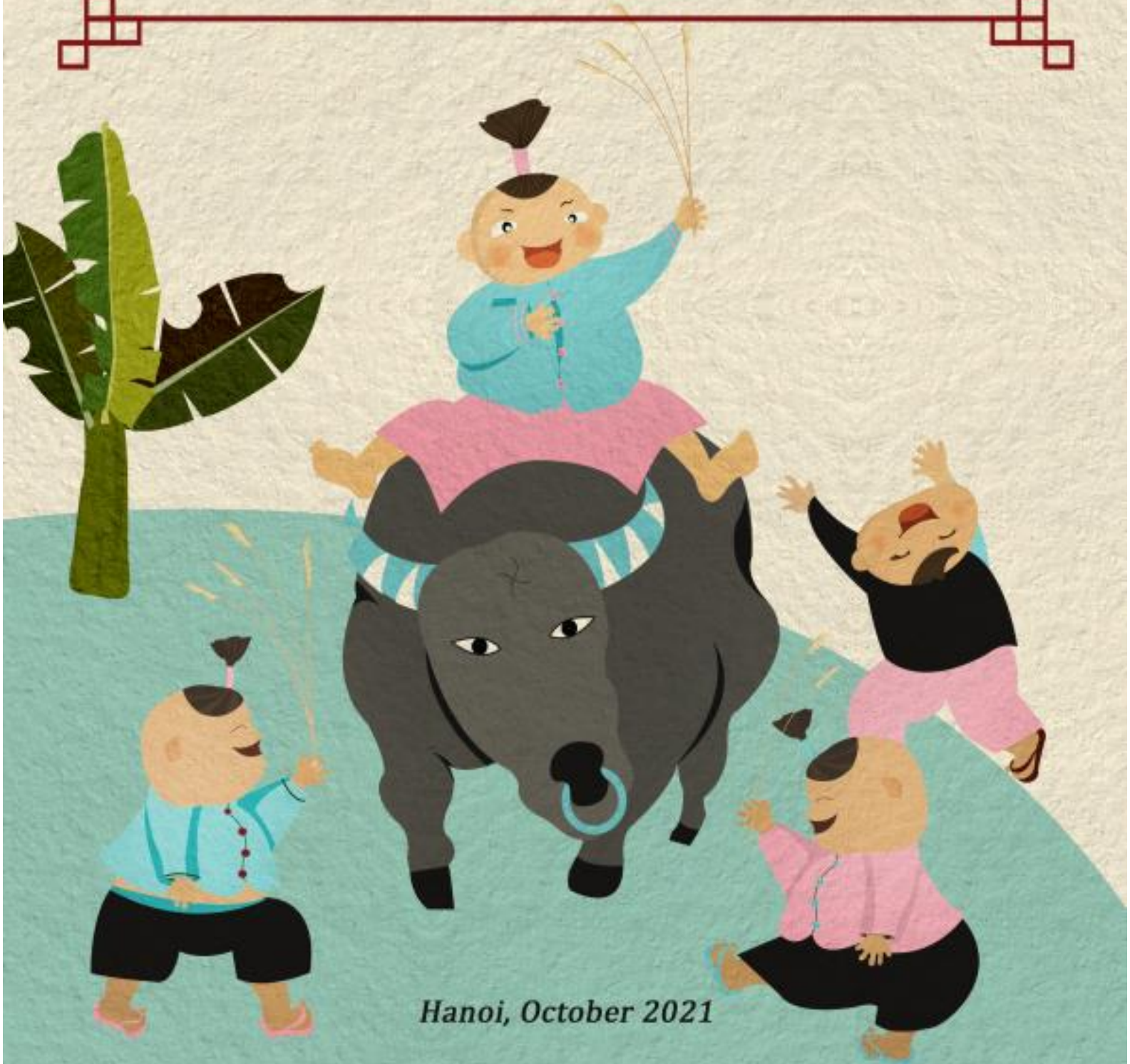
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REPORT

ON THE CURRENT STATUS OF LEGAL GENDER RECOGNITION OF TRANSGENDER PEOPLE IN THE WORLD



Hanoi, October 2021

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Hanoi, October 2021

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FOREWORD

IT'S T TIME would like to express our gratitude towards the valuable references of allied organizations, namely the Institute for Research on Society, Economy and Environment (iSEE), Support Center for Community Development Initiatives (SCDI), and other organizations that helped us shorten the time to complete this report.

The research team would also like to give special thanks to IT'S T TIME colleagues and collaborators, Ms. Bui Mai Anh Thu, Ms. Tran Thi Minh Ngoc, and Mr. Nguyen Phuong Tu for participating in editing and updating the report in 2022.

On behalf of the research team,

Nguyen Quoc Anh

PREFACE

Given that Vietnam is in the process of developing a draft Law on Gender Affirmation, IT'S T TIME, along with relevant agencies of the Ministry of Health and other representative organizations of the community feel the need to have a report that updates the status of laws and legal frameworks regulating gender affirmation issues in different countries around the world until 2021.

Currently, this issue is still receiving a lot of controversy and discussion both in parliaments and in nations' societies. This report will focus on providing the most objective information, serving the reference purposes of the relevant agencies. In addition, information compiled in this report is collected from open sources, so it is inevitable that the content will be incomplete, especially in countries where information is difficult to access, or there have been new and rapid legal developments related to gender affirmation during the time this report is being prepared.

At the request of the Ministry of Health and the needs of different organizations to use it for different purposes, this report will focus on generally presenting the headings corresponding to chapters and provisions of the current draft Law on Gender Affirmation. These headings include:

- The age at which transgenders reach out for medical interventions;
- The age allowed changing gender on papers;
- Medical interventions requirement for the right to change gender on papers;
- Regulations on marital status;
- Regulations on the composition of the Medical Appraisal Council;
- Administrative procedures to change gender on papers.

In addition, attached to the report is an appendix that includes complete statistics on the legal frameworks of the countries included in this report.

In the future, this report will also be continuously revised and adjusted according to the needs of the parties in the working process.

