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# Emerging Issues: A Global Analysis: Legal Recognition and Equal Treatment of Transgender Citizens

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## A Global Analysis: Legal Recognition and Equal Treatment of Transgender Citizens

Madison H. Kyger\*

Transgender individuals across nations have been subjected to a range of restrictive barriers, which limit their legal recognition of fundamental rights and protections.<sup>1</sup> These obstacles place a stigma on transgender individuals, subjecting the community to a wide range of discrimination.<sup>2</sup> These boundaries range in severity; some countries simply impose restrictions of use for certain facilities, while other countries resort to physical abuse.<sup>3</sup> Recently, certain countries have enacted laws to give transgender members the same legal recognition that other citizens are afforded while other countries fail to accept the transgender community and continue to uphold restrictive barriers.

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2. *Id.* (“All these institutional and individual barriers are designated as *cisgenderism*, which entails the ideology and practices that delegitimize the self-perception of transgender and gender diverse people, their body and gender identity.”). Kyle Knight and Neela Goshal, *World Report 2016: Rights in Transition*, HUMAN RIGHTS WATCH (2016), <https://www.hrw.org/world-report/2016/rights-in-transition> (“The requisite procedures may subject applicants to humiliating and harmful treatment [.] These negative consequences of seeking legal gender recognition seriously and harmfully limit individuals’ ability to access crucial services and live safely, free of violence and discrimination.”).
  3. *See Judge Blocks Transgender Bathroom Law in North Carolina Case*, CBS NEWS (Aug. 26, 2016, 5:53 PM), <http://www.cbsnews.com/news/judge-blocks-transgender-bathroom-law-in-university-of-north-carolina-case>; Nicole Crowder, *Seeking Home: The Lives of Gay and Transgender Asylum Seekers of the Middle East*, THE WASHINGTON POST, (March 31, 2015), <https://www.washingtonpost.com/news/insight/wp/2015/03/31/seeking-home-the-lives-of-gay-and-transgender-asylum-seekers-of-the-middle-east>.

In the U.S., the expansion of the transgender community has sparked debate over legal gender recognition. In 2016, states have dealt with controversial issues regarding what facilities and services transgender persons are entitled to, and if their fundamental rights are being deprived.<sup>4</sup> There has been considerable debate about whether these regulations impede on the rights of U.S. citizens.<sup>5</sup> On March 23, 2016, North Carolina enacted the House Bill 2 (hereinafter “HB2”)<sup>6</sup>, requiring students to use the bathroom based on the gender they were assigned at birth as opposed to the gender they identify for themselves.<sup>7</sup> The interpretations of HB2 have formed into two general opinions: either the enforcement is an infringement of equal protection rights or the Bill is necessary to provide safety to others.<sup>8</sup>

U.S. legislation does not seek to impede on individual rights or to negatively effect the legal recognition of the transgender community.<sup>9</sup> Rather, the goal is to enact laws that correspond with every citizen’s rights and concerns.<sup>10</sup> Under U.S. law, the only requirement to change gender is a physician’s letter stating one has undergone clinical treatment and intends to change gender.<sup>11</sup>

In contrast, other countries seek to deter the existence of transgender people and explicitly ignore their afforded rights, subjecting them to numerous of restrictions.<sup>12</sup> These countries utilize ex-

