRATEGY FOR CHANGE: COLLABORATION BETWEEN FUNDERS AND ACTIVISTS

The principles of participation, transparency, and accountability are fundamental to the international human rights framework. Numerous human rights treaties and documents establish the right of all persons to participate in decision-making processes that impact their ability to fully realize their human rights.[45]

Human rights funders (including private and public foundations, as well as governments) play an important role in the success of human rights movements. Yet, tension often exists between the commitment of funders to human rights principles and the way the field of grant-making works. Decisions about funding priorities (such as geographical and thematic focus), which determine the movements and organizations that will have the opportunity to access grants, are typically proposed by a funder's program staff, and approved by a board or senior management.

There are multiple factors that influence grant-making decisions. Donors seek to have the biggest impact possible with their funding, which means field evidence and input is central. However, human rights movements rarely play an active, influencing role in the decisions of funders. Nor do funding institutions always publish information about their grant-making strategies and portfolios, for reasons ranging from grantee security concerns to a desire to keep strategies private.[46] In addition, while they may feel accountable to the fields that they fund, foundation staff members are ultimately accountable only to their organizational hierarchies.

Since 2012, trans activists and funders have collaborated to reduce the gap between the funding needed to advance trans rights and the insufficient resources available. This collaboration has sought to challenge traditional power dynamics between funders and activists by striving for greater participation of trans activists in decision-making about funding for trans rights, increased transparency among funders committed to trans issues, and greater accountability of funders and activists to the movements they support.

The field of trans grant-making is only about a decade old.[47] In order to in-

form this nascent field and make the case for increased funding on trans issues, GATE and AJWS worked together in 2013 to produce the "State of Trans and Intersex Organizing" report described above. At the same time, the Open Society Foundations, Wellspring Advisors, and GATE began discussing the need for greater coordination and collaboration between activists and funders.

These discussions led to the organizing of the first global dialogue among funders and activists working on gender diversity. In 2013, trans and intersex activists and funders met in Berlin for a meeting called Advancing Trans* Movements Worldwide. The objectives were to enable funders to learn from activists about the human rights issues facing trans and intersex communities across the world (activists came from eleven countries and five continents); allow activists and funders to identify and disable barriers blocking access and resources to address these issues; and, most importantly, strategize about needed steps to increase the amount and the effectiveness of future funding to trans and intersex movements.[48]

The meeting was a collaboration between funders and activists for a few reasons. First, trans movements have historically been denied the ability to effectively participate in funding discussions that impact them. Second, the significant under-funding of trans movements and the severity of the human rights violations they sought to address accentuated the power imbalance existing between funders and grantees. Lastly, activists and funders held complementary expertise, and both needed to advance a conversation on resourcing trans activism.

The organizers took a number of steps to challenge power between funders and activists, and facilitate effective participation of trans activists in the meeting. Trans activists, representing the majority of organizing committee members, led in creating an open call for activists to participate and designing the meeting agenda.[49] Given that most of the activists selected to participate had zero or limited experience meeting with funders, each participant had the opportunity to access coaching from a professional communications consultant prior to the meeting. Activists also arrived early in Berlin for a pre-conference strategy meeting. While these steps required labor-intensive meeting preparation, they resulted in a more open and dynamic learning space, with diverse, well-informed, and motivated activists playing a central role in defining the agenda and ensuring donor participants left with a greater understanding of the needs and priorities of trans and intersex movements.[50]

By the end of the meeting, trans activists and funders had identified recommendations to increase and improve funding to trans movements, including establishing mechanisms for ongoing learning and collaboration, conducting a trans movement and issue mapping in order to better inform donor coordination and investment, and exploring the possibility of a global fund for trans activists.[51] Just as importantly, Advancing Trans* Movements Worldwide established interpersonal relationships between funders and activists, and solidified the principle that efforts to expand the field of trans funding should be achieved through funder and activist collaboration and be based on the needs and priorities articulated by trans movements.

Activists and funders meet again in Istanbul in 2015 to explore the feasibility of establishing an international fund dedicated to trans issues.[52] Participants had a difficult task. The success of any potential fund would require it to be seen as legitimate and beneficial by diverse trans movements across the globe and to have the support from a group of funders operating within different decision-making structures. Unlike in Berlin, where the discussion included broad recommendations for the field, the conversation in Istanbul was focused on a potential initiative to which funders in the room would be asked to contribute.