REPORT OVERVIEW

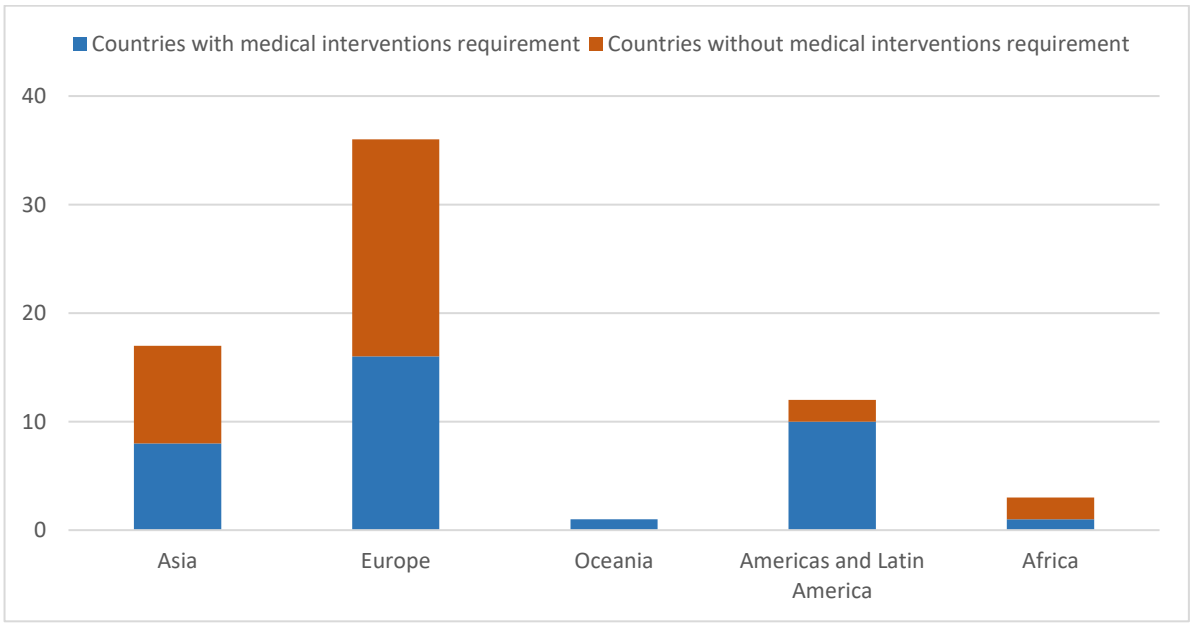
1. Number of countries with Gender Affirmation Laws and regulations on medical interventions

Currently, the total number of countries with Gender Affirmation laws in the world is 71 countries with the specific ratio as follows:

- Europe: 36/50 countries/regions, accounting for 72%
- Asia: 17/50 countries/regions, accounting for 34%
- Americas and Latin America: 13/35 countries/regions, accounting for 42.86%
- Africa: 03/54 countries/regions, accounting for 5.55%
- Oceania: 02/14 countries/regions, accounting for 14.28%

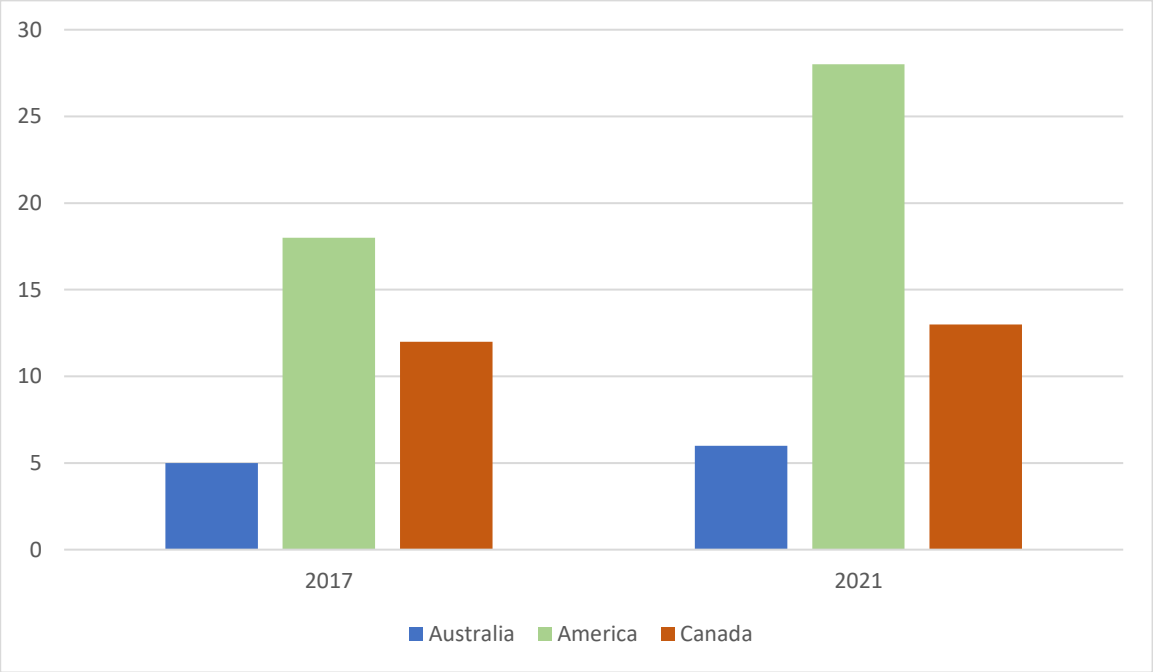
Although the number of countries with laws has not changed much since 2017, the team examined some progressive changes in the provisions of the Gender Affirmation law in these countries, especially the increasing number of countries that have changed the provision of medical interventions, from partial or total surgery to no surgery requirement (this can be understood as only psychological assessment or a choice between hormone therapy and medical interventions). As of 2021, there are 36 countries that do not require medical interventions out of a total of 69 countries, accounting for 52.17%. The specific numbers in each continent are as follows:

Chart 1.1: Ratio of countries with and without medical interventions requirement by continent



The US and Australia are not included in the chart above. As for the federal states, there exists a difference in the regulations of states such as the US and Australia with the number of states that do not require surgery and states that require surgery in the US is 28 and 20 while in Australia is 06 and 02. But for Canada, by 2020 all the provinces of this country have agreed to not require surgery. Overall, the number of states that do not require surgery is increasing over time as shown in the chart below.

Chart 1.2: Compare the number of provinces/states without surgery requirement of the federal states in 2017 and 2021



2. Regulations on health insurance for transgender people

Currently, among the countries that recognize the legal gender of transgender people, 10 have agreed to pay all or part of the cost of gender reassignment surgery.

In Finland, Italy, Germany, Cuba, France, and some autonomous regions of Spain, it is specified that transgender-specific health care is either specialized treatment or is included in the list of services and to be paid by the state.

In Belgium, the public health system covers most de facto transgender healthcare procedures, although there is no code that lists them in the national service catalog that regulates coverage. This is useful, as transgender people are not automatically excluded from the health care system. However, it also means that transgender people do not always have access to the full range of costs.

Or in Luxembourg, the public health system can cover many forms of transgender health care, but not automatically. Transgender people will need to get prior authorization from a public health facility, based on the advice of the Social Security Health Ombudsman.

The Iranian government chooses a solution to support half the cost for those who need financial support in implementing gender reassignment interventions.

Meanwhile, in Israel, the cost of surgery will be funded by the Foundation for Health Maintenance, but the country only allows male-to-female surgery (MTF) while female-to-male (FTM) surgery must be performed abroad.

In addition, in some countries, such as Austria, Georgia, Slovenia, or Russia, transnational healthcare is not included in the public insurance portfolio, but there is no explicit exclusion either. This can make it difficult to confirm coverage: “Transgender people are not specifically mentioned in any documents regarding mandatory health insurance and from a legal standpoint, it is not possible for them to receive any transgender-specific medical support under the auspices of public health.” - Diana Iashenkova, Transgender legal protection project, Russia.

3. Regulations on real-life experience

The provision of real-life experience with the desired gender still exists in the laws of 14 countries around the world and there are many similarities in the regulations on this real-life experience period.