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4. Mrsevic, *supra* note 1 at 125-127 (stating that Maryland, Oregon Vermont and Rhode Island have had recent legislative adoptions).
  5. *See Judge Blocks Transgender Bathroom Law in North Carolina Case*, *supra* note 2.
  6. GEN. ASSEMB. OF N.C. 2016, 2<sup>nd</sup> Extra Session (N.C. 2016) (Also known at the Public Facilities Privacy & Security Act, which is “An Act to Provide for Single Sex Multiple Occupancy Bathroom and Changing Facilities”).
  7. *Id.*; *Judge Blocks Transgender Bathroom Law in North Carolina Case*, *supra* note 5.
  8. *See Transgender Bathroom Debate Likely Headed to Supreme Court*, CBS NEWS (May. 31, 2016, 8:39 PM), <http://www.cbsnews.com/news/transgender-bathroom-debate-likely-headed-to-supreme-court/> (“Bodily privacy is historically one of the most basic elements of human dignity and individual freedom. And forcing a person. to be exposed to persons of the opposite biological sex profoundly offends this dignity and freedom.”); *See Judge Blocks Transgender Bathroom Law in North Carolina Case*, *supra* note 5 (“The state’s Republican leaders argue the law is needed to protect privacy and safety [.] [and] Transgender residents challenging the law argue that [the] measure is harmful and discriminatory.”).
  9. *Id.*
  10. *Id.*
  11. *Know Your Rights*, NATIONAL CENTER FOR TRANSGENDER EQUALITY, (2015) <http://www.transequality.org/know-your-rights/passports>.
  12. Mrsevic, *supra* note 1.

treme measures such as forced sterilization, required psychiatric treatment, abuse, and imprisonment for their identification.<sup>13</sup> Some countries have recently enacted laws to protect the legal recognition of transgender people while other countries fail to address the issue altogether.<sup>14</sup>

In Europe, transgender community has been subjected to invasive requirements such as: genital reassignment surgeries, psychiatric evaluation, and sterilization.<sup>15</sup> In 2002, Finland enacted the Act on Legal Recognition of the Gender of Transsexuals, which stated that all personal information can only be changed if those individuals had been sterilized, underwent psychiatric diagnosis, and provide a medical statement of their intent.<sup>16</sup> The psychiatric diagnosis involves a six to twelve month process in which a transgender person will be diagnosed with psychological disorder of “transsexualism.”<sup>17</sup> Denmark follows a similar trend by requiring all individuals to undergo psychiatric treatment before moving to the next phase in the identification change process.<sup>18</sup> The psychiatric treatment process takes awhile to complete; although it is only an eight-week session, a clinic takes new clients only every five months.<sup>19</sup>

This process transgender persons must undergo characterizes their lifestyle as a psychological disorder and depicts them as an unequal member of society, creating a negative stigma.<sup>20</sup> There are countries in Europe who have responded positively to the desire of transgender legal recognition. In the past three years, Ireland and Malta have eliminated requirements such as psychiatric treatment and

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13. *Id.*

14. *See id.* at 118 (distinguishing the transgender laws, protections and recent advancements between European, Asian and North American countries).

15. *See* AMNESTY INTERNATIONAL, *THE STATE DECIDES WHO I AM*, 32- 77 (AMNESTY INTERNATIONAL 2014) (stating the different requirements for European countries in order for individuals to legally change gender)

16. *Id.* at 40.

17. *Id.*

18. *Id.*

19. *Id.* at 34

20. Mrsevic, *supra* note 1, at 125 (discussing a Courts decision that stated required sex-change surgery is order to change gender on legal documents was discriminatory and created an additional stigma); AMNESTY INTERNATIONAL, *supra* note 15, at 39-42 (arguing that treating transgender as a psychiatric problem is stigmatizing).

sterilization to those who wish to be identified as a different gender; the process is now as simple as filing out a form.<sup>21</sup>

On April 24, 2015, the Parliamentary Assembly of the Council of Europe adopted a resolution on human rights that would protect the rights of transgender individuals.<sup>22</sup> Most recently, on March 18, 2016, the Norwegian Ministry of Health proposed to Parliament that these obstacles be eliminated because they are violation of human rights.<sup>23</sup> These countries have recognized the afforded rights in their government, and responded by tailoring their laws to conform to the desire of transgender identity.<sup>24</sup>

A third gender, known as *hijras*,<sup>25</sup> has been legally recognized in recent years as a separate gender on official identification documents, known as the “neutral gender mark” in certain South Asian countries.<sup>26</sup> The physical presence of hijras has been considered sacred and a blessing in some settings, such as weddings.<sup>27</sup> However, they were not deemed equal to other citizens because their physical existence was subject to numerous of legal restrictions.<sup>28</sup> In 2007, Nepal’s Supreme Court ordered that this third gender be recognized based on the Yogyakarta Principles<sup>29</sup>, which stated gender identification can be changed based on ones “self feeling”. Subsequently, India’s Su-

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21. Knight and Goshal, *supra* note 1.

