

# Discussion Paper

## Transgender Health and Human Rights

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HIV, HEALTH AND DEVELOPMENT



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## **Contact Information**

Vivek Divan, [vivek.divan@undp.org](mailto:vivek.divan@undp.org)

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## **United Nations Development Programme**

HIV, Health and Development Group

Bureau for Development Policy

304 East 45th Street, New York, NY 10017, USA

## **Cover Photo**

UNAIDS, Transgender people in Argentina advocating for the passing of the gender identity law

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The title of this paper—*Transgender Health and Human Rights*—reflects the common use of the term ‘transgender’ in discussions around gender identity. However, the body of the paper refers to ‘trans’ people, a term that is becoming increasingly popular. The word ‘trans’ is used here to include all people whose sense of their gender identity differs from the sex they were assigned at birth. Terminology is important; the words people use to describe their identity convey a sense of belonging, through connections to a shared history or community. No single term can capture the diversity of gender identity and expression around the world. The case studies and quotes in this paper use local terms from specific regions. A broader discussion of key terms is provided in the terminology section found below.

## INTRODUCTION

### PURPOSE

This discussion paper aims to increase understanding of the human rights issues that trans people face, and the priority actions required to secure trans people’s right to dignity, equality, health and security. It focuses predominantly on the rights to health, to legal gender recognition and to freedom from violence and discrimination. Trans people have consistently identified these rights as key priorities.<sup>1</sup> Traversing these issues is essential to addressing the underlying structural factors that marginalize trans people, negatively impact their health and exclude them from the benefits of development.

This paper was written for the United Nations Development Programme (UNDP) to inform its work, and that of other UN agencies, including with local trans communities. It draws on the experiences of trans people around the world, and suggests practical actions that UN staff can take to be more inclusive of trans people, both in daily interactions and in their broader work, particularly in the areas of health, HIV, the rule of law and development.

UNDP’s work covers a range of issues that influence trans people’s lives. Its main engagement on trans issues has been through the lens of HIV and human rights. The HIV, Health & Development Practice leads this work, which is also addressed by the UNDP-supported Global Commission on HIV and the Law.<sup>2</sup> However, other aspects of development that UNDP engages with, such as poverty reduction, governance, citizenship and access to justice, are also highly pertinent to the profound and systemic marginalization that trans people experience. These elements are clearly noted in UNDP’s Strategic Plan for 2014–17, which emphasizes poverty eradication and the reduction of inequalities and exclusion as the primary vision of sustainable development, informed by outcomes of inclusive growth, stronger democratic governance, and universal access to basic services.<sup>3</sup> This paper seeks to engage readers by reflecting the various aspects of health, human rights and development that come into play when examining trans issues.

### INTERNATIONAL HUMAN RIGHTS STANDARDS

All human beings are born free and equal in dignity and rights.<sup>4</sup> Trans people have these same human rights.

The legal obligations of States to safeguard the human rights of trans people are well established in international human rights law. As the United Nations High Commissioner for Human Rights has emphasized, human rights treaty bodies have stated repeatedly that States have an

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1 See CONGENID (2010) Preliminary draft documents of the First International Congress on Gender Identity and Human Rights, Barcelona, 1-6 June 2010, accessed 28 August 2013 at: <http://transgenderasia.org/docs-congenid-draft.pdf>

2 Global Commission on HIV and the Law (2012) *HIV and the Law: Risks, Rights and Health*, accessed on 21 December 2013 at: <http://hivlawcommission.org/>

3 UNDP (2013) *Changing with the World: UNDP Strategic Plan 2014–17*, accessed on 21 December 2013 at: [www.undp.org/content/dam/undp/library/corporate/4\\_UNDP\\_strategic-plan\\_14-17\\_v9\\_web.pdf](http://www.undp.org/content/dam/undp/library/corporate/4_UNDP_strategic-plan_14-17_v9_web.pdf)

4 Universal Declaration of Human Rights (Article 1)

obligation to protect all people from discrimination on the ground of gender identity. The fact that someone is trans does not limit that person's entitlement to enjoy the full range of human rights.<sup>5</sup>