Finland is applying a time frame of 6 months to 1 year for such experience; other countries such as Iceland, Italy, Poland, Austria, Czech Republic, Estonia, and Sweden: from 1 to 2 years. UK, Spain, Turkey, South Africa, and Ecuador: minimum time frame of 2 years, with Ecuador stipulating 2 years of real-life experience and does not require medical interventions.

Germany is the only country that applies a real-life experience period of at least 3 years.

Other cases where the period is not specified are the Canadian states of Manitoba and Ontario, New York of the United States.

REPORT CONTENT

EUROPE

1. Overview

Europe continues to be a place where there is a clear division in the legal ground on the issue of gender affirmation. In Europe, mostly Western or Nordic countries, within the European Union, there are countries that allow gender change on papers without any barriers to medical interventions or medical evaluation, including psychological ones. At the same time, there are countries that completely ban this, mainly in Eastern Europe.

In recent years, there have also been a lot of changes in the legal framework for gender affirmation in Europe. After the European Court of Human Rights made some decisions banning compulsory sterilization or any other form of irreversible surgery in the procedure of changing gender on papers, some countries such as Belgium, France, Portugal, and Greece have modified their laws to be consistent with the above decisions.

Meanwhile, countries such as Hungary or Bulgaria have moved to eliminate their citizens' right to change gender on papers, proposing bills to only recognize sex assigned at birth or biological sex based on chromosomes. However, these laws face strong opposition both at home and abroad. Since these two countries are both members of the European Court of Human Rights, their laws can be forcibly removed or modified.

2. Content

2.1. Regulations on procedures for gender affirmation

- There are 3 countries that do not allow gender change on papers: Albania, Azerbaijan, and Hungary.

- There are 5 countries with unclear regulations: Andorra, San Marino, Monaco, Armenia, and North Macedonia.

- There are 10 countries that need the court's decision: Poland, Bulgaria, Greece, Lithuania, France, Romania, Turkey, Italy, Moldova, and Gruzia.

- The remaining 29 countries require administrative procedures only.

2.2. Regulations on medical interventions requirement

- There are 8 countries that require sterilization: the Czech Republic, Turkey, Netherlands, Montenegro, Romania, Latvia, Cyprus, Bosnia and Herzegovina.

- There are 4 countries that require "real-life experience" with the desired gender: Poland, Germany, Iceland, United Kingdom.

- There are 6 countries that require medical interventions but are not clear: Moldova, Slovenia, some cantons in Switzerland, the United Kingdom, and Italy.

- There are 3 countries that require partial surgery: Estonia, Romania, and some cantons in Switzerland.

- There is 1 country that requires full surgery: Bosnia and Herzegovina.

- There are 4 countries that require at least the use of hormones: Bulgaria, Finland, Poland, and Slovakia.

2.3. Regulations on psychological assessment

There are 26 countries with this requirement.

2.4. Regulations on marital status

- There are 11 countries that do not require maintaining single status.

- There are 9 countries where maintaining single status is compulsory: Bulgaria, Croatia, Cyprus, Czech Republic, Finland, Hungary, United Kingdom, Moldova, and Turkey.

2.5. Regulations on age

- Using gender-affirming hormones:

● Where parental consent is required: Croatia has no age limit, the Netherlands allows this from the age of 12.

● Where parental consent is not required: Latvia from the age of 14; Denmark and Slovenia from 15; the UK, Malta, and Ireland from 16; the remaining countries from the age of 18 or by cognitive maturity.

- Gender change on papers:

● Parental consent is required: Norway from the age of 6; Iceland from the age of 15; Ireland from the age of 16.

● Parental consent is not required: Switzerland has no age limit; Portugal, the Netherlands, and Montenegro from the age of 16; Greece from the age of 17; Ireland, Denmark from the age of 18; Sweden from the age of 23.

NORTH AMERICA

1. Overview

North American region includes only 2 countries, the US and Canada. However, the characteristics of the federal political system of both countries giving a lot of medical and administrative decision-making power to administrative units lower than the federal state (the US states or provinces and territories of Canada) also create huge differences in the legal framework on the issue of gender affirmation between these administrative units.

It can be said that Canada in recent years has reached the highest standards in the empowerment of transgender people as its provinces and territories have passed laws that are closely in line with the desire and needs of the transgender community and transgender advocacy organizations. Although there are still some administrative restraints, it can be said that the movement for transgender rights, as well as the legal framework on gender affirmation issues in Canada, has been gradually transitioning to a stable state after experiencing great upheavals.

On the other hand, the United States is witnessing major changes in the legal aspects of gender affirmation. There is an increasingly clear division between the two main political parties in the US, the Democratic Party and the Republican Party, on the issue of gender affirmation, leading to divergence among American citizens. This is most clearly shown in the differences in the legal framework related to gender affirmation issues between states in the US. In which the states in the Northeast, the Great Lakes, and the West Coast of the United States, which are more liberal and favor the Democratic Party, often have fewer barriers to gender affirmation. In contrast, Southern states, and the sparsely populated Midwest states, which are more conservative and more pro-Republican, have been taking measures to tighten regulations. Even inside the federal government, there are distinctly different views on transgender rights reflected in the difference in the way the federal government works during the transition of the two Democrat administrations, Obama & Biden, and Trump's Republican administration.

2. Content

2.1. Regulations on administrative procedures for gender affirmation

- In all Canadian provinces and 25 US states, changing gender on papers is an administrative procedure.

- In 21 US states, a court decision is required.

- In the two states of Minnesota and Montana, both methods are used.

- In Idaho, the law is currently in the process of litigation.

- In Ohio, there is no law on the procedures.

- In Tennessee, it is not allowed to change gender on papers.

2.2. Regulations on medical interventions requirement

- All Canadian provinces and 28 US states do not require medical interventions.

- One state of the US requires hormone intervention

- 19 US states require surgery.

- The rest of the US states require medical interventions but are not clear about the specific measures or whether medical interventions is required or not.

2.3. Regulations on psychological assessment

The majority of Canadian provinces and American states require a medical professional (not necessarily a psychologist) assessment certifying gender identity as distinct from biological sex or having had medical interventions.

2.4. Regulations on marital status

There is no administrative unit in Canada or the United States that regulates marital status in the legal framework for gender affirmation.

2.5. Regulations on age

- Using gender-affirming hormones:

● Canada and 10 US states allow the use of gender-affirming hormones from the age of 18.

● Canada allows the use of gender-affirming hormones from the age of 16 with parental consent.

● New York state allows it from the age of 17.

● Alabama allows from the age of 19. However, any doctor or parent who allows children under 19 years old to use it is a criminal offense.

● The rest of the US states do not have an age limit.

- Changing gender on papers:

● The Canadian provinces of Alberta, Ontario, and Quebec allow changes from 17 years old, otherwise requiring parental permission. However, Ontario also allows citizens to be counted as adults when they reach the age of 16 and also have the right to change their own gender.

● The Canadian province of New Brunswick requires parental consent and a consent form of the child and 1 witness upon the change for children aged 12- 15 years. For children aged 16-18, only parental consent is required.

