



“People Can’t Be Fit into Boxes”

Thailand’s Need for Legal Gender Recognition

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มูลนิธิเครือข่ายเพื่อนกะเทยเพื่อสิทธิมนุษยชน
The Foundation of Transgender Alliance for Human Rights



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Founded in 2010, the Thai Transgender Alliance, or TGA, supports transgender and gender diverse people in Thailand to have a better quality of life and works to advance the human rights of transgender people through advocacy, movement strengthening and leadership development strategies.

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Glossary

Cisgender: The gender identity of people whose sex assigned at birth conforms to their identified or lived gender.

Gender: The social and cultural codes (as opposed to biological sex) used to distinguish between society's conceptions of "femininity" and "masculinity."

Gender-Based Violence: Violence directed against a person on the basis of gender or sex. Gender-based violence can include sexual violence, domestic violence, psychological abuse, sexual exploitation, sexual harassment, harmful practices, and discriminatory practices based on gender. The term is often used to discuss violence against women but is also widely understood to include violence targeting women, transgender persons, and men because of how they experience and express their genders and sexualities.

Gender Expression: The external characteristics and behaviors that societies define as "feminine," "androgynous," or "masculine," including such attributes as dress, appearance, mannerisms, hairstyle, speech patterns, and social behavior and interactions.

Gender Identity: A person's internal, deeply felt sense of being female or male, both, or something other than female and male.

Gender Dysphoria (previously "Gender Identity Disorder," or GID): The formal diagnosis that psychologists and physicians use to describe persons who experience significant discontent with their biological sex and/or the gender they were assigned at birth. The *International Statistical Classification of Diseases and Related Health Problems* (ICD-10 CM) and the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-V) classify GID as a medical disorder. The 2013 version of the DSM-V replaced "Gender Identity Disorder" with "Gender Dysphoria" in an attempt to avoid the stigma associated with "disorder," and changed the criteria for the diagnosis.

Gender Non-Conforming: Does not conform to stereotypical appearances, behaviors or traits associated with sex assigned at birth.

Kathoey: A Thai term, sometimes translated as “transgender woman,” referring to people who were assigned a male sex at birth and develop a feminine gender identity or expression.

Sex: The biological classification of bodies as male or female based on such factors as external sex organs, internal sexual and reproductive organs, hormones, and chromosomes.

Transgender: The gender identity of people whose sex assigned at birth does not conform to their identified or lived gender. A transgender person usually adopts, or would prefer to adopt, a gender expression in consonance with their gender identity but may or may not desire to permanently alter their physical characteristics to conform to their gender identity.

Transgender Men: Persons designated female at birth but who identify and may present themselves as men. Transgender men are referred to with male pronouns.

Transgender Women: Persons designated male at birth but who identify and may present themselves as women. Transgender women are referred to with female pronouns

Summary

Thailand has an important opportunity to match its positive global reputation on lesbian, gay, bisexual and transgender (LGBT) rights with its obligations under international law by developing a rights-based procedure for legally recognizing gender identity. The country has for decades been a destination for transgender people seeking gender-affirming health care and has been recognized as a place where sexual and gender minorities can live safely and openly. But social acceptance has its limitations and is no substitute for protections grounded in law.

Transgender people in Thailand currently enjoy few legal protections against discrimination and those are not fully enforced. There is no route for transgender people to obtain legal documentation that reflects their gender identity, and the affirmative policies that exist (including the ability to change one's first name) leave discretionary power in the hands of administrative officials.

The result, as documented in this report, is that transgender people in Thailand experience numerous barriers to their rights to health, education, work, freedom of movement, and non-discrimination. Transgender people in Thailand interviewed for this report described how the lack of legal gender recognition, combined with pervasive and harmful stereotypes, limited their ability to access services and forced them to face daily indignities.

For example, a transgender man in Bangkok told Human Rights Watch that in 2019 when he lost his identification (ID) card, which lists him as female, his birth sex, the visit to the government office to replace it was humiliating.

“The first question that they asked me is how did I get my penis...whether it's really possible to become a trans man,” he said. “They opened up the picture of me from the past and compared different versions and asked other colleagues to come and look as well to discuss on this.” The officials invaded his privacy, asking questions about his body and his transition. “I felt like a caricature for these government officials,” he said.

Educational institutions in Thailand reinforce rigid social gender norms. Transgender students in Thai schools face harassment, bullying, and discrimination, all of which is undergirded by the enforcement of appearance standards that force students to dress according to their sex assigned at birth. From early years and even at most universities, the enforcement of school uniform regulations has acted as a barrier and a source of stress and humiliation for transgender students.

Seeking health care is particularly fraught for transgender people in Thailand. They are subjected to privacy violations when their gender identity is exposed in public settings, invasive questioning and humiliation when providers query their gender markers, and discomfort when they are placed in hospital units that do not match their gender identity. Even if they never face such incidents themselves, they often fear and avoid health care based on their peers' experiences. Furthermore, an insufficient number of providers are adequately trained in transition-related care, such as the provision of hormone therapy, leading to the unsupervised consumption of hormones, compounding the accessibility gaps caused by stigma and discrimination.

Thailand has a robust public health care system, and all citizens are eligible for public health insurance. But these programs do not cover transition-related care, and research has shown that private insurance companies sometimes deny transgender people coverage, or only cover them under plans according to the sex they were assigned at birth, making them ineligible for certain services. And while Thailand's public health insurance covers a broad suite of care, including mental health services, the requirement to receive a referral for mental health services from a primary care provider poses a significant hindrance to transgender people seeking transition-related care, for which a psychiatric evaluation is often required, and more generally for those who face indignity and humiliation accessing care in general.

The lack of legal gender recognition in Thailand has a negative impact on transgender individuals' ability to secure employment and their right to be treated with dignity and respect. Employers have posted advertisements explicitly discouraging transgender people from applying. Hiring managers have asked transgender applicants inappropriate questions and told them they would never hire them because of their gender identity, or only if they dressed according to the sex they were assigned at birth.

Thailand's 2015 Gender Equality Act, the first national legislation in Southeast Asia to specifically protect against discrimination on the grounds of gender expression, specifically prohibits any form of discrimination if someone is "of a different appearance from his/her own sex by birth," a critical clause for protecting transgender people. The law's enforcement mechanisms provide a glimpse into how gender identity-inclusive and protective policy can and should be developed in Thailand. The majority of cases brought before the committee responsible for enforcing the act have been brought by transgender people facing discrimination. And after decades of advocacy, other legal progress appears to be on the horizon.

In recent years, the Thai government has begun to engage with civil society organizations and United Nations agencies to debate and develop a legal gender recognition procedure. Other legal developments, including discussions around same-sex relationship recognition, have taken place in parallel and can influence policymakers' perspectives on the rights of transgender people. The consultation processes have stalled, though transgender rights organizations have drafted and submitted their version of affirmative legislation for consideration (see Appendix I).

An ongoing process among government, civil society, and UN agencies to develop the country's first-ever legal gender recognition policy should be treated with urgency. While legal gender recognition is not a panacea for all of the stigma, discrimination, and violence transgender people face, it is the basis to safeguard basic rights and a long-overdue measure in Thailand.

Recommendations

To the Thai Ministry of Social Development and Human Security

- Develop a law, with the input of civil society groups, that enables transgender people to be recognized according to their gender identity and change their legal name and gender without any medical requirements.
- Take a leadership role under the powers vested in the minister of social development and human security under section 5 of the Gender Equality Act and develop a robust and inclusive definition of “gender identity” to be formally published in the royal gazette and cited thereafter in legal deliberations and developments.
- Recognize that it may be in the best interest of some transgender children and young adults to change their legal gender before the age of majority and ensure that transgender children are not excluded from the possibility of applying for legal recognition of their gender identity. In line with Thailand’s obligations under the Convention on the Rights of the Child, the relevant procedures should be designed so as to acknowledge that as children grow and acquire capacities, they are entitled to an increasing level of responsibility for and a say in the regulation of matters affecting them.

To the Ministry of Health

- Issue as a matter of urgency a public statement that the ministry will adopt the World Health Organization’s (WHO) new category of “gender incongruence” and work with the Ministry of Social Development and Human Security and the Ministry of Interior to ensure that their relevant policy language is revised in accordance with the WHO’s International Classification of Diseases, version 11.
- Update all health care policies that affect transgender people to bring them in line with the World Professional Association of Transgender Health (WPATH) Standards of Care-7, standards set by international health and medical experts for health care systems to provide the best possible care for transgender persons.
- Ensure that transgender people have access to the medical and psychological assistance and support they need regardless of whether they pursue medical steps

or a legal gender change and that such support and assistance is available to transgender individuals within a reasonable time.

- Ensure, in consultation with transgender people and civil society groups, that health insurance schemes cover all medical interventions related to gender transition for transgender people.
- Ensure that training is available to health service professionals, including psychologists, psychiatrists, general practitioners, and social workers, with regard to the specific needs and rights of transgender persons and the requirement to respect their dignity.

To the Thai Medical Council

- Revise Thai Medical Council regulations, including by deleting references that describe a transgender person as “a person with behaviour indicating confusion.”¹
- Work with WPATH to adopt the WPATH Standards of Care as the Thai Medical Council’s care standards and train providers on these standards.
- Undertake consultations with transgender community leaders and endocrinology experts to discuss providing hormone therapy to transgender people in a manner that supports their access to desired therapies and safe and effective monitoring of these medications.

To the Ministry of Education

- Ensure that all university programs for the education and certification of teachers include mandatory training on working with diverse students, including those who are LGBT and those who are questioning their sexual orientation or gender identity.
- Undertake a review of Ministry of Education Regulation on Student Uniform B.E. 2551 (2008) and immediately rescind the clause that forbids “cross-dressing.”

¹ Regulations of the Medical Council Concerning Ethics in the Medical Profession Rules for Treatment in Sex Change Operations B.E. 2552 (2009), <http://thailawforum.com/laws/Regulation%20of%20the%20Medical%20Council%20Concerning%20Ethics.pdf> (accessed July 30, 2021).

- Draft and implement a national school uniform policy that covers all levels of education institutions from primary schools to universities and requires institutions to respect an individual's self-declared gender identity and uniform preference.
- Design and implement a national sexuality education curriculum to include affirming materials about diversity of sexual orientations and gender identities.
- Instruct schools to designate all-gender or gender-neutral bathrooms in easily accessible locations throughout the school wherever feasible, particularly in instances where single-user bathrooms are currently gendered.
- Incorporate all-gender bathrooms into planned renovations or any construction of new education facilities.

To the Ministry of Labor

- Adopt via a ministry regulation provisions on non-discrimination from the Gender Equality Act to ensure the ministry's enforcement of equal access to employment.
- Train and instruct labor inspectors to investigate cases of gender identity-based discrimination in all workplaces.

Methodology

Human Rights Watch conducted most of the interviews for this report between January and May 2020 with individuals in four locations in Thailand: Bangkok, Trang, Chiang Mai, and Ubon. Due to public health restrictions during the Covid-19 pandemic, all interviews conducted after March 2020 were done remotely through secure video platforms. Consultations with community groups and analysis of media and legal sources were undertaken in early 2021.

During the period that Human Rights Watch conducted the research and writing for this report, the government of Thailand has been engaging in a consultation process for a legal gender recognition law. Human Rights Watch wrote to the Ministry of Social Development and Human Security and the Ministry of Public Health regarding this process and our recommendations on November 17, 2021. These letters appear in the Appendix section.

Researchers conducted in-depth interviews with 62 transgender people, as well as interviews with social workers, scholars, and employees at advocacy and service provision organizations.

Human Rights Watch researchers obtained informed consent from all interview participants, and provided explanations in Thai about the objectives of the research and that interviewees' accounts would be used in a report and related materials. Interviewees were informed that they could stop the interview at any time or decline to answer any questions they did not feel comfortable answering.

Transportation reimbursement was paid to interviewees so that they could travel to meet researchers in safe locations. No compensation was paid to interviewees who participated virtually from their homes. The interviews were conducted in Thai with Thai-English interpretation, or in English alone. All interviews were conducted privately, with participants interviewed alone.

In this report, pseudonyms are used for all transgender interviewees except those who expressed a strong preference that their real names be used.

I. Rights of Transgender People in Thailand

Thailand has for decades been a destination for gender-affirming health care for transgender people and has gained an international reputation as a place where sexual and gender minorities can live safely and openly. In recent years—in part due to the recalcitrance of Thai policymakers to protect basic rights of lesbian, gay, bisexual, and transgender (LGBT) people—the veneer of Thailand’s reputation has been peeled back to reveal the limits of social acceptance and the urgent need for legal reform.

Transgender people in Thailand currently enjoy limited legal protections against discrimination that are not being thoroughly enforced. There is no route for transgender people to obtain legal documentation that reflects their gender identity, and what affirmative policies exist (including the ability to change one’s given name) leave discretionary power in the hands of administrative officials. The result, as documented below, is that transgender people in Thailand experience numerous barriers to enjoyment of their fundamental rights.

Gender Categories and Labels

The Thai National Identification Card is issued to all citizens at age 15. Children are issued Child ID cards at age 7. ID cards carry titles that correspond to an individual’s sex assigned at birth, and all subsequent documents (for example, passports) are required to carry the same titles.²

The following table is reproduced from a 2018 report on legal gender recognition in Thailand published by the United Nations Development Programme (UNDP) and the Ministry of Social Development and Human Security, and outlines the titles mandated for Thai citizens and their corresponding legal genders:³

² Bureau of Registration Administration, Department of Provincial Administration, Ministry of Interior (1969), “Operation Manual of Registration,” subsection on Person Name and Use of Title, Bangkok: Department of Provincial Administration Publishing, p. 44.

³ UNDP and the Thailand Ministry of Social Development and Human Security, “Legal Gender Recognition in Thailand: A Legal and Policy Review,” May 2018, <https://www.aidsdatahub.org/resource/legal-gender-recognition-thailand-legal-and-policy-review> (accessed July 30, 2021).

