

# Shadow Report on Governmental CEDAW

## Human rights of Transgender people in Taiwan

### Reporting Group: Transgender Punk Activist<sup>1</sup>

Contact: [transpunk2012@gmail.com](mailto:transpunk2012@gmail.com)

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跨性別倡議站

*Transgender punk activist*



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<sup>1</sup> This report was authored by Chen Weizhen (founder of Transgender Punk Activist, trans-woman, and graduate student in Department of Philosophy of National Chengchi University) and translated into English by Dr. Linda Gail Arrigo with an English translation grant from Foundation for Women's Rights Promotion and Development. Thanks for many friends' assistance in discussion and English editing.

## **1. The reporting organization: Transgender Punk Activist**

Transgender Punk Activist was established in September 2012, and in July of the following year it convened an NGO conference on law and gender issues in Taiwan. The realm of transgender issues — the term “transgender” mainly describes transsexual and gender non-conforming persons — is indirectly related to but not directly the same as lesbian, gay, bisexual and intersex issues.

## **2. The historical background of recognition of transsexuality**

Medicalization of transsexuality finds its origins in 19<sup>th</sup> century modern biology and sexology. Subsequently in the 1960’s American psychologists developed the western conception that it involved “the angst that in the individual’s mind and body their social *gender* did not correspond with their biological *sex*”, and later established medical centers on hormone replacement therapy and sex reassignment surgery.<sup>2</sup> In the 1980’s, for the first time, “transsexualism” was included within the contents of the Third Edition of *The Diagnostic and Statistical Manual of Mental Disorders* of the American Psychiatric Association.<sup>3</sup> In Taiwan the first case of a person requesting a sex change was reported in the media in 1976, along with related responses among medical and governmental agencies. But it was not until the year following the ending of martial law in 1988 that the government allowed persons to change the gender designation in their identity cards, with the condition that two certificates of psychiatric diagnosis had been obtained and that sex reassignment surgery had been completed.

In the past, understanding of transsexual issues in Taiwan was shaped by traditional Chinese folk customs and culture, with the significance that “male” and “female” indicated the biological characteristics that were consistent with “man takes a wife, woman given in marriage”, and other related gender social norms and value systems. In addition, the belief that “advanced medical treatment can change biological sex” was framed within this, with the ideology that “progressive” medical techniques can rescue “poor” transsexuals. Moreover, after the year 2000, the developing perspective of human rights was framed in woman/LGBTI social movements and in legal precedents and legislation throughout the world, and the definition of gender was expanded to encompass characteristics beyond biological sex, specifically gender identity and behavior of daily life. In this regard, there was new emphasis that gender identity was part of the basic human right to human dignity (as enshrined in Article 8

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<sup>2</sup> Joanne Meyerowitz. *How Sex Changed: A History of Transsexuality in the United States*. Harvard University Press, 2004. Chapter 3-4, pp. 98-167.

<sup>3</sup> It was named “gender identity disorder” in DSM-IV(1994), and later named “gender dysphoria” in DSM-V (May, 2013).

of the European Convention on Human Rights), and that this was threatened by weaknesses in protections in the fields of employment, education, health, and social environment.

“Gender identity” gradually came to be utilized together with “sexual orientation” as core terminology in the fields of law and international human rights, and widely applied in human rights reports for the United Nations and European Court of Human Rights<sup>4</sup>, etc., as well as in national legislation around the world. The distinctions as well as the parallels between the two terms are important, however. “Sexual orientation” involves the sexual and intimate relations in homosexual, heterosexual, bisexual or asexual unions; “gender identity” involves the anxiety and alienation that is experienced when self-feelings of gender differ from the sex at birth of the individual, and it is compounded in the social vulnerability that is experienced by persons who undergo the *transition* from one gender to another (such as male-to-female, termed “trans-woman”, or female-to-male, termed “trans-man”).

Taking terminology into account, “transsexual” refers to a person whose own *gender identity* not in accordance with the sex they were assigned at birth, and therefore the person is living in transition, though it does not necessarily entail medical transition. For “gender non-conforming”, it refers to a person whose *gender expression* is different from gender social roles associated with that sex (it is irrelevant to gender transition). The term “transgender” refers both to gender identity and gender expression.