Funder and activist participants at the Istanbul convening reached a consensus that "the development of an international trans fund is both possible and recommended" and, more importantly, that, guided by trans leadership and decision-making, the two groups would work together to create the fund.[53] To ensure that trans activists would continue to lead in establishing the fund's priorities and approach, the committee formed to develop the fund was chosen to be at least 80 percent trans-identified and 80 percent activist. The committee has since commenced work to create the fund, with a plan to have an activist-led international trans fund in place in 2016, providing resources for trans activism by 2017.

The values and principles agreed upon by funders and activists for the international trans fund reflect the rights-based outcomes that can occur when collaboration between donors and movements is prioritized. The new activist-led fund will be built around trans leadership and decision-making. It will be flexible and responsive to the needs of trans communities, transparent and accountable to those communities, and prioritize the right of trans people to self-determine the best ways to address the human rights violations they face.[54] In a few short years, activists and funders have not only forged principles for a field of grant-making based upon participation, transparency, and accountability, but they've also committed to the establishment of a funding vehicle through which these principles can be exercised.

CHANGING THE PARADIGM

It will take several years to know if the creation of a collaborative fund will successfully reduce funding barriers for trans groups, increase access to resources, and strengthen trans movements worldwide. There is, nevertheless, growing evidence to suggest that participatory grant-making can play a transformative role in civil society, especially among emerging and marginalized communities. A 2014 Lafayette Practice review of eight international participatory grant-making funds suggests that the transformative potential of participatory grant-making transcends dollars alone. While the $3.6 million annually invested by these funds has been important to the historically marginalized groups they support—including sex workers, HIV-positive young people, and disability rights activists—the Lafayette Practice found the benefits of collaborative funds include flexibility in funding, access to capacity building for activists, and increased impact overall.[55] In addition to giving grants, "[t]he funds see themselves as contributing to the creation of cohorts of well informed leaders that leave panel participation better networked, more fully informed,

and often, with a better understanding of the grant-making process and particularities of how funding decisions are made."[56]

The importance of these non-financial impacts can be seen in trans activists' initial recommendations for the international fund's goals, which include increasing the resources available to trans-led organizations, providing capacity building support (such as skills building, coaching, and technical support), creating a mechanism to support an ecosystem of trans groups with a focus on small and emerging groups, and becoming a thought leader on trans-related investments within the philanthropic sector.[57]

The addition of a trans activist-led fund to the existing philanthropic landscape could reduce many of the barriers identified in the 2013 GATE and AJWS report. For example, having a dedicated trans fund could ensure a baseline of funding for autonomous trans organizations, allowing trans-led groups to flourish without having to compete with LGBT groups. Even if the fund created relatively small grants, it would provide a known and trusted entry point to help trans groups build relationships with donors while learning the basics of grant-seeking. Grant application and reporting guidelines could be streamlined, simplified, and accessible in multiple languages, with support available for first-time grant seekers. Trans activists, avoiding the mismatch between activists' needs and funders' priorities, would set the fund's grant-making strategy. Finally, the process of developing a collaborative fund, including securing commitments from larger foundations and bilateral funders, holds the promise of introducing new and larger donors to trans activism and, in time, increasing overall resources available to the field. It is critical that a new fund not simply reallocate resources, but also bring new resources into the field, expanding the pool of available funding for all groups.

Trans communities around the globe face systemic challenges, from poverty to pathologization and violence. We have seen unprecedented activism improve the rights, wellness, and the safety of trans people. It is critical that the resources available to trans organizations begin to match the scale of tasks before them. Changing the dynamic of funding represents one critical step forward in building and sustaining strong trans movements for the work ahead.

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Davis was also an integral part of the coalition that helped pass California's School Success and Opportunity Act, which ensures transgender students have access to facilities and activities that match their gender identities, and he led the campaign to defend the new law against an anti-LGBT referendum effort. A social worker by training, his writing has been published in various books and journals, including Sexual Orientation and Gender Expression in Social Work Practice and New Directors in Student Services. Masen received his master of social welfare from

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Currently, Davis serves as interim co-director for global action for Trans Equality and consults with non-governmental organizations and foundations on a range of transgender issues. He is a 2015-16 Regents' Lecturer at UCLA and an advisory board member of the John F. Kennedy School of Government at Harvard University's LGBTQ Policy Journal.*

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Gunther joined Astraea in 2013 after serving as the director of Africa programs at American Jewish World Service (AJWS), where she oversaw grant-making to grassroots organizations pursuing sexual rights, natural resource rights, and civil and political rights in Africa. She also played a key role in developing AJWS's global sexual rights strategies with a focus on LGBTQI rights, trans justice, and sex worker rights.

