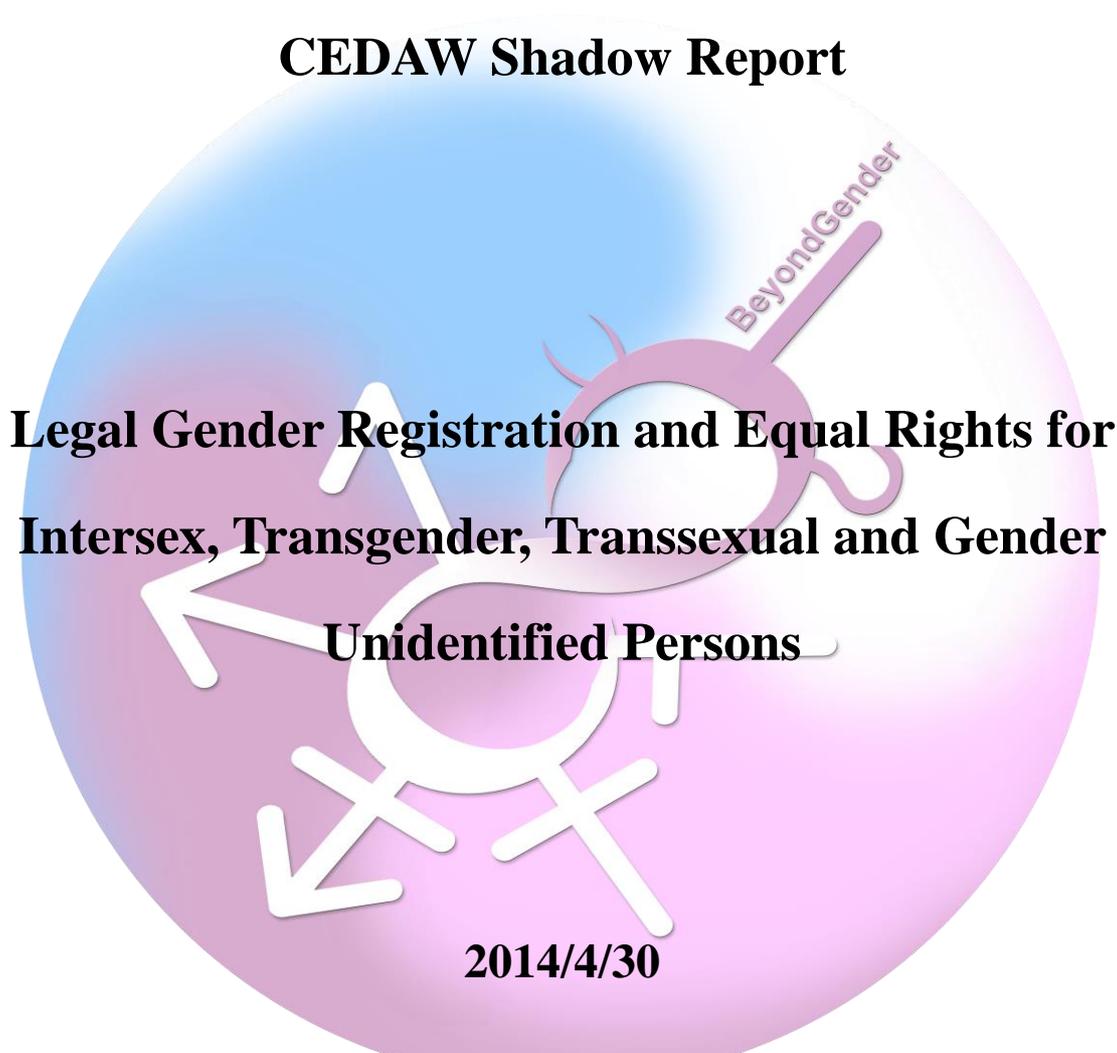


# **Intersex, Transgender and Transsexual People**

## **Care Association (ISTScare)**

### **CEDAW Shadow Report**



# **Legal Gender Registration and Equal Rights for Intersex, Transgender, Transsexual and Gender Unidentified Persons**

**2014/4/30**

Presented by<sup>1</sup> : Intersex, Transgender and Transsexual People Care Association  
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## **Abstract**

Taiwan's Ministry of the Interior published an executive order regulating the legal gender change process in 2008. The order states that one must pass the evaluation of 2 psychiatrists and be forced to undergo surgery removing breasts, ovaries, uterus, penis, and testes. This order violates 5 United Nations human rights conventions: CEDAW, ICCPR, ICESCR, CAT and CRC.