The Organization of American States (OAS) has strongly affirmed the rights of trans people through four OAS General Assembly Resolutions on Sexual Orientation and Gender Identity.<sup>6</sup> In June 2013, the OAS adopted the Inter-American Convention against All Forms of Discrimination and Intolerance, which explicitly lists gender identity and expression as prohibited grounds of discrimination. In April 2010, the Council of Europe's Parliamentary Assembly adopted a resolution on discrimination on the basis of sexual orientation and gender identity.<sup>7</sup>

The right to development entitles every human being and all peoples "to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."<sup>8</sup> For trans people, this vision is not yet reality in any region of the world.

International human rights standards recognize the diversity of humankind and explicitly protect the rights of marginalized groups such as trans people. States are obliged under international law to respect, protect and fulfil human rights. Yet UN treaty bodies and special procedures are increasingly documenting how States violate trans people's human rights, fail to protect against abuses by third parties and refrain from acting to secure trans people's enjoyment of basic human rights.<sup>9</sup>

The legal, economic and social marginalization of trans people affects every aspect of their lives. Social exclusion is reflected in laws that do not acknowledge the existence of trans people, either as a third gender or as people who wish to transition from male to female, or from female to male. Without legal protection, trans people are vulnerable to daily violence and discrimination, with cumulative impacts. Some impacts are visible, such as the HIV epidemic among trans women in many parts of the world. Most impacts are insidious, with trans people, their families and communities left to support each other and struggle for their rights.

Human rights experts have offered guidance on how to apply existing human rights standards to the very real problems that trans people experience. For example, the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity provide clear recommendations for applying international human rights laws and standards to issues of sexual orientation and gender identity.<sup>10</sup>

This discussion paper is divided into eight sections:

- **Terminology**
- **Background** – *History, numbers, visibility and invisibility*
- **Violence** – *Family violence; murder and rape; torture and other forms of cruel, inhuman and degrading treatment*
- **Discrimination** – *Right to education, right to work, legal protection*
- **Health** – *General health services, HIV and AIDS, gender-affirming health services*

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5 Office of the High Commissioner for Human Rights (2011) *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, A/HRC/19/41, para. 16, accessed 15 August 2013 at: [www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-41\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-41_en.pdf)

6 Organization of American States (2012) *Human rights, sexual orientation and gender identity*, Resolution AG/RES. 2653 (XLI-O/11), accessed on 17 October 2013 at: [www.oas.org/en/iachr/docs/GA%20Res%20%202721.pdf](http://www.oas.org/en/iachr/docs/GA%20Res%20%202721.pdf)

7 Parliamentary Assembly of the Council of Europe (2010) *Discrimination on the basis of sexual orientation and gender identity*, Resolution 1728, accessed 3 October 2013 at: <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta10/ERES1728.htm>

8 United Nations General Assembly (1986) *Declaration on the Right to Development* (Article 1.1), A/RES/41/128, accessed on 17 October 2013 at: [www.un.org/documents/ga/res/41/a41r128.htm](http://www.un.org/documents/ga/res/41/a41r128.htm)

9 Office of the High Commissioner for Human Rights (2012) *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law*, p. 10

10 International Commission of Jurists (2007) *Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity*, accessed 17 October 2013 at: [www.icj.org/yogyakarta-principles/](http://www.icj.org/yogyakarta-principles/)

- **Legal Gender Recognition** – *Right to recognition before the law, forced sterilization, progressive gender recognition laws, recognizing third gender options*
- **Conclusion: Trans social inclusion**
- **Selected Resources**

Each section includes action points. Many of the resources in the footnotes and selected resources provide more detailed recommendations directed at specific actors, including health professionals, policymakers and educators.