● 8 US states require parental consent for children under the age of 18.

● New York state requires parental consent for children under the age of 17.

● In New Mexico, if the minor is 14 years old or older, they must sign the Request to Change Gender Designation on the Birth Certificate, agreeing to the amendment of their birth record.

SOUTH AMERICA

1. Overview

The legal system in this region has at least 2 ways to classify “GENDER”.

The first one considers "gender" as a purely biological category. Only gender binary (Male and Female) exists and is directly related to the structure of the reproductive organs and biological characteristics indicated in the body. Often, this view causes a distinction between sex and gender, where sex is considered biological and gender is a social construct. This consensus views surgical and other medical and psychiatric evidence as the primary criterion for gender determination because it holds that gender can only be legitimately changed if the physical characteristics themselves are changed by medical interventions.

A second interpretation found in Latin America is "gender" - a way of classifying bodies based on social and cultural perceptions. This system considers how people perceive their gender as a key factor in identifying that individual's gender.

These views directly affect countries in the region. The closer the legal system is to the first view that gender is a purely biological category, the more difficult the identification process will become for transgender people and vice versa. However, most countries in this region are considering the second point of view and are still hesitant to recognize transgender children or adolescents.

It should be noted that policymakers in some South American countries in recent years have taken steps towards legitimizing gender identity by rejecting some outdated regulations that once played the role of "gatekeeper” in this process (for example, medical diagnosis and review board). Uruguay passed its first legal gender recognition law in 2009, and then Argentina passed a landmark statute in 2012, allowing applicants to change their gender identity with a simple demand. In addition, in June 2015, Colombia issued a decree on the recognition of the gender identity of transgender people following the Argentine approach. In 2016, specific legislation in this area was enacted in both Bolivia and Ecuador. In Bolivia, a model that does not require surgery for sex reassignment is adopted whereby confirmation of psychological assessment is required.

Ecuador requires applicants to provide evidence that they have had real-life experience with the desired gender for approximately 2 years prior to applying.

2. Legal gender recognition without medical interventions for gender affirmation

Amendments by Mexico City, Argentina's Law, and Colombia's Decree allow transgender people to change their name and gender or gender identity through simple and quick administrative procedures, eliminating the cumbersome judicial process and requirements for surgery, sterilization, and gender dysphoria determination.

- There are 6 countries that do not require medical interventions: Chile, Peru, Uruguay, Ecuador, Colombia, Bolivia, Mexico, Argentina

- There are 2 countries that require surgery: Panama, Cuba

3. The intermediate transition between the mandatory regulation of medical interventions and the self-identification model by gender identity

Legal systems with many intermediary solutions, as in Peru and Bolivia. Peru's situation, although on the right track, is still rife with human rights issues. The Constitutional Court changed the legal system's traditional understanding of "gender" to one that is "in the social, cultural, and interpersonal reality" that the person experiences. It also states that gender should not always be determined by the reproductive organs. However, the legal recognition process is still the judicial process.

Bolivia's 2016 Gender Identity Law defines sex as "the biological, mechanical and genetic condition that distinguishes women from men" and gender as "the social constructional process of roles, behaviors, usage, ideas, clothing, practices or cultural characteristics and other customs for men and women". However, at the same time, the Law uses the concept of sex at birth in its definition of gender identity. This intermediate interpretation coexists with an intermediate legal remedy: The law does not require sterilization, surgery, or a diagnosis of mental disorder, but it does require psychological assessment (See Appendix 2 for details).

4. Regulations on minimum age and rights of transgender children and adolescents

Meanwhile, there are two trends in the regional picture on transgender children's rights, with Argentina allowing a 10-year-old transgender boy to change his gender based on the child's consent. Whereas, in 2017, Mexico allowed a 6-year-old transgender

girl to do so through an administrative procedure without the need for a court, a doctor, or a psychologist. On the other hand, progress in Chile and Colombia in legal gender recognition has neglected to consider children's opinions and decisions. The Constitutional Court of Colombia ruled in 2017 that a male transgender individual who is almost 18 years old can change his name and gender; however, it requires “certification from a doctor, therapist, social worker or other professional”.

ASIA

1. Overview

If there is a trend in Asia, it shall be the prevalence of Courts with rulings in cases that recognize the legal gender of transgender individuals whether the law in that country specifically regulates this issue or not. The assessment leading to legal gender recognition in Asia is quite complicated.

In November 2017, Singapore witnessed a setback in policy when it introduced a new requirement for the provision of “totally change the reproductive organs from male to female and female to male”. This happened without any consultation or discussion with the transgender community in the country, and it is currently unclear how this policy will be developed. In addition, the government of this country also makes the argument that it needs "consensus" from society to be able to recognize the legitimate rights and interests of transgender people even though there is no valid data or evidence about the reaction and opinion of society.

In South Korea, the recognition of legal gender is extremely restrictive and procedural. This country takes Japan as a model to follow to create legal processes.

Japan has enacted legislation to specifically address issues of legal gender recognition. While China, Singapore, South Korea, and Taiwan have chosen to settle in other ways. All of the above countries allow gender change on identity cards, household registration books, or other identification documents related to a person's gender.

Meanwhile, the success in legislative update does not guarantee the practice of actual legalization and gender recognition for the trans. Ever since the 2014 case between NALSA and the Union of India, the situation has not changed much for the community here. The Draft Law is still under review by both houses and there is a possibility of repetition in existing bills that can be considered and passed in Pakistan. Nepal, on the other hand, has made significant progress with a 2017 Supreme Court ruling allowing transgender people to change name and gender, although limited to the “O” option with the third gender.

2. Legal gender recognition without medical interventions for gender affirmation

This trend appears in Asian countries, for example, the Ministry of Health of Kyrgyzstan in 2017 issued the Guidelines for health care for transgender people and recommended legal gender recognition without medical interventions.

- There are 8 countries that do not require medical interventions: Korea, Bangladesh, Pakistan, Sri Lanka, Uzbekistan, Taiwan, Kyrgyzstan, and Israel

- There are 9 countries that require surgery: India, Iran, United Arab Emirates, Japan, Mongolia, China, Singapore, Syria, and Nepal. Of these, three countries require sterilization: China, Singapore, and Japan.

3. Authority to determine the order and procedures for changing identity documents

Some countries have the court as the gender recognition authority, while others have an administrative procedure where a government office or an identity document processing department is responsible for determining gender identity (See Appendix 2 for details).

4. Requirements for medical procedures/interventions for gender affirmation

Countries that require surgical procedures or medical interventions for gender affirmation (genitourinary reconstruction or removal of biological features and structures of the former sex) see this as a prerequisite to change and recognize legal gender such as Japan, China, and Taiwan. In contrast, South Korea has eliminated the surgical criterion as a prerequisite requirement in government policy.

Singapore requires the completion of a “gender reassignment procedure” for a person to change their gender on a National Registration Identity Card (NRIC) but does not define this procedure in the law. This shows how unequivocal the surgical procedures or other medically necessary treatments are for a person to be recognized as having undergone the said “procedure” as required by law.