Gender identity is an inseparable part of one's gender. Everyone has the right to gender self-determination and bodily autonomy, and forced surgery is an insult to the dignity of transgender, intersex, and gender-unidentified persons. It also punishes those who desire legal gender change with the price of infertility, surgical complications, and psychological anguish. ISTScare has already seen many cases of those who suffer from the psychiatric evaluation and forced surgery. Gender recognition is a fundamental human right. The government has no right to require surgery for the registration of legal gender change.

ISTScare recommends the following:

1. Immediately abolish forced surgery and psychiatry evaluation requirements.
2. Allow a third gender option, freely available to everyone and without compulsion.

Keywords: ISTScare, CEDAW, ICCPR, ICESCR, CAT, CRC, transgender, intersex, gender unidentified, gender identity, gender recognition, gender self-determination, legal gender registration, forced surgery, psychiatrists, psychiatry evaluation, third gender option.

## **I. About ISTScare**

Intersex, Transgender and Transsexual People Care Association(ISTScare) is an association focusing on the rights of Intersex, Transgender, Transsexual and Gender Unidentified Persons. In order to raise social concern on gender issues and to achieve real gender equality, ISTScare participates in labor movements, provides lectures on campus, and continues to supervise policy-makers.

Taking the spirit from the Universal Declaration of Human Rights, ISTScare has established the Universal Declaration of Sex/Gender Human Rights:

1. All human beings, no matter their sex/gender, are born free and equal in dignity and rights.
2. Everyone has the right to sex/gender self-determination, and shall be treated equally.
3. Everyone of full age, no matter their sex/gender has the right to marry and to start a family.

## II. Current Situation

### Case Study A– The Right to Marriage and Gender Recognition

Jiyi Wu and Abbygail Wu were both formerly legally male and had completed Sex Reassignment Surgery prior to marriage. Due to Taiwanese law that only recognizes marriage between one man and one woman, Abbygail Wu first changed her legal gender to female, while Jiyi Wu retained her male status. This satisfied the conditions and they were married. A week later, Jiyi Wu applied and changed her legal gender to female as well. Afterwards, a Wanhua District Household Registration Service employee, Wu Xinde(吳信德), discovered that the surgery had occurred prior to marriage, resulting in a marriage dispute case that made international news.<sup>2</sup>

In June of 2013, the Ministry of the Interior believed Jiyi Wu to have completed surgery prior to marriage, yet incompletely registering gender information, while being already physically female. Since both partners were physically female before marriage, the Ministry demanded that the original marriage registration be revoked, and gave the Wus until July 31 to annul the marriage, or otherwise the Household Registration Service would do so themselves. On August 7, 2013, the Ministry of the Interior held a conference (Investigation of Gender and Registration of Marriage) intending to revoke the Wus' marriage through it. Initially, the Ministry of the Interior was unwilling to allow non-governmental organizations and other social organizations to participate, but after strong public protest, permitted two organizations, "Taiwan Alliance to Promote Civil Partnership Rights" and

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<sup>2</sup> a. Taiwan Upholds Transgender Marriage In 'Benchmark' Ruling After Couple Has License Revoked -Agence France Presse, 2013.08.08

b. First public transgender marriage dispute in Taiwan -AFP, July 11, 2013

c. Same-sex transgender couple plan to sue over revoked marriage license in Taiwan – GayStarNews By Andrew Potts, 12 July 2013

d. Scholars dispute decision to revoke same-sex trans couple's marriage in Taiwan -GayStarNews By Derek Yiu, 12 July 2013

e. Genderqueer and proud -Taipei Times By Enru Lin, 2013.07.22

f. Behind closed doors -Taipei Times By Enru Lin, 2013.08.14

“Awakening Foundation.” The Wu couple were disallowed from participating during the entirety of the conference, aside from briefly voicing their case.