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<sup>4</sup> Below: Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states *on measures to combat discrimination on grounds of sexual orientation or gender identity* ; *Human Rights and Gender Identity Issue Paper* by Thomas Hammarberg, Council of Europe Commissioner for Human Rights ; *Guidelines to promote and protect the enjoyment of all human rights by lesbian, gay, bisexual, transgender and intersex(LGBTI) persons*, Council of the European Union, June 24, 2013; Report of the United Nations High Commissioner for Human Rights, *Discriminatory Laws and practices and acts of violence against individuals based on their sexual orientation and gender identity* (A/HRC/19/41)(2011); United Nations, Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*. (February, 2013); Ministerial Declaration on *Ending Violence and Discrimination Against Individuals Based on Their Sexual Orientation and Gender Identity*, September 26, 2013; The United Nations Development Programme (UNDP), "*Discussion Paper Transgender Health Rights*", December 2013; European Parliament report *on the EU roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity* (2013/2183(INI)).

The above-mentioned transsexuals who are faced with difficulties on legal recognition, often are requested to undergo unnecessary forced sterilization (with no health insurance coverage), and transsexuals are often faced with violence, unemployment, homelessness, no health coverage, etc. It is recommended Ratifying Governments through legislative, administrative or all appropriate practice provide legal recognition, anti-discrimination and other measures to improve the situation of transsexual people.

Among the three international covenants that have already been transmuted into domestic law in Taiwan, the International Covenant on Civil and Political Rights (ICCPR), Article 2 and 26<sup>5</sup>, have particular implications for gender identity. These implications have also been reflected in Concluding Observations reached in Germany, England, Ireland, and elsewhere.<sup>6</sup> And in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), General recommendation No. 28 (2010), Point 18, among the intersectionality reasons listed, gender identity<sup>7</sup> is one element that can increase vulnerability for particular groups<sup>8</sup>; for example, trans-women and trans-men face also the onus of the general violence against women and homophobia in addition to the particular transphobia. The act and practices that institutions treat transsexual persons show many cultural, prejudices and customary on stereotyped roles for men and women, violating Article 5(a) of CEDAW. General recommendation No. 28, Points 18, on phenomena of indirect discrimination, even more deeply reflects that transsexuals have been excluded in nearly *all aspects* from the concern and protection of official policies, because their numbers are very small and they have been accorded recognition relatively recently.

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<sup>5</sup> *Guidelines to promote and protect the enjoyment of all human rights by lesbian, gay, bisexual, transgender and intersex (LGBTI) persons*, Council of the European Union, June 24, 2013.

“Item 16. Legal measures, such as anti-prostitution laws, nuisance laws, and prohibition of so-called ‘cross-dressing’, may also target gender variant and transgender persons, and be used by law enforcement personnel to prosecute transgender persons on the basis of their gender identity or gender expression. Transgender persons whose identity documentation does not reflect their preferred gender may be hampered in seeking access to justice, where their rights have been violated.”

“Item 20. Appropriate identity documents are a pre-requisite to effective enjoyment of many human rights. Transgender persons who do not have identity documentation in their preferred gender may as a result be exposed to arbitrary treatment and discrimination at the hands of individuals and institutions. No provision is made in some countries for legal recognition of preferred gender. In other countries, the requirements for legal gender recognition may be excessive, such as requiring proof of sterility or infertility, gender reassignment surgery, hormonal treatment, a mental health diagnosis and/or having lived in the preferred gender for a specified time period (the so-called ‘real-life experience’).”

“Item 21. Such excessive provisions or practices are contrary to the right to equality and non-discrimination as stated in Articles 2 and 26 of the International Covenant on Civil and Political Rights (ICCPR) and Article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).”

<sup>6</sup> E/C.12/DEU/CO/5 ; CCPR/C/IRL/CO/3 ; CCPR/C/GBR/CO/6 ; CEDAW/C/SR.881.

<sup>7</sup> General Recommendation No. 28 of CEDAW. “Item 18. Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men. States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them.”

<sup>8</sup> General Recommendation No. 20 of ICESCR. “Item 27. [...]These additional grounds are commonly recognized when they reflect the experience of social groups that are vulnerable and have suffered and continue to suffer marginalization.” and “Item 32. [...]In addition, gender identity is recognized as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the workplace.”

Concerning measures anti-discrimination legislation, there is only the Gender Equity Education Act that specifically lists gender identity, and the Gender Equality in Employment Act and Employment Services Act that only lists sex and sexual orientation.

