



Buenos Aires, November 29th, 2014

Ministry for Social Dialogue, Consumer Affairs and Civil Liberties
Barriera Wharf, Valletta VLT 1971, Malta

Dear Sir/Madam,

On behalf of GATE, Global Action for Trans* Equality¹, I make this submission to support the proposed *Gender Identity, Gender Expression and Sex Characteristics Act*. GATE congratulates the Maltese Ministry for Social Dialogue, Consumer Affairs and Civil Liberties for this groundbreaking initiative, as well as for implementing this consultation process.

This submission also expresses my personal support as one of the signatories of the *Yogyakarta Principles*², as a member of the *Frente Nacional por la Ley de Identidad de Género* – the coalition that elaborated the Argentinian Gender Identity Law³ - and as an intersex and trans citizen of Argentina. That Law, passed in 2012, created a new standard, introducing a radical shift in the fulfillment of human rights, including the right to gender identity recognition through a simple administrative process and the right to pursue bodily modification on the sole basis of informed consent.

We celebrate and support the articulation of the right to gender identity recognition, and the inclusion of gender expression and sex characteristics as protected grounds, as well as the ground-breaking inclusion of bodily integrity and physical autonomy as fundamental rights.

The concrete implementation of the Argentinian Gender Identity Law proved that, in terms of gender identity recognition, administrative procedures are the only provision fully compatible with human rights standards. We celebrate and support the articulation of administrative provisions in the *Act*, as well as the explicit exclusion of requirements incompatible with those standards, such as “proof of a surgical procedure for total or partial genital reassignment, hormonal therapies or any other psychiatric, psychological or medical treatment” in Article 3(4) of the proposed *Act*.

We celebrate and support the explicit inclusion of minors as subjects with the right to identity. The implementation of the Gender Identity Law in Argentina has demonstrated beneficial impact of gender identity recognition in their access to rights, including access to education, health and wellbeing.

¹ GATE is an international trans* organization, whose mission is to promote trans* people's human rights, to produce and make available critical knowledge on trans* issues, and to support trans* organizing worldwide.

² *Yogyakarta Principles on the Application of Human Rights Law to Sexual Orientation and Gender Identity*. Available at: www.yogyakartaprinciples.org

³ A translation of the Law into English is available at:
<http://globaltransaction.files.wordpress.com/2012/05/argentina-gender-identity-law.pdf>

We celebrate and support the inclusion of sex characteristics, bodily integrity and physical autonomy. By including them the proposed *Act* will radically contribute to the dismantling of institutional violence in medico-legal settings⁴, including:

- Medically unnecessary surgical and hormonal procedures, without the consent of the person subjected to such procedures, aimed at ‘normalizing’ those bodies that vary from both male and female standards;
- Unwanted surgical and hormonal interventions, such as sterilizing procedures, when required to grant access to gender identity recognition.

By declaring that “provided that medical intervention which is driven by social factors without the consent of the individual concerned will be in violation of this Act”, the proposed text makes a groundbreaking advance in recognizing and naming one of the most common and yet most silenced ground for human rights violations: social stereotypes and their imposition through stigma, discrimination and violence. We congratulate the Ministry for this giant step in making this human right issue visible and inadmissible.

Taking into consideration the text and spirit of the proposed Act, as well as human rights standards and the concrete experience on the implementation of the Gender Identity Law in Argentina, we respectfully recommend the revision of the following issues:

1. *Proof.* Article 3(4) of the proposed *Act* excludes “psychiatric, psychological or medical treatment” as requirements for gender identity recognition. We recommend the additional exclusion of *diagnoses*, to clarify the depathologizing scope of the provision and stress self-determination.
2. *Affordability.* Different articles of the proposed *Act* require the payment of ‘fees’. It includes, centrally, the notarial fee established in the Notarial Profession and Notarial Archives Act, according to Article 5. (3). Provided that according to Article 4. (2) a declaratory public deed is a *sine qua non* requirement to change the recorded gender, we recommend this and other provisions related to fees, to be reconsidered as they may potentially restrict access to rights on socioeconomic grounds.
3. *Autonomy.* Article 5. (2) of the proposed *Act* requires that a Notary explain “the legal implications of the change of the assigned gender” and the applicant’s declaration of “understanding of such implications”. We recommend the reconsideration of this requirement, as it may potentially restrict decisional autonomy by imposing an additional burden to an otherwise autonomous individual.
4. *Rights of the child.* Provisions included in Article 8 (1) and (4) recognizes that “persons exercising parental authority over the minor or the tutor of the minor” may initiate applications to request change of the recorded gender or declaring

⁴ *Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment.* Available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf

the gender of the minor “before the minor attains the age of fourteen”. We recommend the re-framing of these provisions to place the child at the center of those processes, which should require the “explicit agreement by the minor, taking into account the evolving capacities and best interests of the child as expressed in the Convention on the Right of the Child”.⁵ In the same sense, we recommend the introduction of provisions to solve situations “when the consent of any of the minor’s legal representatives is denied or impossible to be obtained”.⁶

5. *Right to identity and right to truth.* Article (9) of the proposed *Act* limits “accessibility to the full act of birth (...) solely and exclusively to the person who has attained the age of eighteen years...”. We recommend the revision of this formulation to make it fully compatible with the principle of evolving capacities of the child, and the child’s right to identity and right to truth –provided that registration of birth is an integral and key component of biographical truth.
6. *Sectors.* Article 14(3) restricts provisions to “all public sector and public service departments”. We recommend the extension of those provisions to the *private* sector.
7. *Composition of the Interdisciplinary Team.* We strongly recommend provisions expressed in Article 15 (4) to include not only professional but also other relevant stakeholders (for example, *activists*) in the composition of the “Interdisciplinary Team”).
8. *Counseling and support.* We strongly recommend provisions expressed in Article 16 of the proposed *Act* to include *peer* counseling and support.

Finally, we express our deep acknowledgment and gratitude for giving us the opportunity to contribute to this process with this submission, which is not only relevant for Malta, but emancipatory for all.

Yours truly,



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⁵ Argentinian Gender Identity Law, Article 5. *Minors.*

⁶ Argentinian Gender Identity Law, Article 5. *Minors.*