**Conclusions of the conference:**

1. Gender change is a human right, based on respect for the individual, and should not be mandatory. A person should be able to live true to his/herself without registering a gender change.
2. Surgery prior to marriage and legal gender change after marriage do not affect the validity of marriage.

From these conclusions, the Wus’ **marriage has been temporarily preserved. However, there has been no apology or compensation from the Ministry of the Interior, and can be seen as a sign of the Taiwanese government’s arrogance.**

Because Jiye Wu’s gender identity, social gender and outward appearance are typical of ordinary women, not changing her legal gender to female would bring about an inability to thrive in society. She would also be discriminated against in education and the workplace. The Ministry of the Interior mandates surgery and psychological assessment for those seeking to change their legal gender. Thus, they have no choice but to meet these requirements, but as a result of following these regulations, their marriage risked jeopardy. Now she has the right gender identification and life difficulties have eased somewhat, but because of the surgery requirement she was stripped of her fertility and reproductive rights, and will be unable to have her own children.

On January 29, 2014, Abbygail Wu departed from Taiwan Taoyuan International Airport for the US. Her passport identified her as female, however the immigration officer was unable to verify her gender due to characteristics such as her

deep voice, and his own gender stereotypes. Wu was asked to wait as the officer requested higher authorities for permission to retrieve confidential household registration files, and only after interrogation was she then allowed to leave the country.<sup>3</sup>

## **Analysis:**

### **Compulsory Surgery - A Human Rights Violation**

Taiwan presently only has regulations regarding the gender change from the Ministry of the Interior via executive order, which technically can be revised at any time. The Ministry of the Interior in 2008 explained that while genital reconstructive surgery is not required for legal gender change, removal of the ovaries, uterus, breasts, penis and testes is.

Legal gender change forces individuals to lose fertility, deprives them of their reproductive rights, and violates their gender self-determination. "International Covenant on Civil and Political Rights" Article 7 states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." In 1984, the United Nations also adopted the "Convention against Torture and Other cruel, Inhuman or Degrading Treatment or Punishment." The General Recommendation No. 14 of "Convention on the Elimination of All Forms of Discrimination against Women" (CEDAW) also mentions a ban on female genital mutilation.

Everyone has a right to bodily autonomy. The government insults the dignity of transgender, intersex and gender-nonconforming individuals through these regulations, and punishes these people who desire legal gender change to pay the price of infertility, surgical complications, and psychological anguish. Government has no right to use law or regulation to mandate surgery for those seeking legal gender change.

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<sup>3</sup> Gender activist recounts trouble at immigration -Taipei Times By Loa Iok-sin, Feb 20, 2014

## Neither surgery prior to marriage and legal gender change after marriage affect the validity of marriage

How is gender determined? Gender identity (transgender), like sexual orientation is innate, and an inseparable part of one's sexual identity. There is no precise way to determine when someone is male or female. Surgery itself cannot change one from one sex to another.

There are some problematic terms surrounding the reference to transgender people. These include the use of *transgender* as a noun or with an -ed ending. Transgender should be used as an adjective, not as a noun. Do not say, “Tony is a transgender,” or “The parade included many transgenders.” Instead say, “Tony is a transgender man,” or “The parade included many transgender people.” The adjective *transgender* should never have an extraneous “-ed” tacked onto the end. An “-ed” suffix adds unnecessary length to the word and can cause tense confusion and grammatical errors. For example, it is grammatically incorrect to turn transgender into a participle, as it is an adjective, not a verb, and only verbs can be used as participles by adding an “-ed” suffix.<sup>4</sup>

The Ministry of Health and Welfare also explained that they do not have the capability to evaluate what counts as a complete transformation, and that gender is based on what is registered on legal documents rather than physical anatomy.