### 3. Response to the governmental report on CEDAW

This report serves as a response to Points 16.5 to 16.6 of the Republic of China(Taiwan) government's Second State Report (special article) on CEDAW, Article 16, published on December 2013<sup>9</sup>, which involves issues such as transgender persons' rights, legal gender recognition (re-designation of legal gender), forced surgery, requirements for certain counseling, and privacy in official documents. (Precisely, these don't concern Article 16; it shows how ignorance and ignore of our government.)

### 4. Issues of legal gender recognition for transsexual persons (on CEDAW Article 2 & 15)

Legal gender recognition means that the gender identity of an individual or the gender personality in real daily life can be legally re-designated, and can fully receive recognition and protection under the law.

In Taiwan, the household registration system and the National Identification Card with its single personal identification number system is the hub of identification in *all dimensions of life*: national health insurance, driver's license, passport, student identification card, employment, communications, financial systems, police dragnets and searches, etc.



Many countries do not have such a universal and unified system of single identification; Taiwan's system is a continuing artifact of the authoritarian Japanese colonial system and also martial law. For transsexuals who have already transitioned their gender expression in daily life, to expose an identity card that does not match with their gender identity and their outer appearance and life reality is an exposure that invades their privacy. It will directly lead to facing embarrassment, emotional turmoil, and humiliation, or even to more serious consequences such as loss of employment, poverty, and violent attack. The system of legal gender recognition should be improved together with concrete measures, and at the same time.

<sup>9</sup><http://www.gec.ey.gov.tw/Upload/RelFile/1419/706898/16e9d223-c094-4b19-a26b-11012400fdb4.pdf>

In international trends, countries which through legislation or administrative order have already loosened restrictions and stopped force surgery for the re-recognition of legal gender include: United Kingdom (2004), Spain (2007), Austria (2009), Hungary, Poland, Portugal (2010), Estonia, Belarus, Argentina (2012), Uruguay (2009), South Africa (2003), Australia (2013), and others; and in Germany (2011), Sweden (2012), Holland (2012), South Korea (2013) and the Canadian province of Ontario (2012) there have already been suits brought through to the supreme courts to declare unconstitutional infringement on rights.

As for Taiwan, in November 3 2008 the Ministry of the Interior issued Document *No. 0970066240*:

In regards to household registration agencies dealing with documents for determining change in sex, in order to register the change,

1. For transsexuals applying for recognition as a woman changed into a man, they must present two diagnostic affidavits from doctors with the specialty of psychiatry, as well as certification issued by an accredited medical institution that the individual has already completed surgery removing female sex organs, including breasts, uterus, and ovaries.

2. For transsexuals applying for recognition as a man changed into a woman, they must present two diagnostic affidavits from doctors with the specialty of psychiatry, as well as certification issued by an accredited medical institution that the individual has already completed surgery removing male sex organs, including penis and testicles.

Although the regulation has been changed from requiring reconstruction of the genitals as the opposite sex, to merely removal of the genitals, the present requirement is still a serious infringement on human rights, whether in law or in physical practice. Gender identity falls within human dignity, among fundamental rights; in Europe it is found in the European Convention on Human Rights, Article 8, and in our nation it is protected by Article 22 of the Constitution of the Republic of China. In the tension between individual rights and public order, the principle stands that limitations on the rights of individuals must be in accordance with proportionality. The document *No. 0970066240* also violates the principle of legal reserves.

According to a special report to the United Nations Human Rights Council,

Many countries request that transsexuals receive surgery that they ordinarily would not want to accept, as a precondition for legal recognition of the gender that they prefer.

Clearly this seriously violates Article 7 of the International Covenant on Civil and

Political Rights.<sup>10</sup> Changing gender in documentation obviously has no relation to criminal concepts; Taiwan does not criminalize cross-dress behavior. Seen from every angle, changing legal gender indeed requires undergoing some disposition of the body. But this has no basis in law or human rights; it is clearly just because social/culture practice is set as the norm, similar to the inhumane practice of female circumcision. No matter whether it is performed in order to change gender certification or out of autonomous need, genital and breast surgery is seen as a “resolution of a personal predicament” uncovered under the national health insurance and must be paid for in full by the individual, with expense as high as US\$13,000 (which would require three years’ savings with above-average income, plus incurring the social risk for this period) – in effect transferring the social cost to the individual to bear. Genital surgery is not necessarily a condition for transsexuals to achieve their self-realization, spiritual comfort, practical life, and intimate relations (it is only one among many conditions). Moreover, it incurs economic costs and bodily harm; it hits the limits of technological skills, and yields consequences such as the inability to reproduce. The administrative process for changing legal gender is in its nature just within the natural rights of a citizen. Therefore the inappropriate requirements for documentation of gender change should be reconsidered immediately, and the right to legal recognition of gender should be affirmed.