5. Requirements for medical diagnosis, hormone therapy, and "real-life experience test"

Medical diagnosis requirements for gender determination exist in India (requires "psychological assessment" to identify a transgender person as having a "third gender"), Japan (requires a diagnosis of Gender identity disorder), China (diagnosis of Gender identity disorder and psychiatric/psychological counseling for 1 year), South Korea (requires long-term psychiatric treatment) and Taiwan (diagnosis of Gender identity disorder or gender dysphoria). Other Asia-Pacific jurisdictions do not specify or clearly define whether the medical diagnosis requirement applies or not.

India does not require hormone therapy clearly. No jurisdiction in the Asia-Pacific region has a clear requirement for hormone therapy or a requirement to undergo a "real-life experience test" to adapt to the life of the desired gender or experience that intention with its surroundings.

6. Requirements regarding marital status before gender affirmation

The exclusion of marital status is provided for in the laws of Japan, China, and South Korea and not in the laws of India, Taiwan, and Singapore.

7. Minimum age requirement

In China, Shanxi province allows minors to apply to change gender at the registry office. However, this provision could create legal conflicts with the requirement that only people over the age of 21 can apply for gender reassignment surgery and only those who have undergone surgery can apply to change gender on their household registration.

8. Recognition of medical interventions for gender affirmation cases in foreign countries or in the home country

Countries in the region are not entirely clear or have specific regulations on whether to recognize medical interventions for gender affirmation performed outside of the home country or not. Only the province of Henan in China has provisions or regulations relating to said matter, if the intervention is performed in the country verified by hospitals designated by the provisional health administration. However, it remains unclear whether other Chinese provinces will adopt a similar approach.

9. Law's scope

Japan has explicitly stated in its gender recognition law that legal gender recognition entitles the individual to the legal rights of the changed gender. For other jurisdictions, this scope may be highly dependent on the identity document being modified. For example, birth certificate or identity card and the extent of changes (i.e. issue a full replacement card or maintain the modified card).

AFRICA AND OCEANIA

1. Countries with Gender Affirmation Laws

1.1. Africa

In Africa, there are 54 countries, of which South Africa, Namibia, and Botswana are the only ones with Gender Affirmation Law.

1.2. Oceania

Oceania consists of 14 countries, of which Australia (08/08 states) and New Zealand are the two countries with the Gender Affirmation Law.

2. Regulations on medical interventions requirements (surgery, hormones) and gender change on papers

2.1. Countries/states within the country (for the federal government) that do not require medical interventions.

Including 2 countries - New Zealand, Botswana, and 5 Australian states: Victoria (officially from May 1, 2020), South Australia, Northern Territory, Australian Capital Territory, and Tasmania.

- *Age allowed for medical interventions*: the average age of 18 years or older, with the exception of Victoria and Tasmania, which are two states where the legal age for medical interventions is 16 years and older. For children under the prescribed age for medical interventions, they will be examined and supported by a psychologist and need the consent of their parents or guardians.

- *Age allowed to change gender on paper*: similar to the age allowed for medical interventions in states and countries, if the child is under the prescribed age, the consent of the parents or guardians is required to carry out the gender change procedure on papers.

- *Regulations on psychological examiners*: these countries require a registered psychologist or medical professional. Tasmania is the only state that does not require psychological assessments of transgender people.

- *Administrative procedures*: In general, the following procedures are included:

(1) Having an application form for gender change on papers (regulated by countries/states)

(2) Having a birth certificate or being a permanent resident of that country or state (for different states, there will be separate regulations);

(3) No change in gender profile in the last 12 months;

(4) Certified by a psychologist/medical professional as having undergone psychological counseling/clinical treatment.

2.2. Countries/states within the country (for the federal government) that require partial surgery.

This group includes Namibia, 2 Australian states, Queensland, and New South Wales

- *Age allowed for medical interventions*: the average age of 18 years or older. For children under the prescribed age for medical interventions, they will be examined and supported by a psychologist and need the consent of their parents or guardians.

- *Age allowed to change gender on paper*: similar to the age allowed for medical interventions of 18 years or older, if the child is under the prescribed age, the consent of the parent or guardian is required to carry out the gender change procedure on papers.

- *Regulations on psychological/medical examiners*: these countries require the inclusion of 2 doctors/medical staff who will determine if the applicant has performed a gender reassignment procedure.

- *Administrative procedures:* In general, the following procedures are included:

(1) Having an application form for gender change on papers (regulated by countries/states);

(2) Having a birth certificate or having lived in that state for at least 1 year;

(3) Having a certificate or a declaration from 2 doctors/medical staffs that has performed partial surgery.

2.3. Countries/states within the country (for the federal government) that require the use of hormones or surgery.

This group includes South Africa and one Australian state, Western Australia

- *Age allowed for medical interventions*: the average age of 18 years or older. For children under the prescribed age for medical interventions, they will be examined and supported by a psychologist and need the consent of their parents or guardians.

- *Age allowed to change gender on paper*: similar to the age allowed for medical interventions of 18 years or older, if the child is under the prescribed age, the consent of the parent or guardian is required to carry out the gender change procedure on papers.

- *Regulations on psychological/medical examiners*: there is a clear difference.

+ In South Africa: 01 medical practitioner who has applied a medical procedure or treatment or a medical practitioner who has experience in such procedure or treatment; and a second medical practitioner who independently examined the application for gender determination of the transgender person. In addition, psychological assessment requires a psychologist/social worker.

+ In Western Australia: The Board consists of: Chairman (judge or legal practitioner), a medical professional, a person who has gone through the gender reassignment procedures, and a person who has experience in equal opportunity issues.

- *Administrative procedures*: In general, the following procedures are included:

(1) Having an application form for gender change on papers (regulated by countries/states);

(2) Having a birth certificate or having lived in that country/state for at least 1 year; (3) A medical professional's report attesting to the applicant's medical interventions; (4) Psychologist's confirmation that the applicant is living a stable life and is satisfied with the desired gender role for a specified minimum period of time (South Africa: minimum of 2 years).

3. Regulations on marital status

South Africa, Australia, and New Zealand do not regulate marital status in the Gender Affirmation Law.

SOME OPINIONS ON THE CHANGING TRENDS OF COUNTRIES AND PROPOSALS FOR VIETNAM

1. Some opinions on the changing trends of countries

1.1. Age allowed to change gender on papers

No country in Asia allows transgender children to change their gender on paper, even with parental consent. This is allowed in Australia and New Zealand.

In general, the most common age range is still between 16-18 years old and above, but most countries have added provisions to ensure that people under the age limit will also be examined and treated for gender dysphoria.

1.2. Medical interventions requirement for the right to change gender on papers

As for the change of provisions after 2017, many states (for the federal government) and countries have changed their provisions from requiring partial or total surgery to no medical interventions requirement, as follows:

- After 2017, the Canadian state of Saskatchewan passed a regulation that did not require surgery, making Canada a country with a consensus in all states on this provision.