Prior to joining AJWS, Gunther managed livelihood programs in East and West Africa at Trickle Up and worked in Uganda with grassroots activist groups. She holds a BA in feminist, gender, and sexuality studies and African American studies from Wesleyan University and is pursuing an MA in human rights studies at Columbia University.

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Prior to joining AJWS, Scamell was a program officer for the Open Society Public Health Program's Sexual Health and Rights Project. In his four years at Open Society Foundations (OSF), he supported civil society to advance the health and rights of transgender and sex workers communities across the world. Scamell led OSF's grant-making and operational portfolios on access to justice for sex workers, sex work decriminalization, legal gender recognition, access to healthcare for transgender persons, and fund leveraging to increase resources for the transgender movement.

Scamell sits on the board of directors for Global Actions for Trans Equality and the executive committee of the Global Philanthropy Project, where he also co-chairs the Trans Working Group. He holds a master's degree in international human rights law from the University of Essex and a bachelor's degree in political science and international relations from the University of New South Wales.*

Mauro Cabral *is an activist and writer from Argentina. He serves as the director of advocacy and programs at Global Action for Trans* Equality (GATE), where he leads its initiative on the reform of the International Classification of Diseases. He also collaborates as senior advisor to the intersex fund at Astraea. Prior to co-founding GATE, Cabral was part of Mulabi – Espacio Lationoamericano de Sexualidades y Derechos, where he directed its projects on institutional violence against trans peo-*

ple and intersexuality and human rights. From 2005 to 2007 Cabral worked as the coordinator of the Latin American Trans and Intersex Program for the International Gay and Lesbian Human Rights Convention.

At this moment he serves as a board member at Akahatá, and participates in numerous consultative boards, including those of the LGTB program at Human Rights Watch, Dignity for All, and the International Day Against Homophobia and Transphobia. He is also a member of the International Reference Group on Trans Issues and HIV at the Men Who Have Sex with Men Global Forum, and of the AIS Working Group on Key Affected Populations.

In 2006, Cabral participated in the production of the Yogyakarta Principles on the Application of the International Human Rights Law to Sexual Orientation and Gender Identity. In 2009, he edited the book Interdicciones. Escrituras de la Intersexualidad en Castellano.Cabral received his .icentiate degree in history from the University of Cordoba, and from 2001 to 2009 he lectured on bodily and biotechnological issues. In 2015 he received the Bob Hepple Equality Award.

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32. Frazer and Howe, Growing Trans* Funding and Strategy, 13.
33. As a proxy for trans* leadership, which is challenging to assess in an online survey, the GATE-AJWS survey used financial decision-making as a proxy indicator of power, leadership, and authority in a group. Groups that indicated most financial decisions are made by trans* people were coded as "self-led."
34. Eisfeld, Gunther, and Shlasko, The State of Trans* and Intersex Organizing, 16.
35. Ibid, 18.
36. Ibid, 22.
37. Ibid.
38. Frazer and Howe, Growing Trans* Funding and Strategy, 35.
39. Of the thirty-eight donor respondents