## **5. Education (on Article 10)**

According to the 2011 Report of the United Nations Office of the High Commissioner for Human Rights, “Item 60. Isolation and stigmatization create depression and other health problems, spurring absenteeism, skipping classes, and dismissal or dropping out of school. In extreme cases, it may lead to planned or actual suicide.”<sup>11</sup> Young transsexual and gender non-conforming people, either little boys or girls, tend to be sunk in alienation from their own gender and mired in despair. In interpersonal social relations they may tend towards introversion, with low-key and reserved expression, keeping their distance and shrinking from contact, in order to protect themselves. They may avoid physical education classes, group reports, student clubs, and departmental activities that involve overnight stays. The gender designation cannot be changed on student identification until a gender change is recorded on a transsexual’s national identity card. A student would need a psychiatric evaluation and certification “gender identity disorder” in order to be given permission to wear the uniform of the gender different

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<sup>10</sup> United Nations, Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (February, 2013), point 78.

<sup>11</sup> A/HRC/19/41(2011)

from his identification card.

School authorities usually cite “pressure from other students’ parents” as the excuse for imposing unreasonable treatment on transgender students, such as requiring them to come out of the closet, i.e. go public, or use specially-designated washrooms. They are often subjected to interpersonal violence such as bullying or pulling down their pants, or they may even be accused of sexual harassment. Even in cases seen on college campuses, transsexual students may have no energy left to put into their studies, and repeatedly take leave from school, change schools, take examinations to enter other schools, or be expelled. For those in high school and below, facing the common environment of bureaucratic conservatism and group activities, many transsexuals drop out and leave school, and are basically unable to complete high school, which in our country is a general requirement for employment.

## **6. Employment (on Article 11)**

Based on newspaper reports, in recent years there have been at least four transsexuals who have committed suicide.<sup>12</sup> Those who are in the process of transforming from one gender to the other usually face the highest level of social conflict. In January 2011, a trans-woman surnamed Zhou who worked as an engineer sued Mackay Memorial Hospital for gender discrimination in unwarranted dismissal from employment.

The employment conditions for transsexuals are most affected by the two factors of class and the process of transition. Those who are most vulnerable are those with: *education level* of vocational high school or lower (often because of a history of school yard bullying), *rural*, and *living away from home* (they must live independently and shoulder the economic burden). In particular, *youth* transsexual people who are lacking in professional skills, and given the vicious cycle that goes with their immaturity and “low gender capital” (shortage of skills and resources in their new gender expression), with the only jobs available to them being in irregular forms of employment in the low-income, sex work, atypical employees, unemployment etc., where they live at high risk to personal safety and in poor economic conditions.

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<sup>12</sup> A male-to-female named Lin Guo-Hua (林國華) suicide in a hotel on May 7, 2002. A male-to-female named Cai Ya-Ting (蔡雅婷) committed suicide by jumping in front of a train on Dec. 11, 2002. A female-to-male named Yu-Hao (宇皓) committed suicide in August 2008. A college student committed suicide on Dec. 28, 2010, because of being unable to live with his own gender identity.

## **7. Medical treatment for transsexual persons (on Article 12)**

The government in effect hands the matter of legal gender recognition over to the medical system, to determine under medical discretion. But this “difficult social question” exacerbates the subsequent loss of direct medical resources for transsexual issues. Due to traditional Chinese avoidance of the issues plus the fear of being sued, medical personnel who deal with psychiatric evaluation, hormone therapy, and surgery have gradually one after another terminated their services for transsexuals. At present a relatively complete range of services are only available from a few doctors in the capital and north of Taiwan, while they are seriously lacking in central, south, and east Taiwan. In recent years gender identity disorder/gender dysphoria has not always been covered by the national health insurance, which may indicate their ignorance about it, and the costs of services outside of genital surgery (diagnostic evaluation, counseling, testing, hormone medications, group therapy and voice training) have one by one been excluded from national health insurance coverage.