At the time of marriage, the Wus were legally one man-one woman, and under this determination, their registration of marriage is considered valid. At the meeting, the Ministry of Justice also indicated that their 1994 **document** stated that changing gender while married does not affect marital status nor parent-child relationships.

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<sup>4</sup> GLAAD Media Reference Guide - Transgender Glossary of Terms  
<https://www.glaad.org/reference/transgender>

This is applicable to the Wu case, and therefore their marriage remains valid. Household Registration Service Chief Secretary Xie Ailing(謝愛齡) states, “In the future, marriage registrations will continue to follow the same procedures, without asking further information. There will no change in procedure.”

### **Gender is not just man or woman, marriage is not just gay or straight**

The Wus married when they were legally one man one woman, but their true gender in reality is much more diverse, which leading to controversy, and brought about shock and self-reflection to Taiwanese society. We need to reconsider why marriage has gender restrictions. “Why does gender override marriage?” Abbygail Wu asked during the press conference regarding the marriage revocation. On the day of the conference, people outside chanted, “Gender is not just man or woman, marriage is not just gay or straight!”

### **Gender is private**

From Abbygail Wu’s case we can see that 1) the immigration officer lacks an awareness of gender diversity, concepts of human rights and equality. and is full of gender stereotypes and prejudice. 2) Because the Household Registry has records of her gender change, the officer went too far by investigating the registry, and invaded her privacy. 3) The gender marker on ID can be a source of inconvenience to those who are transgender or gender-nonconforming. At the very least, it may affect their rights, and more seriously may violate their human rights. Therefore, if the government can allow people to register their own gender, including a third option (with self-determination as well as having the option of not selection a gender), then that will be the true practice of gender equality.

## **Case Study B<sup>5</sup> - The Right to Education**

Case B is a male-to-female transgender person studying in a religious university. Since she has yet to have sex reassignment surgery (SRS), her official gender is “male.” She applied to be housed in the dormitory since her home is far from the university, and she cannot afford to rent a house nearby. However, since she is still “male” according to her ID, she was assigned to a male dormitory and lives with four other male students. Since her appearance and behaviors are feminine, living in a male dormitory causes her severe embarrassment and inconvenience. Her roommates’ ignorance toward transgender issues makes her situation even worse.

She must wake up earlier than her roommates to wash and change clothes, and leave to avoid the embarrassment and negative views and discussions from encountering other male students. Worse still, she has to check her clothes after waking up every day to make sure she has not been raped by male roommates. She had requested the university to offer her a better environment to avoid these problems, such as living in a female grad school students’ dormitory which is in a different region in the same building of male dormitory. Teachers who had awareness gender issues helped her file the application. However, her request was denied by the university with only 3 ridiculous promises:

1. We can let you find two classmates who have the same condition as you to live with and you do not need to live with 3 classmates like others.
2. If you want to move out of the dormitory, we can assist in finding a cheap house for rent.
3. We will try to improve the situation in dormitory spaces.

### **Personal Reactions of Case B:**

1. There are very few other transgender people. It is almost impossible to find two others in the university to live together.
2. If I can afford to rent a house, I would already do so.
3. There is a current and urgent case right here. Can not the university learn the

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<sup>5</sup> The description of case B, C, D and the analysis are written by Zoe Ye

lessons from the cases of Ye Yong-Zhi (葉永誌) (A feminine student who was bullied in school. She died on April 20, 2000 in an accident while using the restroom in school during class time to avoid bullying) ?

### **Analysis:**

**The university does not respect the students' gender identity and does not offer positive assistance.**

Article 14 of CEDAW states that the right to education must be ensured by law for both men and women equally. The Taiwanese government has made laws addressing gender equality and education, the “Gender Equity Education Act,” which states, “The school shall not discriminate against students on the basis of their gender, gender expression, gender identity or sexual orientation in its instruction, activities, assessments, rewards and penalties, benefits, or services. This requirement does not apply to matters suitable only to persons of a specific gender, gender expression, gender identity, or sexual orientation. The school shall proactively provide assistance to students who are disadvantaged due to their gender, gender expression, gender identity, or sexual orientation with the aim of improving their circumstances.”