- Similarly, on May 1, 2020, the Australian state of Victoria passed a new regulation, bringing the total number of states that approved not requiring surgery to 06/08 states.

- In the US, the states of Montana, New Jersey, New Mexico, and Virginia have changed their provisions in the past 4 years.

- In Asia, there is Kyrgyzstan.

- In South America, countries such as Argentina, Mexico, Colombia, and Uruguay have also changed their provisions to not require surgery.

The above data is a testament to the progress and advancement of countries in the law-making process when it does not require transgender people to have surgery, avoiding infringing on that individual's bodily integrity rights. It is forecasted that this trend will continue to be followed by other countries in order to facilitate the

majority of transgender people to be recognized with their desired gender, without creating additional barriers to those who do not have a medical need or condition to perform medical interventions.

There is not much correlation between countries that do not require surgery and Vietnam in terms of geographical location and political institutions. Also in Asia, Kyrgyzstan, Israel, and Taiwan do not require surgery, but the first two countries are located in Central Asia and do not have many links with Vietnam. Moreover, there are also many differences in legal and cultural background between us and these countries.

1.3. Regulations on marital status

Generally, in the world, there are many continents that do not regulate marital status such as Oceania, North America, and some countries in South America.

The number of countries that regulate marital status varies from continent to continent. In Europe, so far there are 11 countries that do not regulate marital status in legal provisions. Meanwhile, the number of countries requiring celibacy is 9 countries. In Asia, some countries such as China, Japan, and South Korea require celibacy, while it is not required in Singapore and Taiwan. Some other countries do not have specific regulations on this issue.

Since 2017, not many countries have changed this regulation. However, these changes depend a lot on the regulations on Marriage and Family, culture and lifestyle of each country.

1.4. Administrative procedures to change gender on papers

The majority of countries choose to use administrative procedures, including confirmation of psychological diagnosis, confirmation of surgery, or hormone intervention for countries requiring medical interventions. In addition, many countries also choose to follow a court ruling as proof that a person is eligible to change their legal gender. Countries that require real-life experience may need additional documents to determine the psychological process in the real-life experience phase of transgender people.

In countries where there are medical requirements for changing gender information, the type of medical interventions required is not always clearly specified. At the regional consultation of the “Being LGBT in Asia" initiative in February 2015, a parliamentarian from Mongolia suggested that the conditions for changing gender information should be clarified. “I am not pleased at all that public officials are able to impose their own interpretations… and make it inconsistently and erratically on their own,” she said.

Gender affirmation legal recognition laws in Japan, Singapore, South Korea, Taiwan, Hong Kong (China), and China all require gender reassignment surgery and sterilization. In Singapore and Hong Kong (China), even after undergoing gender reassignment surgery, transgender people can change their legal gender only on the National Registration Identity Card, not on the birth certificate.

2. Proposals for Vietnam

2.1. Age allowed to change gender on papers

In some countries and Vietnam, there are regulations in the draft law or some current policies that the person requesting/proposing gender affirmation must be 16- 18 years old or older. This requirement is designed to ensure that all individuals receiving medical interventions are physically and psychologically mature enough to make important decisions or meet the criteria for effective and safe treatment.

However, it should be noted that age is not the only valid factor for affirming adulthood in children because this process has diverse and complex developments. The appropriate age for accessing and participating in the treatment course for gender affirmation or gender dysphoria reduction is very different for each child. Some countries are very careful in setting the age limit in order to limit unwanted medical situations, and the "reversible treatment process" can still be done for children under 18 years old, so restricting the rights of the population under 18 years of age has many potential risks to their physical and mental well-being. Therefore, it is necessary to have orientations and regulations specifically stated in the law on mental and physical health care and counseling for children and adolescents whose age is below the limit.

Research[1] shows that transgender adolescents and children struggle with "emotions of shame and self-hatred and the thought of not deserving good things…", and that transgender people perceive differences in individual identity compared to the majority from a very early age (about 10 years old) or as teenagers (about 13 years old) are able to label themselves as transgender. Medical interventions for this group are considered appropriate and effective in treating gender dysphoria or helping them discover and shape their gender identity more favorably when entering adulthood.

2.2. Medical interventions requirement for the right to change gender on papers

It is necessary to consider the changes of the world in recent years to avoid repeated regulatory revisions that are costly and wasteful in human resources. In addition, Vietnam can totally become a model of innovation, taking the lead in legal reform with progressive provisions. This will help the country's image in the international sphere.

2.3. Regulations on marital status

The requirement of celibacy prevents married transgender people from accessing and using medical interventions, thereby eliminating their right to have their legal gender recognized on papers and significantly affecting their rights and interests. At the same time, it forces married people to terminate their marriage commitment. This provision in the draft law indirectly creates the status quo of discrimination against transgender people and does not protect their equality before the law.

The Human Rights Committee commented that "The prohibition of discrimination (Article 26) included discrimination on the grounds of marital status and gender identity including transgender people", and emphasized "the right to have legal gender recognized by law without the requirements of dissolution of marriage or civil union". In addition, in the Yogyakarta Principles (principle 03), it is cited that "No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person's gender identity".

[1] www.csusm.edu/gsr/irb/documents/policy_guidelines/trans_youth_article.pdf

2.4. Administrative procedures to change gender on papers

Procedures should be targeted to protect privacy and obtain consent with the individual requesting/proposing for gender affirmation. Along with this goal, a new process should also be established to ensure an appeal procedure in cases where a transgender person's request is denied, and the denying party does not provide an acceptable reason or that transgender individual wants to complain, with reasonable measures and sanctions for the violations of rights.

EPILOGUE

Each country has its own cultural background, political system, and context in which to develop regulations on gender affirmation. Whether it is a specialized law or a small regulation, it shows that the country cares about basic human rights. Although there are differences, the legal gender recognition of transgender people based on the correctness of their right to self-determination is the most common. The evidence is the tendency of countries to make progress when it comes to respecting and guaranteeing the right to self-determination for transgender people.

With the data provided by the study, the research team hopes that this evidence will be of high value to the drafting process of the Law on Gender Affirmation and other related laws in Vietnam. In particular, this will be a reference for experts and other scientific researchers who have an interest in this topic.