reached with the online or phone survey, twenty-three were public foundations (including elven women's funds), twelve were private foundations, two were bilateral donors, and one was a multilateral agency. In addition, 95 percent of the donors reported they funded trans* groups in 2013.
40. Frazer and Howe, Growing Trans* Funding and Strategy, 39.
41. Frazer and Howe, Growing Trans* Funding and Strategy, 37.
42. Frazer and Howe, Growing Trans* Funding and Strategy, 38; The reluctance of foundations to give general support and multi-year grants is a sector-wide challenge, not unique to trans* funding. According to the National Committee for Responsive Philanthropy, the average foundation share of giving coded as general support is 21 percent; Jagpal, Niki, and Kevin Laskowski. "The State of General Operating Support," May 2013; Even more dismal, the average foundation share of multi-year grants is 4 percent. Jagpal, Niki, and Kevin Laskowski, "The State of Multi-Year Funding," The Philanthropic Landscape, May 2013.
43. Frazer and Howe, Growing Trans* Funding and Strategy, 36.
44. Htun, Mala, and S. Laurel Weldon, "The Civic Origins of Progressive Policy Change: Combating Violence Against Women in Global Perspective, 1975-2005" The American Political Science Review Vol. 106, No. 3 (Cambridge: Cambridge University Press, 2012): 548-569.
45. See, for example, Article 25 of the International Covenant on Civil and Political Rights (ICCPR) and the Vienna World Conference on Human Rights Declaration and Programme of Action.
46. Several philanthropic sector initiatives are working to promote greater foundation transparency. See "Talking About Transparency," Glasspockets, a project of the Foundation Center, n.d.; "Opening Up: Demystifying Funder Transparency," Grant Craft, 2014.
47. A 2013 survey of nineteen donors currently or formerly interested in funding on trans* issues found that only half had been funding in this field prior to 2008, with the Astraea Lesbian Foundation for Justice having provided the first trans grant in 1994. Source: Global Action for Trans* Equality and Open Society Foundations, Advancing Trans* Movements Worldwide: Lessons From A Dialogue Between Funders & Activists Working on Gender Diversity (New York: GATE and OSF, 2014).
48. Global Action for Trans* Equality and Open Society Foundations, Advancing Trans* Movements Worldwide.
49. The call for presenters at the meeting was widely distributed to listservs, websites, and social media in English, French, Russian, and Spanish; Supra note 2, 24.
50. Supra note 2, 24.
51. Global Action for Trans* Equality and Open Society Foundations, Advancing Trans* Movements Worldwide, 1.
52. As a result of a February 2015 meeting with intersex activists who attended the 2013 Berlin convening, an early decision was made to limit the scope of a fund to trans* issues. The intersex representatives felt it was important to support separate intersex-specific funding initiatives.
53. Masen Davis, International Trans* Convening: A Meeting for Funders and Activists Working on Gender Diversity, Istanbul, May 19-22, 2015 (New York: Global Action for Trans Equality, 2016): 6.
54. Ibid, 7.
55. The Lafayette Practice, Who Decides: How Participatory Grantmaking Benefits Donors, Communities, and Movements (Paris: The Lafayette Practice, 2014).
56. The Lafayette Practice, Who Decides, 11.
57. Davis, International Trans* Convening, 8.

ABOUT THE LGBTQ POLICY JOURNAL

The *LGBTQ Policy Journal* at the John F. Kennedy School of Government at Harvard University is a student-run, nonpartisan review dedicated to publishing interdisciplinary work on policymaking and politics impacting lesbian, gay, bisexual, transgender, and queer (LGBTQ) communities and individuals. The *LGBTQ Policy Journal* published its first edition in the spring of 2011, and it is the only student-produced LGBTQ journal in the nation. At the journal, we strive to improve the quality of public policies affecting LGBTQ communities by furthering reflection and debate on the complex economic, political, and social consequences of public policy regimes for LGBTQ persons. We celebrate diversity, embrace controversy, and promote equality for all.

Our Mission: To inspire thoughtful debate, challenge commonly held beliefs, and move the conversation forward on LGBTQ rights and equality.

WRITE FOR THE LGBTQ POLICY JOURNAL BLOG

The *LGBTQ Policy Journal* staff welcomes contributions from LGBTQ activists, academics, and allies to submit content to be included on our blog (www.hkslgbtq.com). Submissions may take the form of research, reviews, interviews, or dialogues; recounting or retelling of advocacy surrounding policy change; and/or art and personal expression.

How to Submit a Proposal

Please submit your full first draft with all citations to *lgbtq_journal@hks.harvard.edu*. In the email, please include the following information:

- Full name, affiliated organization (if selected, this will be included on our website with your piece)
- Links to any previously published materials

Submission Requirements

Authors will be notified immediately upon receipt of a submission, and contacted again within two weeks if we are able to continue forward with your proposal. If your proposal is accepted, an editorial board member will work with you to refine the submission to meet our standards for publication. Please note our publication parameters:

- Length of 500 to 1,000 words, but we can be flexible
- Authors must disclose if the content has been published in the same form elsewhere
- Authors are required to cooperate with editing and fact checking and to comply with journal standards

Selection Criteria

The *LGBTQ Policy Journal* will select blog submissions for publication based on the following criteria:

- Relevance of topic to LGBTQ policy issues and timeliness with current policy debates
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- Sophistication and style of argument(s)
- Contribution to scholarship and policy-making on LGBTQ issues

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