Title	Description
Dekchai (Master)	Name title for a male who is under 15 years old
Dekying (Miss)	Name title for a female who is under 15 years old
Nai (Mister)	Name title for a male who is 15 years old or older
Nangsao (Miss)	Name title for a female who is 15 years old or older
Nang (Mrs.)	Name title for a female who is married or divorced

As explained later in the section on employment-related titles (pages 37-39), ID card titles can be adjusted if one achieves certain academic and military ranks (for example, professor or lieutenant), and some transgender people have pursued those careers at least in part to achieve that outcome.

History of Legal Gender Recognition Reform

In recent years, there have been attempts to amend Thai laws to allow for legal gender recognition.

In 2007, activists proposed the Persons' Name Title Act to the National Legislative Assembly. The act would have allowed women and transgender people to choose their names. The proposal was restrictive when it came to transgender people, mandating they receive a diagnosis of "Gender Identity Disorder" and undergo surgeries. Nonetheless, debates among policymakers raised concerns about technical issues of enforcement when it came to transgender people changing their titles, and ultimately the language about transgender people was removed and the version of the act that was passed only allows cisgender women to change their titles from Miss to Mrs.⁴

An attempt in 2016 and 2017 by the Ministry of Social Development and Human Security to draft a legal gender recognition law drew criticism from LGBT groups and did not progress.⁵

Currently, transgender people in Thailand can apply to change their first names under the Person Name Act.⁶ While some people are able to do this, discretion to approve the name

⁴ Ibid.

⁵ "Our genders need no approval from the state: LGBT activists," *Prachatai*, March 15, 2017 (accessed August 2, 2021), <https://prachatai.com/english/node/7006>.

⁶ Person Name Act, B.E. 2505 (1962).

change lies entirely in the hands of the individual registrar, and cases of discriminatory questioning or denial have been documented by nongovernmental organizations (NGOs), scholars, and UN agencies.⁷ If a Thai transgender person needs to replace their national ID card because it is lost or expired, they face a similar encounter with an administrative official.

Any such request for a change in name or a new ID card automatically triggers the official to look up the applicant in the national civil registration database, revealing the applicant's sex assigned at birth. Because the name change request or issuance of ID approval is at the discretion of the official, some cases result in transgender people being denied their applications on the grounds of the official seeing the birth sex of the person and deciding the desired name does not match appropriately.⁸ This discriminatory treatment undermines the rights of transgender people.

That said, as UNDP and the Department of Social Development and Human Welfare pointed out in their 2018 report on transgender legal recognition, this procedure also suggests that gender may not be a necessary component of official identity:

[B]iometric data, namely fingerprints, are also stored in the civil registration database together with the person's 13-digit identification number. As that data remain constant, enabling transgender people to amend their name or sex details does not pose any threat of identity fraud.⁹

Biometric data is constant and linked to an individual identification number, meaning that changing or eliminating gender markers does not significantly impact the ability to identify an individual, although it could have consequences for the state's ability to disaggregate and track data based on gender. Any policy that modifies the types of information collected in vital statistics or biometrics systems should take into account the full range of human rights implications, including privacy and data protection measures, and the need to collect and track gender-disaggregated data to detect and remedy inequities and

⁷ UNDP and the Thailand Ministry of Social Development and Human Security, "Legal Gender Recognition in Thailand: A Legal and Policy Review."

⁸ Ibid.

⁹ Ibid.

discrimination women and girls may experience in relation to their health, education, and economic rights. Data security and privacy protections are particularly important to safeguard individuals who are from marginalized communities. Any adjustments to civil registration or vital statistics databases should protect transgender people's right to privacy by robustly safeguarding and not inappropriately sharing their data, so they are not exposed to additional risks of harassment and discrimination by marking their file as "transgender."

The Limits of Social Acceptance

A 2014 UNDP report highlighted continuing shortcomings in Thailand: "Though Thailand has a reputation as one of the most tolerant countries in Asia towards LGBT individuals, legal recognition and protections remain far from liberal."¹⁰ Scholars have noted that while "the notion of Thailand as an LGBT-friendly country is common in guidebooks and academic texts," social tolerance of queer and transgender people has significant limits, and the Thai tourism ministry may be "exploiting" the notion of the country as an LGBT-friendly destination far beyond the reality.¹¹

In a 2019 research report titled "Tolerance But Not Inclusion," UNDP wrote:

LGBT people may perceive pressure to hide and pretend and may seek to hide their identity out of fear of reprisal. Often, the expectation to hide and pretend will come in the form of an explicit request. For example, an employer may hire a transgender person but ask them to dress according to another gender. ... The consequences of not conforming to these demands is potential discrimination, harassment and violence.¹²

¹⁰ UNDP and USAID, "Being LGBTI in Asia: Thailand Country Report," 2014, <https://www.refworld.org/pdfid/54ed82784.pdf> (accessed August 4, 2021).

¹¹ Timo Ojanen, et al., "Intersections of LGBTI Exclusion and Discrimination in Thailand: the Role of Socio-Economic Status," *Sexuality Research and Social Policy*, vol. 16 (2019): 529–542, accessed August 9, 2020 doi: 10.1007/s13178-018-0361-x; Winter S. and, Udomsak N., "Male, Female and Transgender : Stereotypes and Self in Thailand," *International Journal of Transgenderism*, vol. 6, No. 1 , (2002).

¹² UNDP, "Tolerance but not Inclusion: A national survey on experiences of discrimination and social attitudes towards LGBT people in Thailand," December 2, 2019, <https://www.undp.org/content/undp/en/home/librarypage/democratic-governance/tolerance-but-not-inclusion.html> (accessed August 4, 2021).

Researchers have also found that, in media reports transgender individuals (and LGBT people more generally) are “often represented inaccurately, stereotypically, harmfully, or without a clear understanding of the diversity of sexual orientations, gender identities, and gender expressions.”¹³ In a 2020 report, UNDP wrote: “Popular stereotypes of transgender women depict them as hyperfeminine super models, commercial sex workers, clowns, funny personalities or thieves.”¹⁴ The visibility transgender women enjoy in Thai society affords them a modicum of economic opportunity in certain professions. However, these societal parameters limit their opportunities and the lack of protective policies leaves them vulnerable to human rights violations.

While stereotypes remain pervasive and a lack of legal protections causes harm to transgender people in Thailand, some aspects of the Thai language and legal system offer fertile ground for creating affirmative and inclusive policy. For example, the Thai word “*phet*” refers to both sex and gender, concepts that are often distinct in science and legal systems elsewhere. Polite titles used daily in spoken Thai also offer a commonly used gender-neutral option, “*khun*,” that works as a second and third-person reference. As documented in this report, both *phet* and *khun* can be seen as opportunities for flexibility in policymaking. And no matter what terms are used, clear, explicit protections should be instituted.

¹³ Fongkaew K, Khruataeng A, Unsathit S, Khamphiirathasana M, Jongwisan N, Arlunaek O, Byrne J. “‘Gay Guys are Shit-Lovers’ and ‘Lesbians are Obsessed With Fingers’: The (Mis)Representation of LGBTIQ People in Thai News Media,” *Journal of Homosexuality*, vol.66(2) (2019) 260-273; accessed August 4, 2021, doi: 10.1080/00918369.2017.1398026.

¹⁴ UNDP, “Stories of Stigma: Exploring stigma and discrimination against Thai transgender people while accessing health care and in other settings,” 2020, https://www.th.undp.org/content/thailand/en/home/library/gender_equality/stories-of-stigma.html (accessed August 4, 2021).

II. Impact of Lack of Legal Gender Recognition

The right to recognition as a person before the law is a fundamental aspect of affirming the dignity and worth of each person. For transgender people who carry documents that do not recognize them according to their gender identity and appearance, everyday interactions can be fraught with humiliation and danger. Transgender people in Thailand interviewed for this report described how the lack of legal gender recognition, combined with pervasive and harmful stereotypes, limited their ability to access services and exposed them to daily indignities.

For example, Kasem P., a 27-year-old transgender man in Bangkok, told Human Rights Watch that in 2019 when he lost his ID card, which lists him as female, his birth sex, the visit to the government office to replace it was humiliating.

“The first question that they asked me is how did I get my penis, ensuring that I have a penis, and asking me whether it’s really possible to become a trans man,” he said. “They opened up the picture of me from the past and compared different versions and asked other colleagues to come and look as well to discuss on this.” The officials invaded his privacy, asking questions about his body and his transition. “I felt like a caricature for these government officials,” he said.¹⁵

The lack of legal gender recognition procedure in Thailand exposes transgender people to these kinds of interactions. As documented in this chapter, it also impedes their access to education, health care, employment, and freedom of movement.

¹⁵ Human Rights Watch interview with Kasem P., Bangkok, May 5, 2020.

Education

At my school there were gender boxes – you were a boy or a girl. I was always pushed into the boy box.

—Anong R., a 23-year-old transgender woman in Bangkok, January 13, 2020

As documented in this report and in reports by others, transgender students in Thai schools face harassment, bullying, and discrimination. The perpetrators are sometimes their fellow students, and some teachers actively or tacitly allow discriminatory behavior. In some cases, teachers themselves perpetuate discrimination toward transgender students. This happens through derogatory and discriminatory remarks that are specific to transgender students and through the more general enforcement of appearance standards that apply to all students, which is discussed further below.

Because some of the people that Human Rights Watch interviewed for this report attended secondary school and university 10 or more years ago, and school-related policies and circumstances have changed in some places, we cannot offer a definitive account of practices and issues in schools today. Still, we found that the experience of recent graduates tracks that of older graduates in important respects, giving reason to believe that lack of legal gender recognition remains a barrier to the right to education.

Interviewees said that the impact of the hostile school environment included lowering their self-esteem and led to them skipping school. For some, school was the place where they met friends who accepted and supported them. But overwhelmingly, even when transgender students entered universities, the systems did not accommodate or support them.

“Bad Students”

In the summer of 2020, student protesters calling themselves the “Bad Students” took to the streets of Bangkok, setting off a wave of demonstrations against the government. The Bad Students called for an end to all forms of harassment against students demanding democracy, revocation of obsolete and abusive school regulations, and educational reforms with students’ full participation.

Student protesters told Human Rights Watch they saw school as “the first dictatorship” in their lives, with its top-down structure, authoritarian culture of teachers and school administrators, and archaic rules that control everything from clothes to hair length. They also highlighted discrimination against LGBT students among their priority issues. The Bad Students, whose August 16, 2020 rally is believed to be the largest pro-democracy rally in Thailand’s history, assert that their campaign for school reform is part of the wider political campaign to end authoritarian rule in Thailand.¹⁶

In recent years, LGBT rights advocates have successfully pushed the government to reform the national curriculum to include sexual orientation and gender identity in affirming ways as early as grade one.¹⁷ According to a 2020 UNDP report:

Teachers should now be trained to project a fair portrayal of transgender people and other LGBTI identities... ensuring new generations of Thai children start viewing sexual and gender diversity as normal and natural.¹⁸

These are promising and rights-respecting updates; early research shows mixed results in terms of changing LGBT students’ experiences in school.¹⁹

¹⁶ Sunai Phasuk, “Thailand’s ‘Bad Students’ are Rising Up for Democracy and Change,” *Washington Post*, September 17, 2020, <https://www.washingtonpost.com/opinions/2020/09/17/thailands-bad-students-are-rising-up-democracy-change/> (accessed May 25, 2021).

¹⁷ “Rewriting the book on transgenderism,” *Bangkok Post*, October 29, 2018, <https://www.bangkokpost.com/life/social-and-lifestyle/1566410/rewriting-the-book-on-transgenderism> (accessed August 9, 2020); “2-year campaign to include sexual diversity in school curricula succeeds,” *Thai PBS*, May 19, 2019, <https://www.thaipbsworld.com/2-year-campaign-to-include-sexual-diversity-in-school-curricula-succeeds/> (accessed August 9, 2020).

¹⁸ UNDP, “Stories of Stigma: Exploring stigma and discrimination against Thai transgender people while accessing health care and in other settings.”

¹⁹ Manash Shrestha, Pimpawun Boonmongkon, Pimnara Peerawaranun, Nattharat Samoh, Kunakorn Kanchawee & Thomas E. Guadamuz, “Revisiting the ‘Thai gay paradise’: Negative attitudes toward same-sex relations despite sexuality education

Nonetheless, issues posed by Thailand’s lack of legal gender recognition procedure were a common theme in our interviews with transgender people about their experiences in education institutions. This includes accounts of transgender people obtaining their first gendered ID cards when they were 15 years old (Thai people obtain IDs listing them as dekchai/dekying at age 7, then new ones at age 15 that list them as Mr. or Ms.), and the struggles they faced as young adult university students when their discordant IDs prevented them from enrolling in courses or taking exams.

Many of the students and former students interviewed emphasized concerns about the anxieties and dilemmas that gendered school uniforms present, concerns that remain unaddressed by the updated curriculum. According to a 2020 UNDP report, “Institutional denial of allowing transgender girls to express their feminine identity is an important reason why they quit school earlier than their cisgender classmates.”²⁰ Supportive spaces for gender expression can be particularly important for transgender youth to explore and learn about themselves. In Thailand, where the language uses multiple gendered inflections, researchers in one study documented how half of transgender women adults they interviewed reported that they had started using female pronouns for themselves by the time they were 14 years old.²¹

In 2014, UNESCO, Mahidol University, and Plan International Thailand published a report on their research on bullying and exclusion of LGBT students in Thai schools.²² The report found that “Transgender individuals are still considered deviant in Thai educational contexts, but are conditionally tolerated.” The conditions for that tolerance, the report explained, were their excellent academic performance in some cases, and, in the case of trans girl and women students, their beauty. “Students’ conformity to gender norms based on their sex at birth is more important than whether they are attracted to the same sex, another sex, or more than one sex,” UNESCO found. A 2018 World Bank survey in Thailand

among Thai LGBT students,” *Global Public Health*, vol. 15:3 (2020): 414-423, accessed August 9, 2021, doi: 10.1080/17441692.2019.1684541.

²⁰ UNDP, “Stories of Stigma: Exploring stigma and discrimination against Thai transgender people while accessing health care and in other settings.

²¹ Sam Winter, “Thai Transgenders in Focus: Demographics, Transitions and Identities,” *International Journal of Transgenderism*, vol. 9:1 (2006): 15-27, accessed August 9, 2021, doi: 10.1300/J485v09n01_03.