## TERMINOLOGY

**Gender identity:** Every human being has a gender identity—a deeply felt sense of being male, female, or something other or in-between.<sup>11</sup> This discussion paper uses the term ‘trans’ to include all people whose internal sense of their gender (their gender identity) is different from the sex they were assigned at birth.<sup>12</sup>

Recognizing and accepting someone for who they are upholds their dignity as a person. Someone born female who identifies as male is a trans man. He might also use the term ‘FtM’ or ‘F2M’, or simply ‘male’ to describe his identity. A trans woman is someone born male who identifies as female. She might describe herself as MtF, M2F or female. There are many other trans identities, including those that describe a third gender, being both male and female, or identifying as gender non-conforming or gender variant.

The opposite term to transgender is ‘Cis-gender’. It refers to someone whose biological sex matches their gender identity.

**Gender expression:** Every person has their own sense of gender expression, how they express their masculinity and/or femininity externally. Trans people are particularly vulnerable to discrimination when their gender expression combines elements of both masculine and feminine gender expression.

**Gender non-conforming or gender variant:** Gender non-conforming encompasses people whose gender expression is different from societal expectations and/or stereotypes related to gender. Not all trans people are gender non-conforming. Some trans women, just like other women, are very comfortable conforming to societal expectations of what it means to be a woman. Similarly some trans men simply wish to blend in among other men.

**Intersex:** While a trans person is usually born with a male or female body, an intersex person is born with sexual anatomy, reproductive organs and/or chromosome patterns that do not fit the typical definition of male or female. These may be apparent at birth or emerge later in life, often at puberty. There are many different intersex medical conditions. Typically intersex people do not want to be defined by a medical condition or term. Most intersex infants are subjected to procedures, including genital surgery, to adapt their bodies to culturally dominant definitions of maleness and femaleness.

Although this discussion paper focuses on trans people, many of their experiences are shared by intersex people, particularly in the areas of legal gender recognition and access to health. In several regions, including Africa, trans and intersex advocates work closely together on these issues.<sup>13</sup> Intersex people who also identify as trans face additional barriers if they wish to medically transition. Surgeries altering an intersex child’s body may limit the surgical options available if that child wishes to transition later in life.

<sup>11</sup> For some people, gender identity is fluid or changeable.

<sup>12</sup> This is similar to the use of the umbrella term ‘trans’ in other recent publications including: Open Society Foundation (2013) *Transforming Health: International Rights-based Advocacy for Trans Health*, accessed 28 August 2013 at: [www.opensocietyfoundations.org/reports/transforming-health](http://www.opensocietyfoundations.org/reports/transforming-health)

<sup>13</sup> For example, Transbantu Zambia.

**Sexual orientation:** Sexual orientation is another intrinsic part of a person's identity. It refers to a person's capacity for profound emotional, physical or romantic attraction towards other people. It is distinct from gender identity; trans people may be heterosexual, lesbian, gay or bisexual (or pansexual).<sup>14</sup>

The acronym 'LGBT' stands for 'lesbian, gay, bisexual and transgender'. It includes three sexual orientation terms (lesbian, gay and bisexual) and one gender identity term (transgender, or trans). This distinction between sexual orientation and gender identity is not always clear-cut, particularly in communities and cultures where one term is used to describe both. In most of the Pacific and parts of Asia, the same term is used by trans women and many gay men.

**Transition:** 'Transitioning' refers to the process trans people undergo to live in their gender identity (for example, as male, female or as a third gender). Many of the steps aim to change how others perceive gender identity. These are sometimes called 'social gender recognition' and may involve changes to outward appearance, mannerisms or the name someone uses in everyday interactions.<sup>15</sup> Other aspects of transitioning focus on legal recognition, and often centre on changing name and sex details on official identification documents. There are often overlaps, particularly in countries where it is difficult for people to informally change their name without going through a legal process.

Transitioning may also involve medical steps such as hormone treatment and surgeries. However, transition is not defined by medical steps taken or not taken. As discussed in the health section of this paper, many trans people do not have access to gender-affirming health services, and others may not need to access such services. Controversially, most trans people who do have access to gender-affirming health services are required to accept a mental health diagnosis in order to be eligible to transition.

