Discrimination due to gender identity and sex characteristics in Mexico

List of themes suggested to be presented to the Working Group regarding Mexico's Report.
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The first section of this report focuses on the situation of economic, social and cultural rights of trans persons in Mexico. The main focus of this section is the link between the lack of legal recognition of the gender identity of trans persons in Mexico and the violation of these human rights.

The second section addresses the situation of intersex persons in Mexico and the consequences of discrimination due to sex characteristics for the full enjoyment of their human rights, in particular the right to health.

Discrimination due to gender identity

Legal Situation[1]

In Mexico, one can only change the name and sex in the identity documents in Mexico City, thanks to the reforms that were introduced to article 135bis of the Civil Code of Mexico City. These reforms were approved by the local congress in November 2014 and entered into force on February 5, 2015 when it was published in the *Boletín Oficial.*

These legal reforms introduced is a significant step forward from the previous law. Currently, adults (persons over 18 years old) who want to modify their name and sex marker are not required to undergo medical interventions or to have a medical certificate or to have filed prior legal motions. Under the current law, it is a simple administrative proceeding, for which only applicants need to present a certified copy of the birth certificate, an official identity document and proof of residence.

However, it is important to highlight that this law only applies to people who reside in Mexico City, which excludes the majority of trans Mexican people who live in other states of the country. It also excludes people who, due to a variety of reasons, cannot provide proof of residence. For example, trans people who come to Mexico City from other parts of the country and who can only have access to working in the informal sector, such as sex work, live in precarious conditions in Mexico City.

Another problem arises in the case of people who currently reside in Mexico City, but who come from other states, since in many cases the local authorities that issued the original birth certificate refuse to authorize that the Civil Registry of the City of Mexico issues a new birth certificate with the new name and sex marker.

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[1] Rubio Rodríguez O. and Flores Ramírez V.H., "*Los claroscuros del nuevo procedimiento administrativo para el reconocimiento de la identidad jurídica de las personas trans,"* Revista Defensor, No. 1, Human Rights Council of the Federal District. June 2015. Available (in Spanish only) at: http://www.corteidh.or.cr/tablas/r34716.pdf.

For children (people under the age of 18), the law that applies is the previous one which indicates that the proceedings must be carried out through the justice system. These proceedings are discriminatory since the child's family has to pay high fees in for their attorneys and expert witnesses. These professionals play a key role since frequently state officials and expert witnesses provided by the state mistrust the option indicated by the child of wanting to go through the proceedings. Further, it is a long process, which can also become highly burdensome and tiring for the children and the parents.

Consequences of the lack of recognition of the gender identity of trans persons

Since they do not have identification documents that reflect their gender identity, the majority of Mexican trans people are excluded from exercising their economic and social rights. They don't have access to formal employment, to rent a home or to register to study. They are pushed to live in hiding and have less elements to defend themselves from pervasive *machismo*, cisnormativity, transphobia and social discrimination.

Sometimes trans people must pay very high prices to have access to precarious housing, because in the absence of a formal lease, the landlord can establish and modify the price at their will, and can also evict them at anytime. It is also frequent that, in order to avoid being called by names that do not coincide with their appearance or that reflect their identity and not to be laughed at or suffer discrimination by health care professionals, many trans people do not come to health services except in serious cases.

The precarious social and economic situation of the majority of trans people in Mexico also has fatal consequences for them. Killings of trans people who engage in sex work and/or who are homeless are frequent, and they tend to end in impunity. For example, only in the month of October 2016, six trans people were killed in Mexico: Paola and Alessa in Mexico City; a trans young woman whose identity couldn't be confirmed in the State of Mexico; Itzel in Chiapas; Cheva in Chihuahua and Ariel in Guanajuato. Statistics gathered by civil society organizations (since there are no official statistics) indicate there are 77 killings of trans people per year in Mexico. The case of Paola, street sex work, shows the precarious situation of trans women: a man stopped his car in front of her, supposedly because he wanted to engage in sex with her, but he shot her until he killed her. Also, the fact that some trans women, like the young woman in the state of Mexico who died as an unidentified person, also shows their condition as "non-citizens" in Mexico.