The directives for psychiatric evaluation, “resolve the individual’s problem, while precluding after-regrets”, seem to be good-willed, but actually the process is full of cultural prejudices, lengthy, seemingly endless, and fraught with power relationships inequality. The evaluation process generally contains diagnostic methods that have nothing to do with gender identity disorder/gender dysphoria, such as asking about content of sexual fantasies, sexual and love partners, relations with parents, childhood experiences, and traumatic experiences. The main evaluation center in north Taiwan mandates that the individual must participate in group therapy, and this is a requirement necessary for obtaining certification. The psychiatric evaluation process often uses the male/female standards of the general society, such as stereotypical impressions (e.g. whether those who feel they are actually trans-woman played with dolls when they were children, and are heterosexually attracted to men), to ascertain whether the individual’s physical and other conditions make him/her suitable for entering into the another gender. This violates the CEDAW covenant, Article 5(a). More seriously, in Taiwan issuing the certificate of diagnosis again and again requires the approval of parents, even if the individual has long since reached adult age. This entails great pain for some transsexuals and may prolong the process endlessly, violating equality before the law (Article 15 of CEDAW).

Argentina (2012) does not require any medical evaluation, and only calls for application by an administrative procedure. According to the European Council document “Addressing Discrimination Based on Sexual Orientation or Gender

Identity” (2010), Point 35,

Member nations should take appropriate measures to ensure that transsexuals can effectively obtain suitable sex reassignment services, such as psychological, endocrinal, and surgical expertise, etc., concerning transsexual health care, and no one should be subject to unreasonable treatment; moreover, no one should be subject to procedures for sex reassignment without his or her consent.<sup>13</sup>

To quote the European Parliament “on the EU Roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity”, Recommendations Point 11,

(The EU)...calls on the Member States to take appropriate measures to ensure that transgender people in particular have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender healthcare, without being subject to unreasonable requirements<sup>14</sup>.

The CEDAW covenant, General Recommendation No. 24, Point No. 21, emphasizes that the materials and accessible of nearby health should be improved, and that obtaining the permission of spouses and parents should be avoided. Certification of gender as well as health requests should be choices fully autonomous under the law, and should be accorded adequate health resources.

## **8. Public space for transsexual persons**

Anyone has the right to nearby public toilet facilities with gender-binary. Nearby unisex toilet are not just a beneficial division for transsexuals, but are for everyone. It is suggested that Article 37 of the Construction Technical Specifications be amended to specify toilets without gender designation, in proportions and with detailed provisions as in the California Act AB1266 (2013) concerning accessible washroom facilities, for protection of students up to high school level, based on their own choice of gender identity.<sup>15</sup>

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<sup>13</sup> Council of Europe, *Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity*. 31 March 2010. <https://wcd.coe.int/ViewDoc.jsp?id=1606669>

<sup>14</sup> <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&mode=XML&reference=A7-2014-0009&language=EN>

<sup>15</sup> [http://leginfo.ca.gov/pub/13-14/bill/asm/ab\\_1251-1300/ab\\_1266\\_bill\\_20130812\\_chaptered.pdf](http://leginfo.ca.gov/pub/13-14/bill/asm/ab_1251-1300/ab_1266_bill_20130812_chaptered.pdf)

## 9. Social security for transgender persons

Those with various sexual orientations or gender identity/expression are enmeshed in many kinds of vulnerabilities, and under the current system it is difficult to protect them. For example, under Taiwan's Social Assistance Act, the household is taken as the unit for measurement of low income, and emergency assistance mainly uses traditional concepts of social welfare in defining vulnerability.

## 10. Violence for transgender persons

Chinese social culture does not have an obvious pattern of hate killings, but young transsexuals and those of various gender expression still may face *domestic violence* from their parents; Taiwan's domestic laws relating to protection of children do not have appropriate measures to deal with this. Trans-women in *sex work* may be beaten by their male clients when her gender at born is discovered, but even if this occurs, transsexuals are unlikely to seek aid from the legal system and will choose to cover up the incident, because in certifying injuries, police reporting, and court systems, they are likely to meet with embarrassment and violation of their privacy on gender at born.