²² UNESCO, Mahidol University, and Plan International Thailand, “Bullying targeting secondary school students who are or are perceived to be transgender or same-sex attracted: types, prevalence, impact, motivation and preventive measures in 5 provinces of Thailand,” 2014, <https://unesdoc.unesco.org/ark:/48223/pf0000227518> (accessed August 9, 2021).

found that 82 percent of transgender respondents were required to dress according to their sex assigned at birth in order to access education. 71 percent reported negative mental health impact of being made to dress this way, and 25 percent said it had a negative impact on their educational goals.²³

Interviewees described their experiences that supported UNESCO's assessment. Some said they were able to achieve relative acceptance—even popularity—by dressing beautifully or participating in school dance performances. For example, Kulap C., a 32-year-old transgender woman in Ubon, said: “I usually wore full makeup to school. One day I had only powder on and a teacher who was used to teaching me with makeup on said, ‘Do full makeup or I won’t let you in my classroom!’”²⁴

Anong R., a 23-year-old transgender woman in Bangkok said: “In school, discrimination was normal. I was bullied so often, but that was just normal for a trans person to experience.”²⁵ When she got to university, the bullying subsided but the bureaucratic discrimination intensified. Anong had been able, as a teenager, to be photographed as a woman for her government ID card. But when she arrived at the university in 2018, officials told her she was required to be photographed for her campus ID card according to the sex she was assigned at birth, male. “University policy is to have a picture that matches your sex at birth – I sat in my photo as a woman, so it was rejected by staff and the staff verbally harassed me,” she said.²⁶ As a result, Anong dropped out of university.

Other interviewees described similar experiences. Aroon M., 22-year-old transgender man in Bangkok, said he started transitioning before attending university because, while the university did not require students to always wear uniforms, they did require them to wear uniforms for exams.²⁷ Aroon said he is able to wear the male uniform for his exams, but has encountered problems at some testing sessions when the proctors do not already know him personally, because his ID lists him as Miss and has his given birth name, which

²³ World Bank, “Economic Inclusion of LGBTI Groups in Thailand,” 2018, <http://documents1.worldbank.org/curated/en/269041521819512465/pdf/124554-WP-PUBLIC-LGBTI-Report2018-full-report-English-23March.pdf> (accessed August 9, 2021).

²⁴ Human Rights Watch interview with Kulap C., Ubon, January 18, 2020.

²⁵ Human Rights Watch interview with Anong R. Bangkok, January 13, 2020.

²⁶ Ibid.

²⁷ Human Rights Watch interview with Aroon M., Bangkok, May 5, 2020.

is a noticeably female name. “Because they have to identify I am actually me to be in the exam, it’s not really a problem if it’s my teachers who teach me,” he said. “But sometimes it’s someone else, and they get very confused.”²⁸

According to a 2014 report by the International Labour Organization (ILO), “students in formal schools (secondary level and lower) are not allowed to [dress according to their gender identity]. However, transgender students are informally allowed by some universities and most vocational/technical colleges (upper secondary school equivalent and higher) to wear uniforms different from their birth sex.”²⁹ ILO research found that while some teachers in Thai schools “turned a blind eye” to transgender students violating dress code policies, others sanctioned transgender students.

Some transgender students said they chose to adapt their presentation because they felt it was their best option given the restrictive policies.

For example, Dao C., a 34-year-old transgender woman, explained how she identified as a girl since before kindergarten but was still required to wear the boy’s uniform in school. “I did feel uncomfortable wearing boys’ uniform but then there was nothing I could do,” she said.³⁰ Instead, Dao C. chose to express herself subtly. “I wore the boy’s uniform, but then my shirt would be tighter and shorts would be shorter. I just wanted to convey to other guys that I am not guys like them,” she said. “I was happy, even when I was uncomfortable with the uniform, I had to make the best out of the situation.”

Other students employed similar tactics. Phawta P., a 27-year-old transgender woman explained that she would wear a bra under her male sports uniform on the one day per week when the school dress code required that uniform: “It was only one day during the five days of school, but I used to be very happy with that.”³¹ However, while these slight adjustments were a boost to Phawta’s sense of dignity, her teachers also targeted her with discriminatory remarks. “[Teachers] used to comment like ‘Why aren’t you dressing

²⁸ Ibid.

²⁹ International Labor Organization (ILO), “Gender Identity and Sexual Orientation in Thailand,” 2014, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_356950.pdf (accessed August 10, 2021).

³⁰ Human Rights Watch interview with Dao C., Ubon, January 18, 2020.

³¹ Human Rights Watch interview with Phawta P., Chiang Mai, January 16, 2020.

according to the school rules?’ And they used to say, ‘Why aren’t you dressed the same as your friends?’” she said. “Those words were very bad for me.”³²

Waen S., a 25-year-old transgender woman who grew up in Ang Thong province in central Thailand, said she faced abuse from her teachers once she started altering her appearance. “When I started wearing makeup and lipstick to school, my teacher would scold me—call me ‘*tud*’ [a derogatory Thai term, roughly translated as ‘faggot’] as well,” she said.³³ She said she never saw her teachers targeting anyone else and she believed they singled her out because she had started to grow her hair long as well. “I was also beaten at school by teachers, and teachers would instruct the boy classmates to tease me,” she said.³⁴

These abuses—from enforcement of rigid gender norms, to teasing and harassment, to physical violence—significantly affected transgender students’ abilities to access education.

“I skipped classes a lot,” said Kwang M., a 32-year-old who presented as gender fluid during school. Following an incident in which teachers cut her hair in front of the student body at an assembly, she stayed out of school for “several weeks.” She said: “This time was the longest and it was most extreme. Because once your hair is cut it’s like a major thing because you can’t really grow it [quickly] so that’s why I felt very embarrassed, so I didn’t go to school.”³⁵

Health Care

“The triage nurse said out loud ‘Oh, you are a *kathoei*!’ and everyone heard it.

— Kaeo P., a 29-year-old transgender woman, January 2020

³² Ibid.

³³ Human Rights Watch interview with Waen S., Pattaya, January 21, 2020.

³⁴ Ibid.

³⁵ Human Rights Watch interview with Kwang M., Pattaya, January 20, 2020.

Absent identity documents that match their gender presentation, transgender people who seek health care may be subjected to privacy violations when their gender identity is exposed in health care settings, invasive questioning and humiliation when providers query their gender markers, and physical danger when they are placed in hospital units that do not match their gender identity. Even interviewees who told Human Rights Watch they had never faced such incidents themselves said they feared and avoided seeking health care based on their peers' experiences. Inadequate training for providers in transition-related care, such as the provision of hormone therapy, compounds the accessibility gaps for transgender people in Thailand, all undermining the right to the highest attainable standard of health.

Thailand has a robust public health care system, and all citizens are covered by public health insurance. Public hospitals, however, are notoriously slow and sometimes do not offer a full suite of primary care services, necessitating visits to private facilities where fees are either paid by individuals or private insurance plans, or resulting in people not seeking care when private facilities and services are too expensive. And while all three public insurance systems in Thailand cover a broad suite of care, including mental health services, the requirement to receive a referral for mental health services from a primary care provider poses a significant hindrance to transgender people whose experiences accessing care often feature indignities and humiliation.³⁶

In a 2019 UNDP survey, 36 percent of transgender women respondents reported discrimination when accessing health care, with nearly 20 percent reporting they were refused placement in a women's facility at a hospital.³⁷ Human Rights Watch documented similar instances, some of which are summarized below.

Placement in Discordant Facility

During in-patient hospital care, transgender people have the right to safety and dignity like any other patient. This includes being placed in wards according to their gender identity.

³⁶ Timo Ojanen, et al., "Intersections of LGBTI Exclusion and Discrimination in Thailand: the Role of Socio-Economic Status," 529–542.,

³⁷ UNDP, "Tolerance but not Inclusion: A national survey on experiences of discrimination and social attitudes towards LGBT people in Thailand."

Interviewees told Human Rights Watch, however, that they were often placed in the ward according to their birth sex, humiliating them.

Irawadee C., a 30-year-old transgender woman in Bangkok, said that when she was 20, she was hospitalized for appendicitis and an urgent surgery. “I was placed in the male ward,” she said. “All the bad things like this happen to me because of a single word on my document – my gender marker.”³⁸

Wilisanee A., a 33-year-old transgender woman in Trang, said that in 2016 she was shot while riding on the back of her friend’s motorcycle and taken to a public hospital, where staff mistreated her. “The problem with the hospital is that I have to sleep in the male ward. And I dress as a girl so that’s a problem for me to sleep there,” she said, adding that she stayed in the unit for three nights, but was uncomfortable asking the staff to move her because of the way they looked at her.³⁹ Kulap C., a 32-year-old transgender woman, said that she was once hospitalized after a car accident and placed in the male ward. Because she was in critical condition and sedated, she said she did not notice, but she was informed after the fact and felt disturbed upon learning where she had been kept.⁴⁰

Another transgender woman said they were even placed in the male recovery ward while recovering from breast implant surgery, explaining:

I had breasts already and I was uncomfortable being there.... but the hospital said that according to the rules if your gender mark says “male” you have to stay there, no matter how your body is. Like even if you have breasts you are still male and you have to stay in the male ward. They gave the reason that “if you go to the female ward, the female patients won’t be comfortable because you did not have the surgery done yet, like you’re still a guy from down [in the genital region] so like girls won’t be comfortable with that.”⁴¹

³⁸ Human Rights Watch interview with Irawadee C. Bangkok, January 14, 2020.

³⁹ Human Rights Watch interview with Wilisanee A., Trang, January 22, 2020.

⁴⁰ Human Rights Watch interview with Kulap C., Ubon, January 18, 2020.

⁴¹ Human Rights Watch interview with Ratana R., Trang, January 22, 2020.

Kamlai N., a 42-year-old transgender woman in Pattaya, said that when she got sick and needed to be admitted to the hospital in 2018, the staff put her in the male ward despite her request not to be:

When I asked the hospital staff, they just mentioned that there were no more rooms available, so I had to stay in the male ward. I didn't want to stay there but I was really sick, and I was like okay, I have to stay here. I was really embarrassed. The guys who stayed with me in the same common room, they actually stared at me a lot. They also asked questions like, "I thought you were a girl." Everyone kind of knew I was trans.⁴²

After that in-patient stay, Kamlai was adamant about never visiting a hospital again: "After that, even if I got sick, if even if it was a really slight thing, I would just quickly go to the hospital to get the medicines so I could be cured. I didn't want to get seriously sick where I would have to be admitted to the hospital and stay in the male ward."⁴³ Another transgender woman interviewee who had been placed in a male ward deployed a similar strategy: "What I do is I take care of myself really well, do everything not to fall sick because I don't want to face that situation again."⁴⁴

For others, even a quick visit to retrieve medicine was fraught with discrimination and humiliation. Kao P., a 29-year-old transgender woman, said that while most of the clinics and hospitals she had visited treated her fine, there was one incident in 2018 that stood out: "The triage nurse said out loud 'Oh, you are a kathoey!' and everyone heard it. I was just feeling unwell that's why I went to the hospital that day. I avoided that particular hospital after that."⁴⁵

Gender Identity Exposed

Even for transgender people who are not admitted to the hospital, simple tasks such as picking up medications at the hospital pharmacy risk violating their privacy. Experiences of

⁴² Human Rights Watch interview with Kamlai N., Pattaya, January 20, 2020.

⁴³ Ibid.

⁴⁴ Human Rights Watch interview with Ratana R., Trang, January 22, 2020.

⁴⁵ Human Rights Watch interview with Kao P., Bangkok, January 15, 2020.

privacy rights violations can lead some to decide not to access the service—including picking up medicines—to protect themselves.

For example, Sroy W., a 37-year-old transgender woman, said:

I usually go to a public hospital because I don't have fancy insurance. When they would call my name, to pick up medicine I would just sit quietly if there were other people in the room because I knew if I stood up people would laugh at me.⁴⁶

Samorn N., a 25-year-old transgender woman, recounted a similar situation where she faced public humiliation because of the gendered title on her ID card:

After the payment they called me to get my medicines, and that's when they called me "mister" and my name, which I already changed to be a woman's name. So they called me mister and I just feel bad. I'm just like, why can't people just call me *khun*?⁴⁷

Samorn said this happens whenever and wherever she goes to get medications. "When I'm waiting there and they call my full name, I do not want to get up. Because whenever I go for medicine, people just ask each other like 'Is that the person?' 'Is that the right person?'"⁴⁸

Some experience these interactions as less stressful when the gender-neutral *khun* is used. For example, Chimlin, a 34-year-old transgender woman, said: "I have had an experience where I went to get medicine and they called me mister. But other places called me *khun*."⁴⁹

⁴⁶ Human Rights Watch interview with Sroy W., Pattaya, January 21, 2020.

⁴⁷ Human Rights Watch interview with Samorn N., Chiang Mai, January 17, 2020.

⁴⁸ Ibid.

⁴⁹ Human Rights Watch interview with Chimlin P., Pattaya, January 20, 2020.

Questioning and Humiliation

Lamai P., a transgender woman, said hospital staff made comments she found humiliating when they saw her gender marker. “When I went to hospital dressed as a girl, they treated me like ‘Hi, how are you?’ and all,” she said. “But when they see my ID card and they see ‘mister,’ they’re like ‘Oh my god, you’re a guy?’”⁵⁰

Kasem P., a 27-year-old transgender man, said he twice felt humiliated due to his ID card gender marker at hospitals. In the first instance, “the medical staff were debating among themselves on what gender I actually am—because they were worried that the information could be mistaken.” In the second instance, he said hospital staff requested to see his ID card when that was not part of the procedure: “The medical staff actually requested me to share my ID card because [they could me in their records] as a miss, and I deserve a mister.”⁵¹

Avoiding Care

The impact of being placed in facilities discordant with one’s gender identity, infringing privacy rights and dignity while seeking health care, resulted in some transgender people avoiding care altogether. This impacted both people who had direct experience with discrimination and humiliation and their friends and peers who heard stories of the incidents. The 2020 UNDP report documented that “participants said they don’t feel comfortable accessing general health care due to their fear of possible stigma and discrimination from health care staff.”⁵²

As Chariya K., a 39-year-old transgender woman, said legal gender recognition mattered to her primarily to enable health care access, said: “I go to the male ward now. All transgender women go to the male ward.” She explained: “So some trans people refuse to go to the hospital because they’re so embarrassed and humiliated.”⁵³

⁵⁰ Human Rights Watch interview with Lamai P., Chiang Mai, January 16, 2020.