APPENDIX 1

Summary of research on issues and rights of transgender people from 2015 to 2021

No.	Research title	Year	Research summary	Reference
1	Perceptions and attitudes of transgender people about transgender rights in Vietnam.	2016	The purpose of this research is to understand the perception and attitude of transgender people about transgender rights in Vietnam, thereby proposing recommendations and effective communication channels to propagate the Law on transgender rights in Vietnam for transgender people and the community.	Nguyễn, T. T. P. (2016). *Nhận thức, thái độ của người chuyển giới về quyền chuyển giới tại Việt Nam.* Luận văn thạc sĩ, Đại học Quốc gia Hà Nội, Việt Nam.
2	Transgender people and business activities in Vietnam.	2018	This study investigates the economic opportunities and difficulties faced by transgender employees in the Vietnamese environment. The two authors used a 29- question survey to survey 334 transgender people (77.5% trans men and 22.5% trans women) to investigate employment choices and preferences as well as the link between stigma, education, and work. The results show that gender stereotypes and standards often lead to economic inequality between trans men and trans women. For	Ho, M. T. (2018). *Người chuyển giới và hoạt động kinh doanh Việt Nam.*

			example, trans women feel burdened by expectations of financial and family support responsibilities that trans men do not. However, despite the difficulties, there are still successes for transgender people.	
3	Completing the current Gender Affirmation Law in Vietnam.	2017	This study analyzes and evaluates the status of the laws and practices of gender affirmation rights of transgender people in our country. It also determines the cause of the limitations in this issue and develops scientific arguments as well as proposes legal solutions to improve the legal system. Thereby, promoting respect, ensuring and protecting the rights of transgender people, contributing to raising their status, and creating opportunities for transgender people to integrate into Vietnamese society.	Vũ, T. N. A. (2017). *Hoàn thiện pháp luật về quyền chuyển đổi giới tính ở Việt Nam hiện nay: Luận văn ThS. Luật: 603801* (Doctoral dissertation, H.: Khoa Luật).
4	Gender Affirmation laws in the world and reference values for the development of the Gender Affirmation Law in Vietnam.	2020	Presenting the theoretical basis of the Gender Affirmation laws. Analyzing and evaluating the legal provisions on gender affirmation in some countries. Assessing the impact of the Gender Affirmation laws on the transgender community and the whole society in some countries around the world. Drawing lessons for Vietnam in developing laws to ensure human rights and citizenship for transgender people in Vietnam.	Trịnh, T. H. (2020). *Pháp luật về chuyển đổi giới tính trên thế giới và những giá trị tham khảo cho việc xây dựng Luật Chuyển đổi giới tính của Việt Nam*

				(Doctoral dissertation)
5	Current status of medical experience and needs of transgender people in Vietnam	2018	The year 2012 marked an important turning point in the social awareness of transgender people in Vietnam. After a period of conducting research to explore the transgender community in Hanoi and Ho Chi Minh City, the Institute for Research on Society, Economy and Environment (iSEE) published the report "Aspiration to be yourself: transgender people in Vietnam - practical and legal issues" (iSEE 2012) and organize the first seminar on transgender people in Vietnam - attracting the attention of legislators and media. The study addresses general issues of transgender men (FtM) and transgender women (MtF) communities in Vietnam. After this study, transgender people officially appeared in the press and were known by the public as a group of residents with specific characteristics and needs, different from gay people. This study also shows that transgender people in Vietnam, with or without surgery, are victims of stigma, discrimination, violence, and livelihood difficulties just because they want to live as themselves.	http://isee.org.vn/wp-content/uploads/2019/01/Report_Need-experience-on-medical-intervention-of-Transgender-community-in-Vietnam-FINAL.pdf

6	Health risks of hormonal interventions and gender reassignment surgery in Vietnam 2019.	2019	A qualitative study of transgender people in Hanoi, Nghe An, and Ho Chi Minh City with the objective of describing the health risks associated with medical interventions such as hormone therapy and gender reassignment surgery in 2019, thereby making policy recommendations. Data were collected through in-depth interviews with 12 transgender people and analyzed using Nvivo 10 software. Three themes were formed through content analysis, including: 1) Hormones: Companion on the road to finding the true gender, 2) The painful journey of gender reassignment surgery, and 3) A difficult life and uncertain future. The use of hormones without a prescription and a doctor's supervision caused many transgender people in this study to experience prolonged fatigue, irritability, unreasonably boredom, memory loss, anxiety, and depression. The examination and consultation were too sketchy before surgery, the post-operative care was rushed and sloppy, making many people feel their health deteriorated, forgetful, and decreased their sex drive. The Gender Affirmation Law needs to be promulgated soon to provide legal and safe medical interventions for transgender people in Vietnam.	https://doi.org/10.51403/0868-2836/2020/196

7	Hormone therapy and gender reassignment surgery for transgender people in Vietnam.	2019	This is a descriptive cross-sectional study, combining qualitative and quantitative. Quantitative data were collected through direct interviews using questionnaires with 141 transgender people and qualitative data were collected through recording in-depth interviews with 12 transgender people. The study was conducted in Hanoi, Ho Chi Minh City, Nghe An, and Da Nang, from June to October 2019. The results show that the majority of transgender people buy and use hormones without professional guidance. The examination, consultation, and care before and after surgery are not adequate. Many adverse health consequences can arise. The Gender Affirmation Law will help transgender people access safe and quality health services.	http://jhds.vn/bai-bao/dieu-tri-noi-tiet-to-va-phau-thuat-chuyen-doi-gioi-tinh-cua-nguoi-chuyen-gioi-tai-viet-nam-244.html
8	Experiences of some countries in the world on the Gender Affirmation laws and lessons for Vietnam.	2018	In collaboration with the School of Law - Vietnam National University, Hanoi, Proceedings of the Scientific Conference gathered 10 articles on experiences and practices on Gender Affirmation laws of some countries around the world, thereby serving as a premise to contribute to the development of the Gender Affirmation Law in Vietnam.	https://static1.squarespace.com/static/526c21b5e4b0d43e45f6c4c2/t/5c2c84a788251b4996938bb0/1546421453141/LGBT_International+Experience+on+Trans+right_VIE_Final.pdf

9	Gender Dysphoria - appeared, existed, and left its mark in the life of Transgender people.	2019	This study focuses on the experiences, perspectives, and perceptions of transgender adults (age 18 and older) living or studying in two big cities, Hanoi and Ho Chi Minh City, about Gender dysphoria. From there, the study also pointed out the causes, effects, and strategies to deal with Gender dysphoria of transgender people.	https://static1.squarespace.com/static/526c21b5e4b0d43e45f6c4c2/t/5ffd6ccd99828f0602608164/1610444086315/B%C3%A1o+c%C3%A1o+nghi%C3%AAn+c%E1%BB%A9u_B%E1%BB%A9c+b%E1%BB%91i+gi%E1%BB%9Bi.pdf

APPENDIX 2

List of countries with Gender Affirmation Law

No.	Country	Without medical interventions requirement	With medical interventions requirement but does not require surgery	With surgery requirement	With sterilization requirement	Surgery cost is covered by the state	Real-life experience requirement	Note
Europe: - The number of countries with Gender Affirmation Law: **36** - The number of countries without medical interventions requirement: **16** - The number of countries with medical interventions requirement but do not require surgery: **09** - The number of countries with surgery requirement: **11** which **08** countries with sterilization requirement - The number of countries that cover surgery cost: **06**								Every European country (except for noted countries) use both administrative procedure and the court decision.
1	Ireland	X						
2	Austria	X					1-2 years	Only uses administrative procedure
3	Belgium	X				X		

No.	Country	Without medical interventions requirement	With medical interventions requirement but does not require surgery	With surgery requirement	With sterilization requirement	Surgery cost is covered by the state	Real-life experience requirement	Note
4	Portugal	X						
5	Croatia		X					
6	Denmark	X						
7	Germany	X				X	3 years	
8	Netherlands	X						
9	Greece	X						
10	Luxembourg	X						
11	Malta	X				X		
12	Norway	X						