Lack of official data

A serious obstacle so that Mexico can advance in the design and the implementation of public policies in this field is the lack of official data on the situation of trans persons in Mexico in terms of access to housing, education, health and work.

Public Policies

Currently, the only public policies for trans and intersex persons in Mexico are those related to HIV/AIDS. Although these may be relevant, the needs for trans and intersex people go beyond this issue. We think that the best way to address the human rights violations that are described in this report is through an exhaustive policy for trans persons which includes protection from violence but also measures for their full social inclusion through support programs for the full enjoyment of their economic and social rights.

Recommended questions for the State:

1. What measures is the State taking or planning to take to develop public policies that guarantee the full inclusion of trans persons throughout the Mexican territory, particularly in terms of their right to health, education, housing and work?
2. What measures is the State taking or planning to take to produce statistics on the human rights situation of trans persons in Mexico?
3. What measures is the State taking or planning to take to guarantee that trans children and their families from lower socio economic strata have legal and expert witness services that are free and of quality to be able to pursue legal proceedings in order to get legal recognition for their identities?
4. What measures is the State taking or thinking of taking to guarantee that all trans people can have legal recognition of their gender identity throughout the country?
5. What budget has the State allocated to develop these public policies?
6. What instruments will the State adopt to ensure that these public policies are implemented, measured, and in case they are not complied with, to impose penalties?

Intersex persons are born with sexual characteristics (like genitals, gonades and chromosomic patterns) that do not correspond to the typical binary notions on male or female bodies. 'Intersex' is the term used to describe a wide range of natural body variations. In some cases, intersex characteristics are visible at birth while in other they only manifest at puberty. Some chromosomic variations in intersex persons can be physically invisible.

Brújula Intersexual started operations in 2013 and since then the discussion on the right to bodily integrity, physical autonomy and self-determination for intersex persons has been growing. This issue has also been documented in the report issued by the Interamerican Commission on Human Rights (IACHR) in 2015 *Violence against LGBTI Persons*[2]*.* In this report, the IACHR states that "'genital normalizing' surgeries - i.e. interventions with cosmetic purposes - have no medical benefits, because intersex presentations of the body, in the majority of cases, pose no danger to life or health".

Through the work done by *Brújula Intersexual* we have witnessed how the intersex community in Mexico faces problems that are similar to those faced by intersex persons across the world but with some specificities.

1. The medical care protocol for persons with intersex variations includes mutilizing and 'normalizing' practices such as genital surgeries, psychological treatments and others that medically unnecessary, all performed on intersex persons who are under age and without their informed consent.
   - As the IAHRC also points out, medical check-ups in the presence of several doctors are common as "intersex children are usually exposed to abusive display and repeteadly examined for training or scientific purposes, which in turn humiliates them and may cause deep psychological harm".[3]
   - Intersex children have also been subjected to surgical and hormonal procedures to adjust the shape or appearance of their genitals to established standards; to irreversible alterations in healhty tissue and organs; to ongoing photographing of their bodies or to parts of their bodies without their informed consent and to the removal of healthy gonades. All this has resulted in the loss of sensitivity in the genital areas, to recurring infections and to infertility, among others.
   - These interventions have been conducted from the moment a person goes or is taken to see a doctor, and have affected small babies, girls, boys, adolescents and young persons.

   Testimonies from intersex persons subjected to these surgeries in Mexico illustrate this reality:

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[2] Inter-American Commission on Human Rights, Violence against lesbian, gay, bisexual, trans and intersex persons in the Americas, OEA/Ser.L/V/II.Doc.36/15Rev.2, para. 185. Retrieved on Dec. 28, 2016 at http://www.oas.org/en/iachr/reports/pdfs/ViolenceLGBTIPersons.pdf

[3] Inter-American Commission on Human Rights, op.cit. para. 186.