⁵¹ Human Rights Watch interview with Kasem P., Bangkok, May 5, 2020.

⁵² UNDP, “Stories of Stigma: Exploring stigma and discrimination against Thai transgender people while accessing health care and in other settings.”

⁵³ Human Rights Watch interview with Chariya K., Bangkok, January 13, 2020.

Phawta P., a 27-year-old transgender woman, said: “Sometimes when I’m sick, I do not want to go to the hospital because of the gender mark thing, because it’s not comfortable for me.”⁵⁴ Hom C., a 26-year-old transgender woman, said: “I don’t use public hospitals because I want to avoid having problems. I’ve heard stories from kathoey friends – that they get put in the male ward.”⁵⁵

“There were times I did not go to the hospital,” said Boonsri P., a 30-year-old transgender woman. “Because if I were really sick and admitted to the hospital, and if I didn’t have enough money [for a private room] ... I would be placed in the male ward.” She said: “I didn’t want to face that. Because I have a female body, if I’m staying with [men] I would be the center of attention in the room and I didn’t want that.”⁵⁶

Hormone Access and Health Care Provider Competency

Nearly all interviewees who told Human Rights Watch they had taken hormones to affirm their gender identity said they started those medications without guidance from health care providers. They described how they relied on the advice of friends or senior community members—not health care providers—to decide on type and dosage, for at least part of the time they were using hormones. This is, in part, due to the failure of the Thai health care system to provide accessible and adequate hormone replacement therapy treatment for transgender people.

In a 2015 study of 60 transgender women and 60 transgender men in Thailand, only two transgender women participants and two transgender men participants reported receiving medical supervision for their hormone use. The rest of those who were using hormones at the time reported receiving advice on dosage and administration from friends.⁵⁷

In its 2019 study, UNDP found that more than half of transgender women respondents reported using hormones without medical supervision. A minority of these respondents—

⁵⁴ Human Rights Watch interview with Phawta P., Chiang Mai, January 16, 2020.

⁵⁵ Human Rights Watch interview with Hom C., Bangkok, January 14, 2020.

⁵⁶ Human Rights Watch interview with Boonsri P., Ubon, January 18, 2020.

⁵⁷ Louis J. Gooren, Tanapong Sungkaew, Erik J. Giltay & Thomas E. Guadamuz, “Cross-sex hormone use, functional health and mental well-being among transgender men (Toms) and Transgender Women (Kathoeys),” *Thailand, Culture, Health & Sexuality*, vol. 17:1 (2015): 92-103, accessed August 10, 2021, doi: 10.1080/13691058.2014.950982.

around 40 percent—indicated they injected their hormone therapy without medical supervision.⁵⁸ A 2020 UNDP paper confirmed that “only a minority of transgender women have access to medical treatment to guide their gradual transition.”⁵⁹ Interviewees told Human Rights Watch that, by and large, they did not consult health care providers before starting hormone therapy.

Boonsri P., for example, explained that during her last year of high school and first years of university, she took hormones based on her friends’ advice, but never consulted a doctor. “Sometimes I would have a really bad headache or like I would vomit a lot,” she said. In one instance, her medical condition was serious but the barriers to her accessing care were also significant. She said:

There was this one time I had an overdose of hormones. So I went to the hospital and I wanted to explain to them: you know, I had this much of hormones, why am I feeling like this, but then I could not openly discuss because I felt like they would not understand my body. So I didn’t have the guts to actually ask them. I just feel like if it was a hospital with trans doctor or had specific training about this it would be easier for us to discuss and openly talk about the situation.⁶⁰

“The medical establishment is generally supportive of trans people, there’s just not widespread competence,” said Chariya K., a 39-year-old transgender woman who started taking hormones when she was 15 years old.⁶¹ At first, she tried consulting a doctor. “You will become a bat,” the doctor told her. “I asked him what he meant, and he said a bat is half mouse and half bird, so I would be like that, never a full man or full woman,” she said. “So I avoided going to the doctor.”⁶²

⁵⁸ UNDP, “Tolerance but not Inclusion: A national survey on experiences of discrimination and social attitudes towards LGBT people in Thailand.”

⁵⁹ UNDP, “Stories of Stigma: Exploring stigma and discrimination against Thai transgender people while accessing health care and in other settings.”tol.

⁶⁰ Human Rights Watch interview with Boonsri P., Ubon, January 18, 2020.

⁶¹ Human Rights Watch interview with Chariya K., Bangkok, January 13, 2020.

⁶² Ibid.

A friend's mother who was a nurse did the injections for Chariya K. for a while, then she switched to Premarin (a medication taken orally) in college. She stopped hormones following an employer-mandated medical check-up during which the doctor explained that her dosage was doing damage to her body. "The doctor said to stop drinking but I never drank, it was the hormones doing bad things to my body. So I had to stop them," she said. "There are a lot of people with kidney and thyroid problems from off-label hormones due to lack of competent care."⁶³

Hormone replacement therapy is not currently covered by any of Thailand's public health insurance schemes and is not provided in public hospitals.⁶⁴ In 2017, the National Health Security office informed the National Human Rights Commission that intersex people could access gender-affirming surgeries under national public health insurance schemes, but did not make the same procedures available to transgender people.⁶⁵ Clinics run by LGBT NGOs have, in recent years, begun to fill that gap and offer supervised hormone administration.⁶⁶ Nonetheless, many transgender people in Thailand continue to purchase hormone therapies from pharmacies, where no prescription is required, and administer them themselves.⁶⁷

One barrier to medically supervised hormone administration for transgender people in Thailand is the 2009 regulations issued by the Medical Council of Thailand. While intended to be affirmative and provide a pathway to gender-affirming surgeries, the regulations require that transgender people undergo a psychiatric evaluation in order to be eligible for supervised hormone therapy and stipulate that the hormone therapy is part of a pathway toward surgery, which not all transgender people want to undergo.⁶⁸ In fact,

⁶³ Human Rights Watch interview with Chariya K., Bangkok, January 13, 2020.

⁶⁴ Chokrungruanont P, Selvaggi G, Jindarak S, et al., "The development of sex reassignment surgery in Thailand: a social perspective," *Scientific World Journal*, (2014): accessed August 10, 2021, doi:10.1155/2014/182981.

⁶⁵ Hathai Kan Tresuwan, "ประสบการณ์ตรง "คนข้ามเพศ" กับความหวังแปลงเพศด้วย "บัตรทอง"," *BBC-Thai*, November 13, 2018, <https://www.bbc.com/thai/thailand-44822766> (accessed May 20, 2021).

⁶⁶ UNAIDS, "Advances in health services for transgender people in Thailand," June 21, 2016, https://www.unaids.org/en/resources/presscentre/featurestories/2016/june/20160621_thailand_transgender (accessed August 10, 2021).

⁶⁷ Chokrungruanont P, Selvaggi G, Jindarak S, et al. "The development of sex reassignment surgery in Thailand: a social perspective."

⁶⁸ Announcement of the Medical Council 58/2552 B.E. (2009 A.D.) Regarding Guidelines for Persons Manifesting Confusion Concerning Their Sexual Identity or Desiring Treatment By Undergoing a Sex Change Operation, <http://www.thailawforum.com/Guidelines-sex-change-operations.html> (accessed August 10, 2021).

research has shown that a minority of transgender men and transgender women in Thailand desire surgery, suggesting that medically supervised hormone administration yoked to surgery may be perceived as excluding them.⁶⁹

The resulting informal access to and administration of hormone therapy poses significant health risks for transgender people.

According to the International Planned Parenthood Federation (IPPF), the use of hormones without medical supervision among transgender people is often “due to the lack of trans-competent qualified health professionals or unwillingness among otherwise competent health professionals to prescribe hormones to transgender people.”⁷⁰

IPPF notes:

Information on the type and dosage of self-administered hormone tablets or injections is primarily gained through peer networks or via the internet. Both these sources can be incorrect. Even if the information they receive is correct, transgender people may take higher and/or more frequent doses in an effort to speed up their feminization or masculinization process. Taking hormones in this unsupervised way can adversely affect the functioning of liver or heart, and increase the risk of thromboembolism. The chances of these adverse effects are higher if there is associated problematic alcohol use, which might already have affected the liver.⁷¹

The World Professional Association for Transgender Health (WPATH), an international multidisciplinary professional association aimed at promoting evidence-based care, education, research, advocacy, public policy, and respect in transgender health, with over 700 members worldwide, has also issued guidelines for the provision of hormones to transgender people. While WPATH recommends some clinical criteria be met before transgender people are eligible for hormone therapy, it also notes that:

⁶⁹ Louis J. Gooren, Tanapong Sungkaew, Erik J. Giltay & Thomas E. Guadamuz, “Cross-sex hormone use, functional health and mental well-being among transgender men (Toms) and Transgender Women (Kathoeys) in Thailand,” *Culture, Health & Sexuality*, 17:1 (2015); 92-193, accessed August 10, 2021, doi: 10.1080/13691058.2014.950982.

⁷⁰ International Planned Parenthood Federation, “IMAP Statement on hormone therapy for transgender people,” October 2015, https://www.ippf.org/sites/default/files/ippf_imap_transgender.pdf (accessed August 10, 2021).

⁷¹ Ibid.

In selected circumstances, it can be acceptable practice to provide hormones to patients who have not fulfilled these criteria. Examples include facilitating the provision of monitored therapy using hormones of known quality as an alternative to illicit or unsupervised hormone use or to patients who have already established themselves in their affirmed gender and who have a history of prior hormone use.⁷²

As discussed later in this report, the policy barriers to hormone access in Thailand, combined with the stigma and discrimination transgender people often face when attempting to access health care more generally, constitute a violation of the right to the highest attainable standard of health. It is particularly striking that Thailand continues to fail to provide these services given that surgeons have been conducting gender-affirming procedures since the 1970s and the government has marketed the country as a destination for transgender health care.⁷³ What is more, even individuals who have undergone these appearance-altering procedures cannot change their legal gender, subjecting them to continued discrimination and indignity even if they have been able to access and afford gender-affirming care.

Employment

The biggest challenge in my life has been to get a job. I was a student leader and a good student. A bank called me for an interview. The first question they asked me was about my gender identity. It had nothing to do with my ability to work.

—Sroy W., 37-year-old transgender woman, Pattaya, January 21, 2020

The lack of legal gender recognition in Thailand has a negative impact on transgender individuals' ability to secure employment and their right to be treated with dignity and

⁷² World Professional Association for Transgender Health (WPATH), "Standards of Care, Version 7," 2012, https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English2012.pdf?t=1613669341 (accessed August 10, 2021).

⁷³ Chokrungravanont P, Selvaggi G, Jindarak S, et al. "The development of sex reassignment surgery in Thailand: a social perspective;" Jason Gale, "How Thailand Became a Global Gender-Change Destination," *Bloomberg*, October 26, 2015, <https://www.bloomberg.com/news/features/2015-10-26/how-thailand-became-a-global-gender-change-destination> (accessed August 10, 2021).

respect. This, coupled with negative social attitudes, puts transgender people at a distinct disadvantage when it comes to finding and keeping a job.

Many transgender individuals told Human Rights Watch that they were discriminated against when applying for jobs due to their gender identity not matching the gender marker printed on their government-issued identification documents. They also described having faced anti-trans sentiment during the interview process and outright employment discrimination.

Many transgender women that Human Rights Watch interviewed work in the beauty industry—a niche profession where transgender identities have traditionally been more accepted—in positions such as makeup sellers, makeup artists, and in beauty pageants.⁷⁴ Some interviewees were happy in this profession, while others said that they were only in the industry because they were unable to be hired anywhere else, even though they had studied, for example, accounting or nursing.

Employment discrimination against transgender individuals in Thailand is documented by researchers. In a 2019 study by the Asia Pacific Transgender Network (APTN) and Curtin University titled “Denied Work: An Audit of Employment Discrimination on the Basis of Gender Identity in Thailand,” researchers sent 1,600 resumes to 800 entry-level job postings (two applications for each job) in Thailand.⁷⁵ Four job sectors were targeted: three for university graduates (accounting, language, and computer science positions), and one for those who had left school.⁷⁶ Each resume was randomly assigned a transgender or cisgender identity marker. The resumes coded as transgender were done so by either being given an “explicit sex and gender identification (eg ‘Sex: Male. Gender: Female’)” or “by way of a gender specific legal name matching assigned sex, printed alongside a username matching the individual’s gender identity.”⁷⁷ As is standard practice in Thailand, the resumes also included a photo of the applicant that matched the gender identity stated on

⁷⁴ ILO, “Gender Identity and Sexual Orientation in Thailand,” 43.

⁷⁵ Asia Pacific Transgender Network (APTN) and Curtin University, “Denied Work: An Audit of Employment Discrimination on the Basis of Gender Identity in Thailand,” 2019, p. 12.

⁷⁶ Ibid.

⁷⁷ Ibid.

the resume. Cisgender applicants were marked so “by way of a simple sex designation, with name and photo to match.”⁷⁸

The applicants whose resumes included a transgender identity marker were significantly less likely to be called in for an interview than those coded as cisgender.

The APTN-Curtin University research found that:

- I. Transgender people are discriminated against when seeking employment in Thailand and are significantly less likely than cisgender people to receive a positive response to a job application.
- II. Even with equal experience and qualifications the cisgender applicants received 24.1 percent more positive responses to job applications than transgender applicants.
- III. A cisgender woman was 42.2 percent more likely to receive a positive response to a job application than a transgender man.
- IV. The job market was challenging for all applicants. The 800 job applications resulted in only 177 invitations to interview for cisgender applicants. Yet it was even more challenging for transgender applicants: only 133 transgender applicants were called to interview, 44 fewer, even though both sets of applicants were equally qualified and experienced.⁷⁹

As documented in this report, Human Rights Watch found evidence that this discrimination persists throughout the recruitment process. Most interviewees who were qualified for the positions and were called in to interview said they faced one or more of the following:

- Were told they would have been hired if they were not transgender.
- Were asked if they would dress according to the gender marker on their ID.
- Were faced with inappropriate and invasive questions.