## ACTION

- ▶ Learn and use positive local terms for trans people, and avoid derogatory terms.
- ▶ Give people the choice to share their preferred name and pronoun in community consultations (e.g., on name tags or through introductions).
- ▶ When unsure of someone's gender identity, discreetly ask their preferred pronoun and name.
- ▶ Include trans terms and examples in publications.
- ▶ Attend trans community events to show support and to gain greater understanding of trans people's lives.

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14 The term 'bisexual' is typically used to describe a person who is attracted to men and to women. Given the existence of people who identify as a third gender or sex, the term 'pansexual' more appropriately describes people who are attracted to others irrespective of their sex.

15 A trans woman may wear a wig or a gender-affirming prosthetic that enhances the size of her breasts. A trans man may have a prosthetic in the shape of male genitals.



## HISTORY

Around the world, there have always been people whose gender identity and expression differ from the cultural expectations associated with the sex they were assigned at birth. Some people born in male bodies lived as women, some born in female bodies lived as men, and others identified as a ‘third gender’.

*“We are part of our culture. We have been for centuries . . . fa’afafine, fa’afatama, gay, lesbian and any that identify as trans have successfully managed to carve out a harmonious existence with our people.”*

—Ymania Brown, Samoa<sup>17</sup>

Culture and religion can be key parts of a trans person’s identity. In parts of Asia and the Pacific, there are traditional terms for trans women, including those who identify as a third gender. Some trans women historically performed specific ceremonial roles.<sup>16</sup> This visibility has continued to the present day.

In each region where UNDP works, there is a diversity of terms for people born male who identify as female or as a third gender, including:

- **Latin America** – *travesti* in Central and South America, and the indigenous terms *muxe* in Mexico and *omeggid* in Panama
- **Africa** – *meme* (for trans women in Namibia) and *kuchu* (for trans, lesbian, gay and bisexual people in Uganda)
- **Asia** – *kathoey*, *poo ying kham phet*, and *sao phra phet song* (Thailand); *abang* and *mak nyah* (Malaysia); *bin-sing-jan* and *kwaa-sing-bit* (Hong Kong); *transpinay* (the Philippines); *waria* (Indonesia); *hijra* and *aravani* (India); and *meti* (Nepal)<sup>18</sup>
- **Pacific** – *vakasalewalewa* (Fiji), *palopa* (Papua New Guinea), *fa’afafine* (Samoa, American Samoa and Tokelau) *fakaleiti* or *leiti* (the Kingdom of Tonga), *akava’ine* (Cook Islands), and *fakafifine* (Niue island)<sup>19</sup>

An estimated 155 of the 400 indigenous societies in North America traditionally had a third (and in many instances a fourth) gender. Two terms used in the past were *alyha* for trans women and *hwame* for trans men.<sup>20</sup>

In most parts of the world there are fewer historical references to trans men, or people born female who have a masculine gender expression. In northern Albania, the term *burrnesha* describes people who were born female, took a vow of chastity, wore male clothing and lived as men.<sup>21</sup> In Thailand, the term *kathoey* was historically used to describe any ‘non-normative’ gender behaviour, and encompassed trans men as well as trans women. This usage persists in rural Thailand today.<sup>22</sup>

Trans men in Thailand and Indonesia today typically use the terms *tomboy/toms*, while in the Philippines, these terms are interchangeable with the word *transpinoy*. In Malaysia, *pak nyah* is used to describe trans men and *pengkid* refers to tomboys. Indigenous terms used today in the Pacific for trans men include *fa’afatama* in Samoa and *tangata ira tane* in New Zealand.

16 Some indigenous cultures allocated specific roles to ‘gender diverse’ people, sometimes recognizing them as a link between the spiritual and the physical world. For example, there are anecdotal accounts that *whakawāhine* (indigenous Māori trans women) in New Zealand historically were the only group allowed to touch the food given to *tōhunga* (spiritual healers). Source: personal communication with Selena Pirika (March 2009).