22. Mrsevic, *supra* note 1, at 118-119 (“The resolution [is] to [.] adopt transparent and accessible legal procedure of recognition of gender self identity without further restrictions [.] to prohibit sterilization and other medical procedures [.] and mandatory divorce on the basis of gender identity [.] to consider the inclusion of the third gender option in gender identity documents for those seeking such a status, to organize accessible health care for the specific needs of transgender persons and to ensure that trans\* people are not labelled as mentally ill.”).

23. John Jeanette Solstad Remo, *Norway: Historic Breakthrough for Transgender Rights*, AMNESTY INTERNATIONAL (March 18, 2016), <http://www.amnestyusa.org/news/press-releases/norway-historic-breakthrough-for-transgender-rights>.

24. Mrsevic, *supra* note 22.

25. Knight and Goshal, *supra* note 1 (stating that Hijras are individuals that were born as male, but transition into a female identity).

26. Mrsevic, *supra* note 1, at 118-119 (stating the Nepal, India, Bangledash and Pakistan all recognize the third gender\_

27. *Id.*

28. *Id.* (“[R]ather than being viewed as equal to others before the law, they were regarded as exotic and marginal—an existence dictated by boundaries and limitations, not rights.”).

29. *Id.* (“Yogyakarta Principles [are] the first document to codify international principles on sexual orientation, gender identity, and human rights.”).

preme Court in 2014 also entitled the third gender to have access to state welfare programs.<sup>30</sup> Justice Siddharth Mridul of a High Court of Delhi stated during a 2015 ruling, “[g]ender identity and sexual orientation are a fundamental right of self-determination, dignity and freedom...[e]veryone has a fundamental right to be recognized in their chosen gender.”<sup>31</sup>

Unlike the U.S., Europe, and South Asia, Middle Eastern countries have not progressed in eliminating barriers.<sup>32</sup> Instead, these individuals are subject to extreme measures of discrimination including horrific assaults and homicide by fellow citizens of the Middle East.<sup>33</sup> In response, LGBT individuals request asylum and deportation overseas for their safety or to be entitled to equal rights.<sup>34</sup> Each case has to be seen by the U.N. High Commissioner for Refugees (hereinafter “UNCHR”) to place the individual in another country; this process can take several years.<sup>35</sup> Without being afforded equal rights or asylum being granted, transgender people live in constant fear of discrimination and serious hate crimes.<sup>36</sup>

The transgender community has been subject to hardships around the world. In the comparative analysis of the treatment and restrictive barriers, the U.S. has placed relatively few obstacles to the process of transgender legal recognition; although the current state arguably deprives transgender people of their fundamental rights, it does not purposely discriminate against them. This is distinguishable from European and South Asian countries where the restrictive and invasive requirements have been implemented to deter legal recognition. However, these countries have developed a path of acceptance and enacted laws to protect them. Middle Eastern countries have not recognized that these individuals deserve rights, but instead invoke

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30. *Id.*

31. *Id.*

32. *See* Crowder, *supra* note 3.

33. *See id.* (stating the stories of individuals being threatened to be killed in the Middle East because of their gender identification or sexual preference)

34. *Id.* (“Hundreds of individuals from the Middle East apply for resettlement overseas every year because of increased discrimination against their sexuality or gender identity.”).

35. *Id.*

36. *Id.* (“[. ]where lesbian, gay, bisexual and transgender Kurds have sought refuge and are fighting for legal equality and acceptance and to live without discrimination or fear”).

fear into the LGBTQ community that is culturally permissible. These obstacles are stigmatizing on transgender people because they are not afforded equal rights. If they had the same entitlements, then being transgender would become culturally acceptable and discrimination would be minimized. With the expansion of the transgender community and recent legal developments, countries can reasonably predict that there will continue to be advancements to accomplish equal rights for all persons, no matter their gender identity.