As detailed below, some interviewees also reported that they had encountered job postings that explicitly stated transgender individuals would not be considered.

⁷⁸ Ibid.

⁷⁹ “Asia Pacific Transgender Network (APTN) and Curtin University, “Denied Work: An Audit of Employment Discrimination on the Basis of Gender Identity in Thailand, p. 12.

Explicit Anti-Trans Hiring Bias

Several transgender people Human Rights Watch interviewed were told in job interviews that they were not hired because they were transgender.

Samorn N., a 25-year-old transgender woman, had problems finding a job after studying tourism. A friend who worked at a hotel brought her to the hotel for an interview:

The one who's supposed to hire me said it's a shame that you're trans, because if you weren't a trans we would have hired you. [This happened] two years ago, when I graduated and started looking for jobs. I was a recent graduate then so I was very distressed because I had to find a job. I felt sad.⁸⁰

Phawta P., a 27-year-old transgender woman, said she did well in school but had difficulties securing employment. She felt that she was more talented than others at her school and that she was rejected from employment opportunities for being transgender. She said:

I was a good student and I had a good GPA [grade point average], I graduated, but still I won't get a job. The problem is, transgender people—even if we have a good education, we don't get the jobs that we deserve. Like many industries reject us, don't give us jobs. This is why quite a lot of us end up being sex workers.⁸¹

One of the jobs Phawta applied for was a job doing public relations and graphic design for a school. She told Human Rights Watch she possessed the relevant qualifications for the job, and the university she graduated from had a relationship with the employer. Phawta did not get the job after interviewing. She said:

They [the employer] wished that I was not like this. After the interview is when they told me they wished I was not a trans. And then they chose him

⁸⁰ Human Rights Watch interview with Samorn N., Chiang Mai, January 17, 2020.

⁸¹ Human Rights Watch interview with Phawta P., Chiang Mai, January 16, 2020.

[a cisgender male applicant] for the job ... If I was not a trans I would have gotten the job.⁸²

Phawta then applied for a job at a local television channel and was unsuccessful, though she felt the hiring managers were kind.

Kulap C., a 32-year-old transgender woman, was rejected from several jobs at the interview stage once the interviewer saw her ID and realized she was transgender. She said:

At age 22 when I started applying for jobs, I got rejected four or five times. They just would suddenly say I wasn't qualified. They had already called me in for an interview based on my qualifications and then this was the excuse they gave.⁸³

Multiple employers told Ireshi S., a 24-year-old kathoey, that she was not an acceptable candidate for a job because she was transgender. According to Ireshi S.:

At a job interview I was told directly that they only accept men and women. And then they said they wouldn't take me even if I could do the job. It happened three times over recent years – once for a phone center sales job, and twice for a makeup retail sales job. I had experience in cosmetics. They kept saying they weren't sure I could hit the sales target. After that I cried a lot and stopped applying for jobs. I went back to freelance makeup artist work – which is less stable than a sales job.⁸⁴

Though the beauty industry appears to be more open to hiring transgender women, Gamon P. a 34-year-old transgender woman, experienced anti-trans sentiment when applying multiple times to cosmetics departments in a shopping mall: “They told me that they only hire women even though I looked like a woman—my gender marker [on my ID] suggests that I am a man, so I could not apply.”⁸⁵

⁸² Human Rights Watch interview with Phawta P., Chiang Mai, January 16, 2020.

⁸³ Human Rights Watch interview with Kulap C., Ubon, January 18, 2020.

⁸⁴ Human Rights Watch interview with Ireshi S., Bangkok, January 15, 2020.

⁸⁵ Human Rights Watch interview with Gamon P., Bangkok, January 14, 2020.

Kanda B., a 29-year-old transgender woman, applied to work at several factories. At the first factory, hiring managers told her she was “overqualified” for the position.⁸⁶ At the second factory, she said:

They gave me excuses until the hiring manager told me that I was a trans woman and that they didn’t have good experience hiring trans women. We are always perceived as violent or having fights, talking really loud, he said. So, they rejected my application.⁸⁷

Waen S., a 25-year-old transgender woman who works as a dancer at a bar, described two experiences in which she encountered explicit anti-trans bias when applying for a job. When she applied for a position at an electronics store, the employer stated that they did not hire transgender people “because the past trans employees caused too much drama.”⁸⁸ After this experience, she applied for a hotel reception job in Pattaya and was denied. When she asked why, she received the response “because trans girls steal boyfriends from real girls.”⁸⁹

After facing discrimination and job rejections, some transgender people seek employment in the informal economy.⁹⁰ Hom C., 26, a transgender woman, recounted her experience as a university intern with the tourism police studying financial accounting. During her interview on the first day, Hom said:

One woman asked me for my documents and she said to me “You’re a mister.” Then she walked towards me and touched my face. Then she started shaming me “Oh, you’re chubby.” Then she started talking about a kathoey government official. She said she wouldn’t hire a kathoey—only women. I went to work at an LGBT organization because treatment like that wasn’t acceptable to me.⁹¹

⁸⁶ Human Rights Watch interview with Kanda B., Bangkok, January 15, 2020.

⁸⁷ Ibid.

⁸⁸ Human Rights Watch interview with Waen S., Pattaya, January 21, 2020.

⁸⁹ Ibid.

⁹⁰ ILO, “Gender Identity and Sexual Orientation in Thailand,” 94.

⁹¹ Human Rights Watch interview with Hom C., Bangkok, January 14, 2020.

Kaeo P., a 29-year-old transgender woman, was filling out a job application when, upon reaching the end, she saw there was “a line about not accepting transgender people.”⁹² Kaeo said, “I was qualified for the job but I just stopped filling out the form at that point. I thought maybe the opposite existed—and I started looking on the internet for jobs that specifically accepted trans people—therefore I am working [at an LGBT NGO].”⁹³

Ratana R., a transgender woman, 42, had dreams of becoming a teacher, but in the sixth grade, when she was already expressing her identity, her teachers told her that she could only pursue this career path if she hid her identity.⁹⁴ She decided not to be a teacher so she did not have to hide being trans, and later graduated from university with a degree in finance (though she did not attend her graduation ceremony because she was not permitted to dress as a woman). Ratana looked for jobs for five years, but faced problems due to her gender marker:

The places where I go to tick in the box “Mister” [in the job applications] say they can’t accept me because I am dressed as a woman, I am a girl. So they don’t accept me. And some of the [boxes] I tick “Miss” but they wouldn’t accept me because my ID says mister. I was like, what am I supposed to tick?⁹⁵

When Ratana was called in for job interviews, she faced discrimination based on her gender marker, as well as inappropriate questions:

Nobody talked about my qualifications at all. I have applied for jobs like secretary, or at a bank, nobody talked about my qualifications and grades. They would just ask me, “Do you have a boyfriend?” “Are you with a guy?” “Where did you get your breasts from?” “Did you get surgery done?” And at the end of the whole [process] they would just say that they’ll contact me back, but nobody did of course, for five years. And I felt very worthless.⁹⁶

⁹² Human Rights Watch interview with Kaeo P., Bangkok, January 15, 2020.

⁹³ Ibid.

⁹⁴ Human Rights Watch interview with Ratana R., Trang, January 22, 2020.

⁹⁵ Ibid.

⁹⁶ Ibid.

After Ratana was not hired for any of the jobs she applied to over the course of five years, her father advised her to “be [her] own boss” and opened a convenience store for her to run.⁹⁷ Researchers have noted that LGBT people in Thailand with private capital sometimes have the option of self-employment, but it is limited to those who have access to such funds.⁹⁸

Kaeo P. and Samorn N. both described their experience encountering job advertisements that specifically stated that transgender individuals would not be considered for the job.⁹⁹ Similar incidents have been documented in media reports.

For example, according to media reports in 2019, Nong Perry, a transgender woman who had five years of sales experience at a mobile phone company, applied for a position at a telecommunications company. After submitting the initial job application, she was shortlisted by the company, did well on a test given to other candidates, and was offered a job. When she accepted the offer, she bought a ticket to Bangkok for the job orientation and gave her notice at her then-job. However, soon after, a representative from the company contacted her to inform her that there was an “error” in her application: that her gender marker on her identification was “Mister,” but her gender identity is female.

The representative then said the company could not register her on their online system unless she committed to present as masculine at the orientation by wearing a wig and binding her chest.¹⁰⁰ They tried to justify their request to her by saying that the company does not have a policy for hiring transgender people and that they had originally not realized that she was trans.¹⁰¹ Thousands of people subsequently signed a petition for the

⁹⁷ Ibid.

⁹⁸ Nemoto, T., Cruz, T., Iwamoto, M., Trocki, K., Perngparn, U., Areesantichai, C., Roberts, C., “Examining the sociocultural context of HIV-related risk behaviors among kathoey (male-to-female transgender women) sex workers in Bangkok, Thailand,” *Journal of the Association of Nurses in AIDS Care* (2016): 27, 153–165, accessed August 10, 2021, doi:10.1016/j.jana.2015.11.003.

⁹⁹ Human Rights Watch interviews with Kaeo P., Bangkok, January 15, 2020, and Samorn N., Chiang Mai, January 17, 2020.

¹⁰⁰ “โซเชียลวิจารณ์แซด! บริษัทยักษ์ใหญ่เชียงใหม่ “สาวข้ามเพศ” ไม่รับเข้าทำงาน,” *Sanook*, September 14, 2019, <https://www.sanook.com/news/7895879/> (accessed May 20, 2021).

¹⁰¹ Ibid.

company to take responsibility for the discriminatory incident, and the company and their hiring agency apologized.¹⁰² Samsung later also investigated the incident.¹⁰³

A similar incident was documented in 2020 when June, a transgender woman with seven years' experience in cosmetic sales and a bachelor's degree in communications, applied to two cosmetics companies both under the purview of SSUP Beauty and Wellness. After she submitted her application for the positions, the human resources department responded that they were only considering cisgender women. Over 1,500 people signed an online petition in support of June.¹⁰⁴ On September 2, 2020, the companies released a statement that they would commit to the Standard of Conduct for Business Tackling Discrimination against LGBTIQ people.¹⁰⁵

In September 2018, an LGBT individual shared his experience applying for a teaching position at a well-known school in Pathum Thai province in Thailand. The job post stated the school was not recruiting staff who were “sexually disoriented.”¹⁰⁶ The application form also asked if the applicant was interested in heterosexual or homosexual relationships, or both.

Requests to Change Appearance

Several transgender women told Human Rights Watch that potential employers asked them during job interviews if they would alter their appearance and dress as a man.

Boonsri P., a 30-year-old transgender woman, sent in a resume which had her gender printed as male (her legal gender). When she arrived at the interview expressing her

¹⁰² “เรียกร้องให้ Samsung ออกมาแสดงความรับผิดชอบ เลิกปฏิบัติ ไม่รับบุคคลข้ามเพศเข้าทำงาน,” Change.org petition (undated), <https://www.change.org/p/เรียกร้องให้-samsungthailand-ออกมาแสดงความรับผิดชอบ-เลิกปฏิบัติ-ไม่รับบุคคลข้ามเพศเข้าทำงาน>, (accessed May 20, 2021).

¹⁰³ “ชมชงไทยระบุกำลังตรวจสอบข้อเท็จจริง หลังมีชาวปฎิเสธรับผู้หญิงข้ามเพศเข้าทำงาน,” BlogNone, September 14, 2019, <https://www.blognone.com/node/111910>, (accessed May 20, 2021).

¹⁰⁴ “ลงชื่อขอให้ Cute Press & Oriental Princess แสดงความรับผิดชอบกรณีไม่รับคนข้ามเพศเข้าทำงาน,” Change.org petition (undated), <https://www.change.org/p/บริษัทในเครือ-ssup-beauty-and-wellness-ลงชื่อขอให้-cute-press-oriental-princess-แสดงความรับผิดชอบกรณีไม่รับคนข้ามเพศเข้าทำงาน> (accessed May 20, 2021).

¹⁰⁵ On file with Human Rights Watch.

¹⁰⁶ Image posted online at <https://mgronline.com/live/detail/9610000089105>, (accessed May 20, 2021).

female gender identity, the interviewer asked if she would dress as a man on the job.¹⁰⁷ Boonsri said: “I said no, and I rejected that job because this is how I [was] born to be, as a girl, and I felt like they did not see my talent or my abilities. They just saw my gender, so I just rejected that.”¹⁰⁸

Sroy W., a 37-year-old transgender woman, was asked at an interview if she would change the way she wore her hair. She said that the hiring manager told her that “hiring a trans woman would bring about a bad image for the company and also bad luck.”¹⁰⁹

A nurse by training, 32-year-old transgender woman Hathai W. was told at a job interview that “they only accept men and women, not kathoey.”¹¹⁰ She applied to hospitals, but “they tell me I had to dress like a man if I wanted the job, so I declined. Therefore, I have never worked according to my qualifications.”¹¹¹ Beam P., a 35-year-old transgender woman who is also a nurse, said that potential employers “won’t accept me because they want me to dress as a guy... I never worked exactly for what I studied, because every time I’d go for the job, they’d just ask me to wear a guy’s uniform.”¹¹²

Some reacted by changing their tactics, asking employers in advance of applying if they accept transgender employees.¹¹³

Beam P. and Hathai W. both reported being called into interviews, but then being asked to wear a man’s uniform once the interviewer realized they were transgender; as a result of these experiences, Beam and Hathai both said they now call ahead to ask if a position accepts transgender people before applying. For example, Beam said:

From then onwards I started making calls before going for interviews and I would ask directly if they would take transgender people. And if they say no

¹⁰⁷ Human Rights Watch interview with Boonsri P., Ubon, January 18, 2020.

¹⁰⁸ Ibid.

¹⁰⁹ Human Rights Watch interview with Sroy W., Pattaya, January 21, 2020.

¹¹⁰ Human Rights Watch interview with Hathai W., Bangkok, January 15, 2020.

¹¹¹ Ibid.

¹¹² Human Rights Watch interview with Beam P., Bangkok, January 14, 2020.