The subject of Case B has faced a disadvantage in school due to her gender identity. The university has denied her gender identity according to her official gender, and is passive on assisting her in her situation and ignores the difficulty that transgender students face. This is clearly a violation of the student's right to education and a violation of related gender equality laws in Taiwan.

Transgender people still face severe discrimination in the workplace in Taiwan. For these students, the situation is exacerbated by the high cost of SRS and being trapped by their officially referred gender which they disagree with. If the government allows her to change official ID without having SRS done before, she can be recognized as female by law and will be allowed to live in female dorm and avoid the problems mentioned above.

## Case Study C – The Right to Work

Case C is a male-to-female transgender person living in Tainan City. Since she has not yet had SRS and therefore legally male, she frequently encounters difficulties from superiors and colleagues both while applying for jobs and while working.

Example one (on applying for a job):

While applying for a job at a well-known chain retail company, she had been requested by the company to fit the dress code requirement of “male” staff – to cut her hair short. Since she had saved her hair for a more female appearance, it is unreasonable and cruel to ask her to cut her hair, as it is necessary for her to live as female. This requirement is unacceptable to her.

Example two (on applying for a job):

While applying for a job at a Taiwanese hypermarket, the interviewer told her that male staff are not allowed to have long hair. This kind of rule practically prevents male-to-female transgender people from applying for jobs and conflicts with their basic human rights.

Example one (while working):

While working on a job in the food and beverage department of a university in Tainan City, her manager made verbally discriminatory remarks against her gender expression such as “Am I hiring you for your beauty?” which caused her to quit.

Example two (while working):

While working in a small retail shop, the boss initially agreed to hire her, but then starts to make personal attacks toward her on her appearance and gender identity, causing her to quit out of anger.

### **Analysis:**

**Gender stereotypes are still severe in the workplace, making it difficult for transgender people to apply for jobs.**

Taiwanese “Act of Gender Equality in Employment” and “Employment Service Act” regulates that the employers shall not discriminate against employees according

to their gender or sexual orientation. “Gender identity” was not specifically mentioned but should have been included on the view of gender equality. Rule 11 in CEDAW requires the signed countries to eliminate all discriminations toward females in the workplace. However, transgender people in Taiwan, especially male-to-female are still encountering severe discrimination while applying for jobs.

Male-to-female transgender people in Taiwan often encounter discrimination like mentioned above in the workplace, especially the “men should not have long hair” stereotype which prevents them from having a job in the first place. If they can be legally recognized as female prior to having SRS done, these unreasonable requirements can be avoided and they will be able to have jobs and assimilate into society using female identity.

## **Case Study D - Law Recognition**

Zoe Ye(葉若瑛), is a male-to-female transgender person who has not yet had SRS and thus still legally male. She has been living as female for many years, and is addressed as “Miss” in most social situations. However, she encounters embarrassment and inconvenience when her official gender (male) is noted. For example, at the hospital, staff will call out “Miss” but upon seeing her medical record will confirm if the data is wrong. She becomes extremely embarrassed and claims she just wishes to leave as fast as she can.

Also, she is addressed as “Mr. Ye” on bank books, phone bills and other letters and documents. She mentioned that this is a cause of mental torture, and in conflict with her gender identity. Like the subject in Case C who had been discriminated in the workplace, she is afraid that she will also be discriminated against, and therefore she is unwilling to step into the workplace.

### **Analysis:**

**The inconsistency between appearance and official records causes severe difficulties in everyday life. Changing ID without SRS is the best solution.**

Rule 15 in CEDAW requires signed countries to ensure equality in law toward different genders. However, transgender persons who have not changed their legal

gender face many difficulties and inconveniences in everyday life, including the right to education and employment. It is obvious that transgender people face inequality. The best immediate solution toward these problems is to allow legal gender change without requiring SRS.