17 Personal communication with Ymania Brown from the Samoan Fa’afafine Association (July 2013)

18 Balzer, C. and Hutta, J. (2012) ‘Transrespect versus transphobia worldwide: A comparative review of the human-rights situation of gender-variant/trans people’, *TvT Publication Series*, Vol. 6, p. 80, accessed 14 October 2013 at: [www.transrespect-transphobia.org/uploads/downloads/Publications/TvT\\_research-report.pdf](http://www.transrespect-transphobia.org/uploads/downloads/Publications/TvT_research-report.pdf)

19 See the Pacific Sexual Diversity Network’s website: <http://psdnetwork.org/>

20 Today the umbrella word ‘two-spirit’ is a pan-Native North American term that bridges indigenous concepts of diverse gender and sexual identities with those of Western cultures. The term *nádleehi* is also used by those who identify as a third gender. See Thomas, W. and Jacobs, S. (1999) “... ‘And we are still here’: From Berdache to Two-Spirit People,” in *American Indian Culture and Research Journal*, Vol. 23, No. 2, pp. 91–107, accessed 3 October 2013 at: <http://aisc.metapress.com/content/k5255571240t5650/>

21 Elsie, R. (2010) *Historical Dictionary of Albania* (2nd ed.), p. 435. Lanham: Scarecrow Press

22 Sinnot, M. (2004) *Toms and Dees: Transgender Identity and Female Same-Sex Relationships in Thailand*, Honolulu: University of Hawai’i Press

Historical records from other parts of the world describe people born female who cross-dressed. Some of these individuals likely identified as male or as a third gender. Others may have been escaping strict gender roles, including the presumption that they would marry and have children. For some individuals, cross-dressing was likely a means of economic survival in societies where only men had access to paid work.<sup>23</sup>

## NUMBERS

There are no definitive statistics on the number of trans people around the world. Estimates in Western countries are typically based on numbers of people who access public gender clinics and therefore exclude those who do not medically transition, or who use private or overseas clinics. International literature suggests that as prejudice towards trans people decreases, their visibility increases.<sup>24</sup>

A recent US study estimated that 0.3 percent of the US adult population may be trans.<sup>25</sup> A study in the Netherlands found that 0.6 percent of those born male and 0.2 percent of those born female wished to alter their body through hormones or surgery to match their gender identity.<sup>26</sup> A study of the Asia Pacific region suggested that there are over 9 million trans people in the region.<sup>27</sup> In India, the *hijra* community alone is estimated to number around 1 million people, without counting the many other trans women and men.<sup>28</sup>

## VISIBILITY AND INVISIBILITY

In some parts of the world, including the Caribbean, there are few openly trans people even within a wider lesbian, gay, bisexual and trans (LGBT) community.<sup>29</sup> In other parts of the world, such as the Pacific, gender diverse people are more visible than lesbians, bisexual people or even gay men.<sup>30</sup>

*“Know your identity as you would know your heart. In that you would know your place in your family, in your government, in your island and in the world.”*

—Shevon Matai, American Samoa<sup>31</sup>

Visibility can increase acceptance and counter negative stereotypes that limit the opportunities available for trans people. The harmful impacts of ‘transphobia’—prejudice directed at trans people because of their gender identity or expression—can be reduced with positive depictions of gender diversity.

When trans people internalize transphobia, it undermines their self-esteem and ability to seek peer support. Evidence indicates that exposure to transphobia is a mental health risk for trans people, resulting in increased levels of

depression and suicidal thoughts.<sup>32</sup> Isolation can be particularly acute for trans and gender-variant children and young people without family or peer support.<sup>33</sup> A US study found that 33 percent of trans young people had attempted suicide as a result of discrimination and bullying.<sup>34</sup>

23 Halberstam, J. (1998) *Female Masculinity*, Durham and London: Duke University Press

24 Collins, E. and Sheehan, B. (2004) *Access to Health Services for Transsexual People*. Dublin: The Equality Authority

25 Gates, G. (2011) *How Many People are LGBT?* Los Angeles: UCLA School of Law, Williams Institute

26 Kuyper, L. and Wijsen, C. (2013) ‘Gender identities and gender dysphoria in the Netherlands’ in *Archives of Sexual Behaviour*, July 2013

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