¹¹³ Human Rights Watch interview with Beam P., Bangkok, January 14, 2020; Human Rights Watch interview with Hathai W., Bangkok, January 15, 2020.

and reject it, I just cut off that company from my list. Yes, it is a lot of work, because they've accepted me through my resume, but then I go and they see me in person. They just reject me because I'm not according to my gender mark.¹¹⁴

Lawana N., a 31-year-old transgender woman who applied to several companies in the past and had been rejected, said of her experience: "The common ground that [the companies] had was that they would not hire a trans woman unless I dressed more masculine, cut my hair, and wore the men's uniform to work."¹¹⁵

Experiences of hostility and discrimination during the hiring process can lead transgender people to avoid further humiliation and pursue other avenues of income.

Alternative Employment Paths Sought

Two interviewees told Human Rights Watch that they specifically chose their career path so they could have more freedom to wear what they want to work and even found a workaround to change the gender marker on their identification documents.

Wish P., a 36-year-old transgender man, said that he had to wear the girls uniform (a skirt) in elementary school, but "became the happiest person you would ever meet" on physical education days (one day per week) when he could wear trousers.¹¹⁶ After finishing primary school, Wish chose to attend a technical school where he would not have to wear a skirt. He said:

I not only chose the school, but the degree or the major that I could take during high school based on that fact that I didn't have to wear a skirt. So for me, I chose to be an architect because having a far-sighted mindset, I wouldn't have to wear a skirt at all.¹¹⁷

¹¹⁴ Human Rights Watch interview with Beam P., Bangkok, January 14, 2020.

¹¹⁵ Human Rights Watch interview with Lawana N., Bangkok, January 15, 2020.

¹¹⁶ Human Rights Watch interview with Wish P., Bangkok, May 4, 2020.

¹¹⁷ Ibid.

In its 2020 report, UNDP stated that “a handful of vocational educational institutions in Bangkok and Chiang Mai are the exception” to the general rule that the Thai education system does not allow transgender people to dress according to their gender identity in education institutions.¹¹⁸

However, even though Wish has a degree in architecture, he never pursued work as an architect because he did not think he would be able to earn enough money to afford to undergo gender-affirming surgeries or arrange to have enough time off for the healing processes; he instead owns an online business selling lotions and supplements.¹¹⁹

Wish said he considered specific types of careers that would allow him to access a gender-neutral title. He said that he has always wanted to change his gender marker from “Miss” to “Mister.”

I have always wanted to change my gender mark, even up until now. I even considered taking a Ph.D. because, in Thailand, if you take a Ph.D., you can change your prefix to Dr., or assistant professor, or professor. So I was looking for the courses that I could take to gain knowledge and be able to change the gender mark.¹²⁰

In another example, when Dao C., a 34-year-old transgender woman, went to get her ID card at 15 and was assigned the gender marker “Mister,” she wanted to remove the marker.¹²¹ She joined the military and trained for three years, when she was given the title “Sergeant.” She said:

When I got [the title “Sergeant”], when I finished [the training], I went and changed my ID card. When someone calls me “Mister,” it’s a very manly

¹¹⁸ UNDP, “Stories of Stigma: Exploring stigma and discrimination against Thai transgender people while accessing health care and in other settings.”

¹¹⁹ Human Rights Watch interview with Wish P., Bangkok, May 4, 2020.

¹²⁰ Human Rights Watch interview with Wish P., Bangkok, May 4, 2020.

¹²¹ Human Rights Watch interview with Dao C., Ubon, January 18, 2020.

thing, very weird. But this, the thing that I have right now, even though it says you're a male, it's softer.¹²²

When she earned the title “Sergeant,” she was eligible to change her ID card to include “Sergeant” before the male indicator. She explained that even this slight change mattered a lot to her: “In the kathoey community, the word ‘Mister’ is a really, really strong word; this [title] makes it softer.”¹²³

As discussed later in this report, discrimination against transgender people—on the basis of sex, or *phet*—is illegal in Thai and international law.

Freedom of Movement Simply moving from one place to another can be a dangerous and humiliating experience for people whose documents do not match their expression. The stakes are high, particularly for international travel, and range from fraud accusations and exposure to intense scrutiny and humiliation. United Nations human rights experts have condemned such targeting of transgender people in security processes.¹²⁴

Kasem P., a transgender man in Bangkok, told Human Rights Watch he was humiliated by traffic police in 2019 when they stopped him with his girlfriend and checked his ID. “They had my ID card, and the police held the ID card next to my face and took a picture,” he said. His girlfriend asked the police officers why they were doing this. “[They] gave the justification that it’s such a weird thing to kind of record it or save it, just to share with their colleagues,” Kasem said.¹²⁵ “I felt like that really crossed the line. It’s not part of their job to take a picture. And they took pictures just for personal reasons, [because it was] something they had never seen.”¹²⁶

¹²² Ibid.

¹²³ Ibid.

¹²⁴ UN General Assembly, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/64/211, August 3, 2009, <https://www2.ohchr.org/english/issues/terrorism/rapporteur/docs/A-64-211.pdf> (accessed August 10, 2021).

¹²⁵ Human Rights Watch interview with Kasem P., Bangkok, May 5, 2020.

¹²⁶ Ibid.

Several interviewees explained that they faced issues traveling to other countries, including Hong Kong, Japan, and South Korea, because the gender marker on their passports does not align with their gender expression.

Duangkamol K., a 27-year-old transgender woman in Bangkok who said she faced extensive questioning at the Seoul airport due to her gender marker, said being able to travel is a primary motivator for why she would pursue legal gender recognition if it were available to her. “For me, being able to change my documents would make it easier for me to enter and access other countries,” she said.¹²⁷

Even domestic travel has been complicated for some. Beam P., a 35-year-old transgender woman in Bangkok, explained: “In Thailand when you take a plane or train you have to give your gender mark, and whenever I do that, I always have to sit in the guy’s car [of the train] because of my gender.”¹²⁸

According to Thai passport photograph regulations, female applicants need to pull their hair behind their ears to ensure their face is showing; male applicants need to pull their hair back in ponytails. Transgender women, legally recognized as males, are technically required to do the latter, but some have been able to avoid doing so by including the following attestation on their passport applications: “I do hereby affirm taking photograph with hair down in a passport. If any problems occur, I will assume full responsibility in every aspect.”¹²⁹

¹²⁷ Human Rights Watch interview with Duangkamol K., Bangkok, January 14, 2020.

¹²⁸ Human Rights Watch interview with Beam P., Bangkok, January 14, 2020.

¹²⁹ UNDP and the Thailand Ministry of Social Development and Human Security, “Legal Gender Recognition in Thailand: A Legal and Policy Review.” <https://www.aidsdatahub.org/resource/legal-gender-recognition-thailand-legal-and-policy-review>.

III. Thailand's Emerging Legal Gender Recognition Policy

“If you feel it deep inside you, you should be able to change your documents.”

—Irawadee C., a 30-year-old transgender woman in Bangkok, January 2020.

In recent years, the Thai government has begun to engage with UN agencies and civil society groups to discuss and develop a legal gender recognition procedure. Other legal developments, including discussions around same-sex relationship recognition, have taken place in parallel and can influence policymakers' perspectives on the rights of transgender people. The consultation processes have stalled, though transgender rights organizations have drafted and submitted their version of affirmative legislation for consideration.

The 2015 Gender Equality Act, a monumental piece of legislation, provides a glimpse into how gender identity-inclusive and protective policy should be developed in Thailand.

The Gender Equality Act

In September 2015, Thailand's Gender Equality Act came into force, becoming the first national legislation in Southeast Asia to specifically protect against discrimination on the grounds of gender expression.¹³⁰ The new law specifically prohibits any form of discrimination if someone is “of a different appearance from his/her own sex by birth,” a critical clause for protecting transgender people. The act uses the term “*phet*,” discussed above, which is understood to encompass concepts of sex and gender and, some contend, sexuality.¹³¹

The law can be enforced by the Committee on Determination of Unfair Gender Discrimination (CDUGD), an entity that sits within the Department of Women's Affairs and

¹³⁰ Thailand Gender Equality Act, B.E. 2558 (2015), <https://www.hrw.org/news/2015/09/21/thailand-gender-equality-act> (accessed August 10, 2021).

¹³¹ Winter, S., “Language and identity in transgender: Gender wars, anatomania, and the Thai Kathoey,” *Problematizing Identity: Everyday Struggles in Language, Culture, and Education*, (2013): 119-136, accessed August 10, 2021, doi: 10.4324/9780203822548.

Family under the Ministry of Social Development and Human Security. In a 2020 report analyzing the law’s implementation, the Department of Women’s Affairs and Family and UNDP analyzed the cases that CDUGD had adjudicated in the five years of the law’s existence.¹³² In addition to providing data, the report noted: “The impetus for the promulgation of this Act has derived from advocacies by international actors and civil society rather than support from the policy makers or political groups.” Regrettably, the report concluded, this meant that, “[a] lack of clear support from the policy makers has as a result compromised the enforcement of the law.” As discussed below, a similar dynamic appears to be at work with policymaker engagement on legal gender recognition legislation.

Between 2016 and 2019, CDUGD adjudicated 27 complaints, the vast majority of which were cases of transgender women facing discrimination. In 2019, for example, the committee reviewed six complaints, all of which were from transgender women. The cases, described below, reflect many of the issues documented in this report:

- Barred from studying, taking exams, or internships as a result of wearing uniform/hairstyle matching one’s gender.
- Barred from using honorific matching one’s gender when applying for ID card.
- Not assigned accommodation commensurate to one’s gender during training by public agencies.
- Denied services in a restaurant.
- Denied employment by educational institution.
- Barred from wearing clothing that matches one’s gender by school personnel.

In 2016 and 2017, there were four cases filed each year of discrimination in education, summarized as “Barred from studying, taking exam, internship, using photo in certificate, joining graduation ceremony as a result of wearing uniform/hairstyle matching one’s gender.” In each of the eight cases, CDUGD found the accused party responsible for discrimination. The UNDP report notes that many cases have taken longer than the prescribed 90 days to be adjudicated—a delay attributed to lack of clarity on standard

¹³² UNDP, “Review of the Progress of Enforcement of the Gender Equality Act 2015,” 2020, https://www.th.undp.org/content/dam/thailand/docs/UNDP%20TH_Gender%20Equality%20Act.pdf (accessed May 20, 2021).

operating procedures and lack of cooperation from accused parties—and that even in cases where the committee found liability, no punishment was ordered.

The Gender Equality Act has proven to be an important law in terms of protecting the rights of transgender people in Thailand, though enforcement appears to be insufficient. The CDUGD’s adjudications have demonstrated the need for more robust enforcement mechanisms and thrown into relief how critical an accessible and transparent legal gender recognition policy is for protecting the basic rights of transgender people in Thailand.

IV. International Law and Legal Gender Recognition

In its 2017 review of Thailand, the UN Human Rights Committee, which monitors state compliance with the International Covenant on Civil and Political Rights (ICCPR),¹³³ commended the government for the 2015 Gender Equality Act but also urged authorities to “intensify measures to ensure that lesbian, gay, bisexual, transgender, intersex, indigenous and stateless people and migrants do not suffer from discrimination and violence.”¹³⁴

The ICCPR, which Thailand ratified in 1996, provides for equal civil and political rights for all (article 3), the right to recognition for everyone before the law (article 16), the right to one’s privacy and family (article 17), and the right of people of marriageable age to marry and to start a family (article 23(2)).

Governments are obligated under the ICCPR to ensure equality before the law and the equal protection of the law of all persons without discrimination on any ground, including sex (article 26). The Human Rights Committee has specifically recommended that governments should guarantee the rights of transgender persons including the right to legal recognition of their gender, and that states should repeal abusive and disproportionate requirements for legal recognition of gender identity.¹³⁵

Principle 3 of the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity – a set of principles developed by international human rights experts and endorsed by the UN – states that:

Everyone has the right to recognition everywhere as a person before the law. Persons of diverse sexual orientations and gender identities shall

¹³³ International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976. Thailand ratified the ICCPR in 1996.

¹³⁴ UN Human Rights Committee, “Concluding observations on the second periodic report of Thailand,” CCPR/C/THA/CO/2, April 25, 2017..

¹³⁵ UN Human Rights Committee, “Concluding observations on the fourth periodic report of Ireland,” CCPR/C/IRL/CO/4, August 19, 2014,; UN Human Rights Committee, “Concluding observations on the seventh periodic report of Ukraine,” CCPR/C/UKR/CO/7, August 22, 2013.

enjoy legal capacity in all aspects of life. Each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity, and freedom. No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilization or hormonal therapy, as a requirement for legal recognition of their gender identity. No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person's gender identity. No one shall be subjected to pressure to conceal, suppress, or deny their sexual orientation or gender identity.¹³⁶

In his report to the UN General Assembly in 2018, the UN independent expert on sexual orientation and gender identity, Victor Madrigal-Borloz, stated:

[L]ack of legal recognition negates the identity of the concerned persons to such an extent that it provokes what can be described as a fundamental rupture of State obligations. As expressed by one scholar, when States deny legal access to trans identities, what they are actually doing is messaging a sense of what is a proper citizen.¹³⁷

Legal Gender Recognition

Separating Medical and Administrative Processes

International human rights standards are increasingly understood to require the separation of legal and medical processes of gender reassignment for transgender people.

The 2015 “Blueprint for the Provision of Comprehensive Care for Trans People in Asia and the Pacific,” co-published by WHO, UNDP, USAID, PEPFAR, the Asia-Pacific Transgender Network, and the Health Policy Project, recommended that governments “[t]ake all necessary legislative, administrative, and other measures to fully recognize each person’s

¹³⁶ “Principle 3,” Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, 2006, <http://yogyakartaprinciples.org/principle-3/> (accessed August 10, 2021).

¹³⁷ UN General Assembly, Report of the independent expert on sexual orientation and gender identity, Protection against violence and discrimination based on sexual orientation and gender identity, A/73/152, July 12, 2018, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/73/152 (accessed August, 10, 2021).

self-defined gender identity, with no medical requirements or discrimination on any grounds.”¹³⁸

Several countries have adopted best practices that reflect this. Sweden, the Netherlands, Ireland, Colombia, Malta, and Denmark in recent years changed their legal recognition procedures to remove invasive medical requirements; Denmark and Malta, along with Argentina, do not require a medical diagnosis for legal gender recognition.¹³⁹ Argentina and Malta are widely considered to set best standards in legal gender recognition procedures.¹⁴⁰ In some countries, legislatures have adopted these standards in laws and policies; in other countries, courts have required the application of these principles.