No.	Country	Without medical interventions requirement	With medical interventions requirement but does not require surgery	With surgery requirement	With sterilization requirement	Surgery cost is covered by the state	Real-life experience requirement	Note
13	France	X				X		
14	Spain		X			X	2 years	
15	Belarus	X						
16	Estonia		X				1-2 years	
17	Finland			X	X		6-12 months	
18	Iceland	X					1 year	
19	Italy		X			X	1-2 years	
20	Moldova	X						Only uses administrative procedure

No.	Country	Without medical interventions requirement	With medical interventions requirement but does not require surgery	With surgery requirement	With sterilization requirement	Surgery cost is covered by the state	Real-life experience requirement	Note
21	Russia		X					
22	Sweden		X				2 years	
23	United Kingdom		X				2 years	
24	Bosnia and Herzegovina			X	X			
25	Czech Republic			X	X		1-2 years	
26	Montenegro			X	X			
27	Romania			X	X			Only uses the court

No.	Country	Without medical interventions requirement	With medical interventions requirement but does not require surgery	With surgery requirement	With sterilization requirement	Surgery cost is covered by the state	Real-life experience requirement	Note
								decision
28	Slovakia		X					
29	Slovenia		X					
30	Switzerland	X						
31	Turkey			X	X		2 years	Only uses the court decision
32	Ukraine			X				
33	Poland			X			1-2 years	
34	Latvia			X	X			Only uses the court decision

No.	Country	Without medical interventions requirement	With medical interventions requirement but does not require surgery	With surgery requirement	With sterilization requirement	Surgery cost is covered by the state	Real-life experience requirement	Note
35	Republic of Cyprus			X	X			Only uses administrative procedure
36	Serbia			X				Only uses the court decision

No.	Country	Without medical interventions requirement	With medical interventions requirement but does not require surgery	With surgery requirement	With sterilization requirement	Surgery cost is covered by the state	Real-life experience requirement	Note
Asia - The number of countries with Gender Affirmation Law: **17** - The number of countries without medical interventions requirement: **08** - The number of countries with medical interventions requirement but do not require surgery: **0** - The number of countries with surgery requirement: **09** which **03** countries with sterilization requirement - The number of countries that cover surgery cost: **03**								
1	Kyrgyzstan	X						Only uses administrative procedure
2	Israel	X				X		Only uses administrative procedure

No.	Country	Without medical interventions requirement	With medical interventions requirement but does not require surgery	With surgery requirement	With sterilization requirement	Surgery cost is covered by the state	Real-life experience requirement	Note
3	India			X				Uses both administrative procedure and the court decision
4	Iran			X		X		Only uses the court decision
5	China		X	X				Only uses administrative procedure
6	Singapore		X	X				Uses both administrative procedure and the court decision

No.	Country	Without medical interventions requirement	With medical interventions requirement but does not require surgery	With surgery requirement	With sterilization requirement	Surgery cost is covered by the state	Real-life experience requirement	Note
7	UAE			X		X		
8	Japan			X	X			Only uses the court decision
9	South Korea	X						Only uses the court decision
10	Bangladesh	X						Only uses administrative procedure (A council of experts and government employees)

No.	Country	Without medical interventions requirement	With medical interventions requirement but does not require surgery	With surgery requirement	With sterilization requirement	Surgery cost is covered by the state	Real-life experience requirement	Note
11	Pakistan	X						Only uses administrative procedure (A council of experts)
12	Sri Lanka	X						Only uses administrative procedure
13	Uzbekistan	X						
14	Nepal		X					Only uses the court decision

No.	Country	Without medical interventions requirement	With medical interventions requirement but does not require surgery	With surgery requirement	With sterilization requirement	Surgery cost is covered by the state	Real-life experience requirement	Note
15	Syria		X					
16	Taiwan	X						Only uses the court decision
17	Mongolia		X					

No.	Country	Without medical interventions requirement	With medical interventions requirement but does not require surgery	With surgery requirement	With sterilization requirement	Surgery cost is covered by the state	Real-life experience requirement	Note
Americas and Latin America - The number of countries with Gender Affirmation Law: **13** - The number of countries without medical interventions requirement: **10** (not including the United States because of separate regulations in each state) - The number of countries with medical interventions requirement but do not require surgery: **0** (not including the United States because of separate regulations in each state) - The number of countries with surgery requirement: **02** (not including United States because of separate regulations in each state) - The number of countries that cover surgery cost: **01**								
1	The United States	X (28 states)	X (1 state)	X (19 states)				There are 21 states using the court decision, 25 states using administrative procedure, 2 states using both methods
2	Canada	X						

No.	Country	Without medical interventions requirement	With medical interventions requirement but does not require surgery	With surgery requirement	With sterilization requirement	Surgery cost is covered by the state	Real-life experience requirement	Note
3	Argentina	X						
4	Mexico	X						There are regulations in 3 states: Mexico city, Nayarit và Michoacán. Federal level does not require medical interventions
5	Bolivia	X						
6	Colombia	X						
7	Ecuador	X					2 years	
8	Uruguay	X						

No.	Country	Without medical interventions requirement	With medical interventions requirement but does not require surgery	With surgery requirement	With sterilization requirement	Surgery cost is covered by the state	Real-life experience requirement	Note
9	Peru	X						Only uses the court decision
10	Panama			X				In 2016, a court in Panama recognized a case of gender affirmation without medical interventions
11	Cuba			X		X		
12	Chile	X						

No.	Country	Without medical interventions requirement	With medical interventions requirement but does not require surgery	With surgery requirement	With sterilization requirement	Surgery cost is covered by the state	Real-life experience requirement	Note
13	Brazil	X						According to the Judgment of the Supreme Federal Court on March 1, 2018. However, there are many barriers in the proofing process (too many papers)

No.	Country	Without medical interventions requirement	With medical interventions requirement but does not require surgery	With surgery requirement	With sterilization requirement	Surgery cost is covered by the state	Real-life experience requirement	Note
Africa - The number of countries with Gender Affirmation Law: **03** - The number of countries without medical interventions requirement: **01** - The number of countries with medical interventions requirement but do not require surgery: **01** - The number of countries with surgery requirement: **01** - The number of countries that cover surgery cost: **0**								
1	South Africa		X				2 years	Section 27(A), under the provisions of the Sex Description and Sex Status Act, 2003 (Act No. 49 of 2003).
2	Namibia			X				
3	Botswana	X						Uses the court decision

No.	Country	Without medical interventions requirement	With medical interventions requirement but does not require surgery	With surgery requirement	With sterilization requirement	Surgery cost is covered by the state	Real-life experience requirement	Note
Oceania - The number of countries with Gender Affirmation Law: **02** - The number of countries without medical interventions requirement: **01** (not including Australia because of separate regulations in each state) - The number of countries with medical interventions requirement but do not require surgery: **0** - The number of countries with surgery requirement: **0** - The number of countries that cover surgery cost: **0**								
1	Australia	X (6 states)		X (2 states)				There are separate regulations in each state
2	New Zealand	X						

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