## 11. Mass media treatment for transgender persons

Police reports given to the media are used as amusing consumer items in so-called news coverage. In ordinary cases of theft or being caught in a police check for drunk driving, the general cisgender persons involved will not appear in the news. But if a transsexual is the subject of the case, the police system will notify the mainstream media to produce a "society news report", and police even will pull up the clothing of the transsexual for the reporters to photograph.<sup>16</sup>



Source: AppleDaily (TW), 30 March 2013

## 12. Privacy of Identity Documents for transsexual persons

Even if a person has already registered a legal gender change in their household

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<sup>16</sup> <http://www.appledaily.com.tw/appledaily/article/headline/20130330/34920479>

registration documents, the “Household Registration Transcript” in the government documents system retains a column in which the change of name and identification number are noted, and there is no way that this can be completely expunged. Further, because the police communications system which is called “M-Police” (2010) has electronic access to the household registration system, one faces the possibility of being outed on the occasion of any routine police check. We suggest adding backstage functions to the household registration system, and regulating limits of authority to access personal gender-sensitive information.

### **13. Marriage for transsexual persons (on Article 16)**

Although in Civil Code it is not written that the marriage couple is to be composed of one male and one female, the conservatively-oriented interpretation of governmental administration tends to perform as a “marriage gatekeeper”, which forces the transsexual to obtain marriage only under the condition of both sides being in the legal genders of one male and one female. An *abuse of authority* case in July 2013, concerning a couple surnamed Wu, the legal status of the transgender couple’s marriage in Taiwan was suspended by the Ministry of Interior until consideration of the result of their sex reassignment surgery. The finding was that they are both female, so their status supposedly violates the terms of marriage in Taiwan (though there are no written legal regulations regarding either gender efficacy in registration or in terms of marriage).<sup>17</sup>

We proclaim our support for marriage equality advocated by Taiwan Alliance to Promote Civil Partnership Rights<sup>18</sup>, in terms of gender-neutralizing legal requirements for marriage; and likewise regulations on the best interests of the child for adoption should incorporate non-discrimination on sexual orientation and gender identity for the adopters.

### **14. Reproductive rights for transsexual persons**

Many transsexual people who want to have their own consanguine children will store their sperm/ovum before undergoing medical sex-transition (including cross-sex hormone therapy and genital surgery). But under the terms of the current Artificial Reproduction Act, artificially-assisted reproductive technology can only be applied

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<sup>17</sup> "Gender queer and proud", *Taipei Times*, July 22, 2013.

<http://www.taipeitimes.com/News/feat/archives/2013/07/22/2003567867>

<sup>18</sup> <http://tapcpr.files.wordpress.com/2013/10/e5a99ae5a7bbe5b9b3e6ac8a1003.pdf>

with the condition of heterosexual marriage; i.e., homosexual or transsexual people, who are not permitted legal marriage, have no eligibility to apply for it. We proclaim our support for the demand of Taiwan LGBT Family Right Advocacy that access to artificially-assisted reproduction should be allowed to all legally adult individuals, with mutual consent but without involving any third side surrogacy.

## **15. Refugee status for transsexuals persons**

According to the report of November 3, 2013, by *Apple Daily* in Hong Kong, a trans-woman named Sasha, who had applied for asylum without success and consequently lost status as a Ph.D. student in Taiwan, had suffered unreasonable restraint and humiliation at the hands of Customs in Hong Kong.<sup>19</sup> We proclaim our support of the Refugee Bill Submissions by Taiwan Association for Human Rights<sup>20</sup>, which proposes to cover considerations of gender, sexual orientation and gender identity, and they should be legalized as soon as possible.

## **16. To participate in government policy and policy transparency (on Article 7)**

Although Taiwan has a progressive policy agenda, with the Executive Yuan's Gender Equality Committee plus gender equality committees at every level of official institutions, as well as in schools (all schools have gender equality associations) and appeal mechanisms concerning employment (in local labor bureaus), still transgender people do not constitute a sizeable enough group or meet other qualifications (such as being professor) to be represented on committees.

Enjoying the benefit of review of Taiwan's compliance with the two international covenants, from 2013 on Taiwan transsexual NGOs have had the opportunity for policy dialogue with the Ministry of Education, the Ministry of Health and Welfare, and the Executive Yuan's Gender Equality Committee. However, there are still more difficulties in dealing with the Ministry of Interior. In the 2013 review of ROC compliance with the two international covenants, in Point 20 of the Concluding Suggestions<sup>21</sup>, as well as in other Concluding observations<sup>22</sup>, it was pointed out that

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<sup>19</sup> <http://hk.apple.nextmedia.com/news/art/20131103/18491211>

<sup>20</sup> <https://www.tahr.org.tw/node/1233>

<sup>21</sup> “[...]and a range of other areas appears generally to be undertaken primarily on the basis of internal analysis by ministerial-level task forces and other such mechanisms, with minimal participation by those affected.”