In 2013, the UN special rapporteur on torture stated that, “In many countries transgender persons are required to undergo often unwanted sterilization surgeries as a prerequisite to enjoy legal recognition of their preferred gender.”¹⁴¹ The special rapporteur noted a trend of finding such compulsory sterilization a violation of human rights, including non-discrimination rights and physical integrity, and called upon governments “to outlaw forced or coerced sterilization in all circumstances and provide special protection to individuals belonging to marginalized groups.”¹⁴²

¹³⁸Health Policy Project, Asia Pacific Transgender Network, United Nations Development Programme, *Blueprint for the Provision of Comprehensive Care for Trans People and Trans Communities in Asia and the Pacific* (Washington, DC: Futures Group, Health Policy Project, 2015), pp. 112, http://www.healthpolicyproject.com/pubs/484_APTBFINAL.pdf (accessed June 24, 2021).

¹³⁹Government of Denmark, Parliamentary Gazette, Law 182, Motion to Law amending the Law on the Central Office (Assigning new personal number for people who experience themselves as belonging to the other sex), April 30, 2014; for Malta see: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=26805&l=1> (accessed August 11, 2021); Government of Ireland, Oireachtas, Act No. 25 of 2015, Gender Recognition Act of 2015, <http://www.oireachtas.ie/documents/bills28/acts/2015/a2515.pdf> (accessed August 11, 2021).

¹⁴⁰IDENTIDAD DE GENERO Ley 26.743 Establécese el derecho a la identidad de género de las personas (2012), <http://tgeu.org/argentina-gender-identity-law/> (accessed August 11, 2021); Republic of Colombia, Ministry of Justice and Law, Decree 1227 (June 4, 2015) Kingdom of the Netherlands, Law of December 18, 2013 amending Book 1 of the Civil Code Act and the municipal personal records database in connection with the changing conditions and the competence of amending the entry of sex in the birth certificate, <http://wetten.overheid.nl/BWBR0034670/2014-07-01> (accessed August 11, 2021).

¹⁴¹UN Human Rights Council, Report of the Special Rapporteur on Torture, Juan Méndez, A/HRC/22/53, February 1, 2013, para. 78.

¹⁴²*Ibid.*, para. 88.

A 2012 Office of the UN High Commissioner for Human Rights (OHCHR) report, prepared in response to a 2011 Human Rights Council resolution calling for an end to violence and discrimination on the basis of sexual orientation and gender identity, noted that:

Regulations in countries that recognize changes in gender often require, implicitly or explicitly, that applicants undergo sterilization surgery as a condition of recognition. Some States also require that those seeking legal recognition of a change in gender be unmarried, implying mandatory divorce in cases where the individual is married.¹⁴³

In a 2014 joint statement, the WHO, OHCHR, UN Program on HIV/AIDS (UNAIDS), UNDP, UNICEF, and UNFPA said: “States parties’ obligation to respect the right to health requires that they abstain from imposing discriminatory practices. This includes an obligation to respect the rights of persons with disabilities and transgender and intersex persons, who also have the right to retain their fertility.”¹⁴⁴ The agencies called on governments to “[p]rovide legal guarantees for full, free and informed decision-making and the elimination of forced, coercive and otherwise involuntary sterilization, and review, amend and develop laws, regulations and policies in this regard.”¹⁴⁵ In a 2015 report, mandated by a 2014 Human Rights Council resolution on sexual orientation and gender identity, OHCHR recommended that states begin immediately “[i]ssuing legal identity documents, upon request, that reflect preferred gender, eliminating abusive preconditions, such as sterilization, forced treatment and divorce.”¹⁴⁶

International health expert bodies have in recent years strengthened their positions against medical models for legal gender recognition. WPATH called for removal of any

¹⁴³UN Human Rights Council, Report of the United Nations High Commissioner for Human Rights on discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, A/HRC/19/41, November 17, 2011, para. 72.

¹⁴⁴ OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO. Eliminating Forced, Coercive and Otherwise Involuntary Sterilization, WP 660, 2014, p. 10.

¹⁴⁵Ibid., p. 13.

¹⁴⁶UN Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on discrimination and violence against individuals based on their sexual orientation and gender identity, para. 79(i).

sterilization requirements as part of legal gender recognition in a 2010 statement.¹⁴⁷ WPATH stated:

No person should have to undergo surgery or accept sterilization as a condition of identity recognition. If a sex marker is required on an identity document, that marker could recognize the person's lived gender, regardless of reproductive capacity. The WPATH Board of Directors urges governments and other authoritative bodies to move to eliminate requirements for identity recognition that require surgical procedures.¹⁴⁸

In 2015 WPATH updated the statement, reiterating its condemnation of forced sterilization, and expanding its critique of arduous and medicalized procedures for legal gender recognition, saying: "No particular medical, surgical, or mental health treatment or diagnosis is an adequate marker for anyone's gender identity, so these should not be requirements for legal gender change;" and, "Marital status and parental status should not affect legal recognition of gender change, and appropriate legal gender recognition should be available to transgender youth."¹⁴⁹

And in 2017, WPATH updated their position statement again, reiterating that:

WPATH further recognizes the right of all people to identity documents consistent with their gender identity, including those documents which confer legal gender status.... Transgender people, regardless of how they identify or appear, should enjoy the gender recognition all persons expect and deserve. Medical and other barriers to gender recognition for transgender individuals may harm physical and mental health. WPATH

¹⁴⁷ WPATH "2010, Statement on Identity Recognition," June 16, 2010, https://amo_hub_content.s3.amazonaws.com/Association140/files/Identity%20Recognition%20Statement%206-6-10%200n%20letterhead.pdf (accessed December 18, 2018).

¹⁴⁸ Ibid.

¹⁴⁹ WPATH, "2015 Statement on Legal Recognition of Gender Identity," January 19, 2015, https://amo_hub_content.s3.amazonaws.com/Association140/files/WPATH%20Statement%200n%20Legal%20Recognition%20of%20Gender%20Identity%201-19-15.pdf (accessed December 1, 2018).

opposes all medical requirements that act as barriers to those wishing to change legal sex or gender markers on documents.¹⁵⁰

Rights of Transgender Children

The right to recognition as a person before the law is articulated in the Universal Declaration of Human Rights and guaranteed in the ICCPR and the Convention on the Rights of the Child (CRC), which Thailand ratified in 1992.¹⁵¹ The right to preserve one's identity is guaranteed by article 8 of the CRC, which specifies three aspects of identity—nationality, name, and family relations—but that list is not exhaustive. Together with the right to protection from arbitrary interference in privacy, such as ICCPR article 17, the right to preserve one's identity extends to the way one's identity is reflected on state-issued documents, including for children.

As the CRC makes clear, “[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”¹⁵² This includes decisions about legal recognition of the gender identity of transgender children.

Article 12 of the CRC provides that in determining the child's best interest, the child itself should be heard and taken into account:

1. Governments should assure to the child who is capable of forming their own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the

¹⁵⁰ WPATH, “2017 Statement on Identity Recognition,” November 15, 2017, <https://www.wpath.org/media/cms/Documents/Web%20Transfer/Policies/WPATH%20Identity%20Recognition%20Statement%2011.15.17.pdf> (accessed January 23, 2019).

¹⁵¹ Universal Declaration of Human Rights, G.A. Res. 217(III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) art. 6; see also Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990; see also CRC, arts. 7 and 8; ICCPR, art. 16.

¹⁵² CRC, art. 3.

child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.¹⁵³

The government's failure to address the barriers that transgender students in Thailand face in accessing education can amount to a violation of the right to education, which is enshrined in the International Covenant on Economic, Social and Cultural Rights and the CRC.¹⁵⁴ The gender expectations enforced on students can curb their freedom of expression, protected in the ICCPR.¹⁵⁵

Updating Diagnostic Guidelines

Both the *International Classification of Diseases and Related Health Problems* (ICD), which is published by the WHO, and the *Diagnostic and Statistical Manual* (DSM), which is published by the American Psychiatric Association (APA), have removed the diagnoses for "Gender Identity Disorder" (GID) and "transsexualism" from "mental disorders" sections altogether.

In 2012 the APA board's changes to the latest DSM removed the term "Gender Identity Disorder." The APA instead added the term "Gender Dysphoria" with the specific definition that it refers to emotional distress over "a marked incongruence between one's experienced/expressed gender and assigned gender." The APA specifically clarified: "It is important to note that gender nonconformity is not in itself a mental disorder. The critical element of gender dysphoria is the presence of clinically significant distress associated with the condition."¹⁵⁶

The WHO approved a revised version of the ICD in June 2019.¹⁵⁷ The new WHO guidelines reframe "gender identity disorders" as "gender incongruence," and move the diagnostic codes from the chapter on mental disorders to one on sexual health, an important gain for

¹⁵³ Ibid.

¹⁵⁴ International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, art. 13; CRC, arts. 28 and 29.

¹⁵⁵ See ICCPR, art. 19.

¹⁵⁶ American Psychiatric Association, "Gender Dysphoria Fact Sheet," 2012, https://www.psychiatry.org/File%20Library/Psychiatrists/Practice/DSM/APA_DSM-5-Gender-Dysphoria.pdf (accessed August 11, 2020). <http://www.dsm5.org/documents/gender%20dysphoria%20fact%20sheet.pdf>

¹⁵⁷ World Health Organization (WHO), ICD-11, <https://icd.who.int/> (accessed August 11, 2021).

transgender adolescents and adults, who may soon be able to seek medical care without being viewed as “mentally disordered.” Governments have until 2022 to change their diagnostic coding systems. According to the WHO, “[t]his reflects evidence that trans-related and gender diverse identities are not conditions of mental ill health, and classifying them as such can cause enormous stigma.”¹⁵⁸

Non-Binary Gender Markers

An increasing number of governments recognize—at least on some documents—a non-binary gender identity. These include Nepal, India, the Netherlands, Australia, and New Zealand, among others. In the United States, non-binary state identification documents are available in 15 states and the District of Columbia. In 2020, the Gender Inclusive Passport Act, which would require the US State Department to issue “X (unspecified)” passports to those who apply for one based on “self-attestation,” was introduced in Congress.¹⁵⁹

The International Civil Aviation Organization (ICAO), which sets global standards for machine readable passports, allows for three sex categories: female, male, or “X” for unspecified.¹⁶⁰ Analysts have pointed out that historically, international passport regulations did not require gender to be listed on the documents. It was only added following US government advocacy at the ICAO in the 1970s.¹⁶¹

Removing Gender Markers from Official Documents

In 1972, Sweden instituted the world’s first law for transgender people to be able to change their legal gender. Since then, around the world, much has changed. An increasing number of countries have legal gender recognition procedures on the books; many of

¹⁵⁸ WHO, “WHO/Europe brief – transgender health in the context of ICD-11,” <https://www.euro.who.int/en/health-topics/health-determinants/gender/gender-definitions/whoeurope-brief-transgender-health-in-the-context-of-icd-11> (accessed May 25, 2021).

¹⁵⁹ “Rep. Khanna Introduces Legislation to Add a Third Gender Onto US Passports,” US House Representative Ro Khanna press release, February 25, 2020, <https://khanna.house.gov/media/press-releases/release-rep-khanna-introduces-legislation-add-third-gender-us-passports> (accessed August 12, 2021).

¹⁶⁰ International Civil Aviation Organization, “Machine Readable Travel Documents, Eighth Edition, 2021.” https://www.icao.int/publications/Documents/g303_p4_cons_en.pdf (accessed August 12, 2021).

¹⁶¹ Samantha Allen, “How the Rise of Androgyny Changed Our Passports,” The Daily Beast, October 14, 2018, <https://www.thedailybeast.com/how-the-rise-of-androgyny-changed-our-passports> (accessed August 12, 2021).

those governments that passed laws with discriminatory and medicalized requirements now have passed updates that eliminate medical barriers, and some have apologized for past wrongdoing;¹⁶² some are including third gender or non-binary options for people to select; and some are exploring the removal of gender markers altogether.¹⁶³

Thailand's system of civil registration and ID documents, along with the Thai language's inclusion of a gender-neutral title, present the government with an opportunity to be a regional and global leader on the issue of legal recognition for transgender people. As discussed in this report, Thailand's civil registration database contains, according to the Ministry of Social Development and Human Security and UNDP, sufficient identifying information (fingerprints and a national ID number) to confirm someone's identity regardless of whether their current gender matches their birth-assigned sex or not. As such, listing a gender marker on government ID cards is not necessary to prevent identify fraud, though the government needs to be able to ensure that it had other means to collect and track gender-disaggregated data to monitor and remedy discrimination and inequity toward women and girls in areas including education, health, and economic rights. Practices for data management should be compliant with robust collection, retention, and protection practices and legislation, particularly given the sensitive nature of this data and the broad ramifications for the individual in case of a data breach or inappropriate sharing.

The Yogyakarta Principles+10 (YP+10), an update to the original Yogyakarta Principles, states:

Everyone has the right to legal recognition without reference to, or requiring assignment or disclosure of, sex, gender, sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to obtain identity documents, including birth certificates, regardless of sexual orientation, gender identity, gender expression or sex characteristics.

¹⁶²John Ahlander, "Sweden to offer compensation for transgender sterilizations," Reuters, March 27, 2017, <https://www.reuters.com/article/us-sweden-transgender-sterilisation/sweden-to-offer-compensation-for-transgender-sterilizations-idUSKBN16Y1XA> (accessed August 12, 2021); Kyle Knight, "Netherlands Apologizes for Transgender Sterilizations," Human Rights Watch, December 1, 2020, <https://www.hrw.org/news/2020/12/01/netherlands-apologizes-transgender-sterilizations> (accessed August 12, 2021).

¹⁶³Neela Ghoshal, "Transgender, Third Gender, No Gender: Rights Perspectives on Laws Assigning Gender," *Opinio Juris*, September 8, 2020, <https://www.hrw.org/news/2020/09/08/transgender-third-gender-no-gender-part-i> (accessed August 12, 2021).