> “Far from bringing me happiness, the vaginoplasty brought me many problems. The main one is the pain I feel at all levels, from any piece of cloth touching me to when I have to clean myself after urinating.”[4]
> “I underwent my second genital surgery at 9 and it really affected me, I came out of it feeling very badly. At 12, they operated on me for the third time, to build a 'neo-vagina'. The outcome also was a lot of pain and some effects persisting until today".[5]

2. The lack of trained and sensitized specialists who can treat intersex persons efficiently and respecting their dignity is noticeable.

3. Economic and social inequalities experienced in the country lead to health service providers treating lower-income persons, those coming from the provinces, not fluent in Spanish or who have not learned to read and write in a differential way. Those who are vulnerable because of poverty or marginalization are not provided with adequate information on the situation of their intersex children or directly with no information at all; often, children are subjected to medical procedures without the parents being asked for their consent. We have heard doctors arguing that those in the lowest socioeconomic ranks "have no capacity to understand intersex characteristics and it is better for them not to know they have them". In some cases, doctors have acknowledged that this lack of awareness might imply a future health risk for these persons. The IAHRC has recommended the following:

> The Inter-American Commission on Human Rights recommends that OAS Member States make necessary amendments to policy and law to prohibit medically unnecessary procedures on intersex persons, when it is administered without the free informed consent of the intersex person. Amendments must bemade to medical protocols to ensure the right to autonomy of intersex persons: intersex persons must decide for themselves whether they want to undergo surgeries, treatment or procedures. Considering that the majority of these medical interventions are not medically necessary and given that, in general, there is a high risk that they will cause irreversible damage to the physical and mental health of intersex persons, those interventions can only be undertaken when the intersex child can provide his or her prior, free and informed consent. Surgeries and other medical interventions that are not medically necessary must be postponed until intersex persons can decide for themselves.[6]

4. Mexico is a country with extreme inequalities, a high rate of extreme poverty and a defficient health system. Unlike what happens in the Global North, many persons with intersex bodies have not been subjected to surgery and have preserved their bodily integrity. But body variations are met with social cruelty,

[4] https://brujulaintersexual.wordpress.com/2016/08/30/vagina-mi-felicidad-por-guadalupe-chavez-persona-intersexual/
[5] https://brujulaintersexual.wordpress.com/2015/02/08/historia-de-una-persona-con-hiperplasia-suprarrenal-congenita/
[6] Inter-American Commission on Human Rights, op.cit. para. 194.

disgust and mockery. Many intersex persons can be subjected to discrimination and violence when their intersex status becomes known in their context. To this regard, the IACHR has recommended to Organization of American States (OAS) Members States

> To (i) conduct trainings of medical personnel and medical community in order to provide adequate treatment and support to intersex persons and their families; (ii) create multidisciplinary groups to provide support and counseling to parents and relatives of intersex children and infants and to provide care and support to intersex persons from childhood into adolescence and adulthood; (iii) conduct awareness-raising and sensitization campaigns at the national level on the shortterm and long-term effects of "normalizing" interventions on intersex children; and (iv) carry out educational campaigns in conjunction with the ministries of education in order to bring down stereotypes, stigma and invisibility surrounding intersex persons.[7]

5. Intersex persons face serious difficulties to access their own medical histories or records. Procedures to access those records can be lengthy and they are not always successful.

6. The lack of recognition of the pain and injustices caused to intersex persons in the past and of the subsequent compensation, reparations, access to justice and right to truth are ongoing. There is also a lack of recognition that medicalizing and stigmatizing intersex persons leads to significant trauma and health damages.

Question for the Mexican State:

What measures is the Mexican State taking or plan to take to guarantee that girls and boys whose genital characteristics differ from established standards for male and female bodies, or diagnosed as intersex can fully enjoy their human rights, including the right to health?

[7] Inter-American Commission on Human Rights, op.cit. para. 195.