<sup>22</sup> Concluding observations of CEDAW, Germany, 2009 (CEDAW/C/DEU/CO/6), point 61 to 62.

the government has serious blockages in dialogue channels on transsexual issues. We urge all agencies to establish convenient mechanisms for dealing with issues of the disadvantaged, even outside of citizens' groups, in order to realize civic participation with a democratic spirit, and to avoid sacrificing peoples' rights through one-sided decision-making.

## 18. Conclusions and Recommendations

Before this report was completed, Interior Ministry officials refused to take administrative responsibility by repeatedly giving responses such as "Gender legislation involves the medical profession, and this is supposed to be taken care of by the Ministry of Health and Welfare rather than Interior Ministry."

We solemnly assert that legal gender is only subject to the operation of autonomy by an individual citizen, and accordingly it should be rendered full protection by the nation, and not violate human rights by compulsory medical treatment.

We make the following recommendations:

- A. For securing *legal gender recognition* the Taiwan government should *immediately* set an administrative or legislative timetable to secure *legal gender recognition* to protect transgender people. **Specifically, the mandatory requirement of compulsory sterilization should be abolished, and the norm of psychiatric medical evaluation should be decreased.** Moreover, specific regulations should be written down to secure the rights of transgender groups in terms of privacy of identification papers, employment, education, health, social protections, etc.

Legislation should conform with the International Covenant on Civil and Political Rights Items 2, 7 and 26 on equality, *avoid forced medical intervention, counseling or acquisition of some other person's agreement*, and entail full execution of deliberative democracy in the policy process. We recommend the Taiwan government take reference of certain relevant models

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"Cooperation with non-governmental organizations 61. The Committee notes with satisfaction the cooperation of the State party with civil society organizations, particularly women's organizations, which is mostly achieved through government cooperation with such organizations on specific programmes and projects. The Committee regrets, however, that the call for dialogue by non-governmental organizations of intersexual and transsexual people has not been favourably entertained by the State party. 62. The Committee requests the State party to enter into dialogue with non-governmental organizations of intersexual and transsexual people in order to better understand their claims and to take effective action to protect their human rights."

in the legislative structures of England, Argentina, and Australia<sup>23</sup> so as to propose a governmental legislative draft which opens dialogue with people affected and improves the situation. Government should not avoid cooperation by claiming some excuses such as appealing to results of outsourced research, public questionnaires, or seeking so-called “social consensus.”

- B. *Anti-discrimination* in gender, sexual orientation, gender identity, and gender expression should be expressly enshrined in current legislation such as the Gender Equality in Employment Act, Employment Services Act, the Social Assistance Act, and the Housing Act, as well as in legislation pending in the national legislature such as the Refugee Act and the Gender Equality Fundamental Act.
- C. In terms of concrete applications in *employment, education, medical management* and *privacy of household registration system*, government and every institution should be responsible for proper communication and close cooperation with citizen non-governmental organizations of transgender people in order to execute their services well and effectively. In order to enhance acknowledgement and operation of transferring networks for specific of transgender people, guidelines of environment inclusion and editing manual should be concerned.
- D. In terms of *social security*, we request that the standard for qualifying low-income households under the Social Assistance Act should take the factual living status of an individual into account. In addition, the government should consider providing short-term life support programs in cases of sexual orientation, gender identity and gender expression (SOGIE) intertwined with vulnerable conditions (such young, homeless, unemployed, etc.). Hence these measures would be designed to fulfill the intention of CEDAW No. 28, regarding infusion of gender identity issues into public policy, reducing indirect discrimination, and improving substantive equality accordingly.

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<sup>23</sup> Gender Recognition Action in UK(2004). <http://www.gires.org.uk/GRA.php>  
Gender Identity Law in Argentina(2012). <http://globaltransaction.files.wordpress.com/2012/05/argentina-gender-identity-law.pdf>  
Australian Government Guidelines on the Recognition of Sex and Gender(2013). <http://www.ag.gov.au/Publications/Documents/AustralianGovernmentGuidelinesontheRecognitionofSexandGender/AustralianGovernmentGuidelinesontheRecognitionofSexandGender.doc>