Everyone has the right to change gendered information in such documents *while gendered information is included in them.*¹⁶⁴ [Emphasis added]

The YP+10 urges governments to:

Ensure that official identity documents only include personal information that is relevant, reasonable and necessary as required by the law for a legitimate purpose, and thereby end the registration of the sex and gender of the person in identity documents such as birth certificates, identification cards, passports and drivers licenses, and as part of their legal personality.

In a report to the UN General Assembly in July 2018, the UN independent expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz, said: “The notion that there is a gender norm, from which certain gender identities ‘vary’ or ‘depart’ is based on a series of preconceptions that must be challenged if all humankind is to enjoy human rights.”¹⁶⁵

Madrigal-Borloz’s report addressed the progress—and lack thereof—on legal gender recognition globally and in international human rights standards. He wrote:

Legal systems must, on an ongoing basis, carefully review the reasoning behind the gathering and exhibition of certain data, and the rules governing data management, which must include separate considerations for the need to gather and the need to exhibit. In this connection, the mandate holder has significant doubts as to the real need for the pervasive exhibition of gender markers in official and non-official documentation, which appears to be fulfilling the vestiges of needs that have long been superseded or adhering to a rationale that should have never been applied in the first place. The simple principle remains that States must refrain from

¹⁶⁴ Yogyakarta Principles Plus Ten: Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles (November 10, 2017), http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf (accessed August 12, 2021).

¹⁶⁵ UN General Assembly, Report of the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity,

gathering and exhibiting data without a legitimate, proportionate and necessary purpose.

Transgender people interviewed for this report expressed a range of views regarding the best way forward for the government's plans to create a legal gender recognition policy. Given that the gender marker on Thai ID documents is reflected in the individual's title, many told Human Rights Watch they saw the existence of a respectful and commonly used gender-neutral title as an appropriate way to efficiently and immediately allow for their legal recognition.

"If you ask me if I want to change my gender marker on the ID card, I prefer to not have one," said Lamai P. "I feel like people should be able to use the word *khun* because it's perfect and very respectful."¹⁶⁶ "I feel there should be no gender marker," said Kaeo P., a 29-year-old transgender woman. "*Khun* would be fine. I don't want 'Miss.' I want *khun* or nothing."¹⁶⁷ Waan K., 30, said: "I feel like it will make me feel better emotionally to be able to be *khun*. Even today I do not like to use the gender mark 'Miss.'"¹⁶⁸

Some people said they already use *khun* as a protection device for themselves.

Chimlin P., a 34-year-old transgender woman, said that she advocated to be called *khun* in public places as a way of protecting her dignity and safety: "There's an army area there where I needed to register for a card to enter and exit, and when I was in the queue for that, the army guy called me 'Mister.'" She said:

I told him: "You can actually call me *khun* and not use the word mister. It was in front of everybody when he called me mister. So then I argued back that I wanted them to call me *khun*. I felt embarrassed because it was a really long queue. So I felt like, why call me mister, why not call me *khun*. Because you know, it's really embarrassing, I felt really embarrassed."¹⁶⁹

¹⁶⁶ Human Rights Watch interview with Lamai P., Chiang Mai, January 16, 2020.

¹⁶⁷ Human Rights Watch interview with Kaeo P., Bangkok, January 15, 2020.

¹⁶⁸ Human Rights Watch interview with Waan K., Pattaya, January 20, 2020.

¹⁶⁹ Human Rights Watch interview with Chimlin P., Pattaya, January 20, 2020.

Kamlai N., a 42-year-old transgender woman, said in the past she had avoided health care because of some experiences of being referred to as “Mister” at clinics and hospitals. Over time, she said, she and other transgender people had been able to convince staff at her local hospital to call everyone *khun* in public settings, so she felt more comfortable going.¹⁷⁰

Vanida L., a 23-year-old transgender man in Bangkok, said: “Maybe it’s better to not have any gender marker for anyone at all. We can’t fit people into two boxes or two roles.”¹⁷¹

The Thai Transgender Alliance has drafted proposed legislation for the government to consider. The current draft appears in Appendix 1 of this report and includes recognition of a third undefined gender category labeled “other.”

Employment Discrimination

Thailand has ratified both the ILO Equal Remuneration Convention, 1951 (No. 100) and the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Both conventions affirm the right to non-discrimination for workers in Thailand.

The Equal Remuneration Convention “promotes equal pay for work of equal value between men and women, addressing pay discrimination on the grounds of sex.”¹⁷² The Discrimination Convention “sets comprehensive standards to promote equality of opportunity and treatment in the world of work.”¹⁷³ Discrimination is defined in the Discrimination Convention as:

(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

¹⁷⁰ Human Rights Watch interview with Kamlai N., Pattaya, January 20, 2020.

¹⁷¹ Human Rights Watch interview with Vanida L., Bangkok, April 30, 2020.

¹⁷² ILO, “Equality and non-discrimination at Work in East and South-East Asia: Guide,” 2011, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_178415.pdf (accessed August 12, 2021).

¹⁷³ Ibid.

(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.¹⁷⁴

The Discrimination Convention mandates states to require “a proactive, positive approach towards the promotion of equality in opportunity and treatment in employment and occupation.”¹⁷⁵

Thai Federal Law

Thailand's 2017 constitution states in section 27:

All persons are equal before the law, and shall have rights and liberties and be protected equally under the law.

Men and women shall enjoy equal rights.

Unjust discrimination against a person on the grounds of differences in origin, race, language, sex, age, disability, physical or health condition, personal status, economic and social standing, religious belief, education, or political view which is not contrary to the provisions of the Constitution, or on any other grounds shall not be permitted.¹⁷⁶

The Ministry of Labor Regulation on Thai Labor Standards, Social Responsibility of Thai Businesses B.E. 2547 (2007) “prohibits discrimination against workers on numerous grounds, including ‘nationality, ethnicity, religion, language, age, sex, marital status, personal sexual attitude, disability, labour union membership, political party affiliation or any other personal opinion.’”¹⁷⁷

¹⁷⁴ Ibid.

¹⁷⁵ ILO, “Gender Identity and Sexual Orientation in Thailand.”

¹⁷⁶ Constitution of the Kingdom of Thailand, https://www.constituteproject.org/constitution/Thailand_2017.pdf?lang=en (accessed August 12, 2021), sec. 27 paras. 1-3.

¹⁷⁷ Ministry of Labor Regulation on Thai Labor Standards, Social Responsibility of Thai Businesses B.E. 2547 (2007).

Acknowledgments

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The report was reviewed by Graeme Reid, LGBT rights program director, Sunai Phasuk, senior Thailand researcher, Heather Barr, interim women's rights co-director, a health and human rights editor, Petra Molnar, business and human rights editor, Michael Bochenek, senior children's rights counsel. James Ross, legal and policy director, and Joseph Saunders, deputy program director, provided legal and program review respectively. Akekrin Coco Kerdsoong, manager at Thai Transgender Alliance, Suparnee (Jay) Pongruengphant, project manager at UNDP-Thailand, and Vitit Muntarbhorn - Professor Emeritus at Chulalongkorn University, reviewed and provided valuable feedback on the report.

Anjelica Jarrett, LGBT rights senior coordinator and Yasemin Smallens, LGBT rights coordinator, provided editorial and production assistance and formatted the report. Additional production assistance was provided by Travis Carr, senior publications coordinator, and Fitzroy Hepkins, senior administrative manager.

Human Rights Watch thanks all of the trans people in Thailand who shared their stories with us so we could write this report.

Appendix: Letters to the Government of Thailand

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Fax: [REDACTED]

Email: [REDACTED]

Re: Request for information on the rights of transgender people in Thailand

Dear Minister Juti Krairiksh:

I am writing on behalf of Human Rights Watch to inquire about the Social Development and Human Security Ministry's work to protect the rights of transgender people in Thailand.

Human Rights Watch is an independent nongovernmental organization that monitors and reports on human rights in more than 90 countries around the world, including in Thailand.

We have conducted research on the rights of transgender people in Thailand as it relates to their ability to change their legal gender. Our forthcoming report draws on and cites the work your Ministry has conducted on the issue.

As you may know, because there is no legal procedure in Thailand for changing gender, transgender people face discrimination in accessing education, employment, and health care. In many cases, this results in them pursuing unsupervised transition-related care, including hormone replacement therapy via over-the-counter drugs without supervision of a medical professional—which can have grave consequences.

We understand the Ministry of Social Development and Human Security has engaged extensively with transgender communities to discuss legal reforms, including legal gender recognition, that would protect the rights of transgender people.

We are keen to reflect the Ministry's latest actions and commitments in this regard in our report. As such, we kindly request your reply to the following questions by December 1, 2021 so that we may accurately reflect it in our publications.



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1. What recent steps has the Ministry taken to develop and advocate for a law that enables transgender people to be recognized according to their gender identity and change their legal name and gender without any medical requirements?
2. What are your plans for, according to the powers vested in the minister of social development and human security under section 5 of the Gender Equality Act, developing a robust and inclusive definition of “gender identity” to be formally published in the royal gazette?

We would be happy to meet at your convenience to discuss our findings or the international human rights standards relevant to our recommendations in more depth. Kindly send your reply to Kyle Knight at [REDACTED].

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kyle Knight', with a stylized, cursive script.

Kyle Knight
Senior Researcher, LGBT Rights
Human Rights Watch

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Minister Anutin Charnvirakul
Ministry of Public Health
Royal Thai Government
Tiwanon Road, Talat Khwan Subdistrict, Mueang District,
Nonthaburi Province 11000

Fax: [REDACTED]

Email: [REDACTED]

Re: Request for information on the rights of transgender people in Thailand

Dear Minister Anutin Charnvirakul:

I am writing on behalf of Human Rights Watch to inquire about the Ministry of Health's work to protect the rights of transgender people.

As you may know, Human Rights Watch is an independent nongovernmental organization that monitors and reports on human rights in more than 90 countries around the world, including in Thailand.

We have conducted research on the rights of transgender people in Thailand as it relates to their ability to change their legal gender. Because there is no legal procedure for changing gender, transgender people in Thailand face discrimination in accessing education, employment, and health care. In many cases, this results in them pursuing unsupervised transition-related care, including hormone replacement therapy via over-the-counter drugs without supervision of a medical professional—which can have grave consequences.

One barrier to medically supervised hormone administration for transgender people in Thailand is the 2009 regulations issued by the Medical Council of Thailand.¹ While intended to be affirmative and provide a pathway to gender-affirming surgeries, the regulations require that transgender people undergo a psychiatric evaluation in order to be eligible for supervised hormone therapy and stipulate that the hormone therapy is part of a pathway toward surgery, which not all transgender people want to undergo.² In fact, research has shown that a minority of

¹ Regulations of the Medical Council Concerning Ethics in the Medical Profession Rules for Treatment in Sex Change Operations B.E. 2552 (2009), <http://thailawforum.com/laws/Regulation%20of%20the%20Medical%20Council%20Concerning%20Ethics.pdf> <http://thailawforum.com/laws/Regulation%20of%20the%20Medical%20Council%20Concerning%20Ethics.pdf>.

² Announcement of the Medical Council 58/2552 B.E. (2009 A.D.) Regarding Guidelines for Persons Manifesting Confusion Concerning Their Sexual Identity or Desiring Treatment By Undergoing a Sex Change Operation, <http://www.thailawforum.com/Guidelines-sex-change-operations.html> (accessed August 10, 2021).

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transgender men and transgender women in Thailand desire surgery, suggesting that medically supervised hormone administration linked to surgery may be perceived as excluding them.³

Requiring psychiatric evaluation or diagnosis to access care is antithetical to international standards and best practices. As you may know, the World Health Organization's International Classification of Diseases Version 11 (ICD-11) removed the diagnosis of "gender identity disorder," which requires Thailand to update its diagnostic codes. As the Ministry of Health is responsible for implementing ICD-11, we write to inquire how the Ministry plans to engage the Thai Medical Council in updating Thailand's standards of care for transgender people.

We urge the Ministry to carefully consider the harms posed to transgender people under Thailand's current legal regime, which lacks a procedure for allowing people to change their legal gender.

For the purposes of our research, we request that the Ministry kindly provide us with information by December 1, 2021 on the following so that we may reflect this in our reporting:

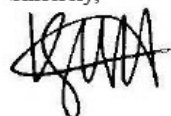
1. What plans does the Ministry have to update Thailand's standards of care for transgender people?
2. What steps have been taken to support the creation of a rights-based legal gender recognition procedure?

We would be happy to meet at your convenience to discuss our findings or the international human rights standards relevant to our recommendations in more depth.

We kindly ask that you reply to Kyle Knight at [REDACTED] in response to this letter.

Thank you for your attention to this important matter.

Sincerely,



Kyle Knight
Senior Researcher, LGBT Rights
Human Rights Watch

³ Louis J. Gooren, Tanapong Sungkaew, Erik J. Giltay & Thomas E. Guadamuz, "Cross-sex hormone use, functional health and mental well-being among transgender men (Toms) and Transgender Women (Kathoeys) in Thailand," *Culture, Health & Sexuality*, 17:1 (2015), 92-193, accessed August 10, 2021, doi: 10.1080/13691058.2014.950982.

“People Can’t Be Fit into Boxes”

Thailand’s Need for Legal Gender Recognition

Thailand has no procedure for a person to change their legally recognized gender, meaning transgender people’s basic rights are constantly undermined. They are at risk of discrimination in their daily lives, including in employment, education, and healthcare settings.

“People Can’t Be Fit into Boxes” documents how the absence of a legal gender recognition procedure, coupled with inadequate non-discrimination protections and pervasive social stigma, limits transgender peoples’ access to vital services and results in daily indignities. The country has for decades been a destination for transgender people seeking gender-affirming health care. The Thai government in recent years has indicated a willingness to develop and implement a legal gender recognition procedure, and has consulted with civil society groups and United Nations agencies.

Thailand has an important opportunity to match its positive global reputation on lesbian, gay, bisexual and transgender (LGBT) rights with its obligations under international law by developing a rights-based procedure for legally recognizing gender identity.



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