## **Case Study E – Gendered Spaces**

An internet report from April 24, 2014 shows restrooms in the 1<sup>st</sup> Student Activity Center of National Taiwan University with signs on the male restroom stating, “No biological females allowed,” and on the female restroom stating, “No biological males allowed.”

### **Analysis:**

Article 5a of CEDAW states: “To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”

Restrooms are one of the most obviously divided gender spaces in daily life, due to cultural and societal pressures. The traditional gender binary restrooms cause psychological barriers to transgender, intersex and gender-unidentified people. There was one transgender woman who died from uremia (kidney failure) due to holding in urine for too long.

While the government is being unsupportive of gender-neutral bathrooms, Taiwan’s premier university is segregating people based on biological sex. This kind of division is harmful to transgender, intersex and gender unidentified people, and also violates the gender-related clauses of CEDAW, Taiwan’s Gender Equity Education Act, the United Nations LGBTI declarations.

### III. Explanations to the local Act, Regulations or Directions violated 5 United Nations human rights conventions: CEDAW, ICCPR, ICESCR, CAT and CRC.

#### A. CEDAW

<b>Direction Number</b>	<i>內授中戸字 No. 0970066240</i>
<b>Classification</b>	<ol style="list-style-type: none"> <li>1. Stereotypical image of gender</li> <li>2. Classification by gender identity</li> <li>3. Discrimination to female people.</li> </ol>
<b>Violation or loss or rights protection of current Article of Law, Regulations, Directions to CEDAW or general recommendations.</b>	<ol style="list-style-type: none"> <li>1. <i>Those seeking legal gender change from female to male must submit medical certification to the government authorities, including the mental assessment of two psychiatrists with the diagnosis of "gender identity disorder" (DSM-IV TR) or "gender dysphoria" (DSM-V), and the surgical removal of female reproductive organs (breasts, uterus and ovaries) by a certified medical hospital or clinic.</i></li> <li>2. <i>Those seeking legal gender change from male to female must submit medical certification to the government authorities, including the mental assessment of two psychiatrists with the diagnosis of "gender identity disorder" (DSM-IV TR) or "gender dysphoria" (DSM-V), and the surgical removal of male reproductive organs (penis and testis) by the certified medical hospital or clinic.</i></li> </ol>
<b>Violation of Article or general recommendations of CEDAW</b>	<p>Articles 2, 12 and 15 of CEDAW</p> <p>General Recommendation No. 14 Female circumcision(sterilization, castration)</p> <p>General recommendation No. 28 - The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women</p>

	<p>18. Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men.</p> <p>General Recommendation No. 24</p> <p>31. States parties should also, in particular:(e) Require all health services to be consistent with the human rights of women, including the rights to autonomy, privacy, confidentiality, informed consent and choice.</p> <p>General Recommendation No. 24</p> <p>28. ...article 16 (1) (e), which requires States parties to ensure that women have the same rights as men to decide freely and responsibly on the number and spacing of their children and to have access to information, education and means to enable them to exercise these rights.</p>
<p><b>Reasons of Violation</b></p>	<p>1. Human dignity, the preservation of individual autonomy, and the liberty of individual development are the core values of liberal and democratic constitutional government. Gender identity is an inseparable part of one’s gender that cannot be evaluated or decided by another governmental organization or specialist such as psychiatrists or psychologists.</p> <p>2. There can be no discrimination or unreasonable difference in treatment on the basis of gender or gender identity.</p> <p>3. Forcing psychiatric assessment and consultation is a violation of the right to autonomy and choice.</p> <p>4. Forcing transgender people to undergo surgery infringes on human rights, reproductive rights and bodily autonomy.</p>

	<p>5. There exists multi-faceted sex discrimination due to the stereotypes of male and female bodies, such as that a man cannot have female reproductive organs such as breasts, uterus or ovaries, and vice versa. There is also the presumption that a person who has male reproductive organs will surely commit a crime, which violates the spirit of equality in the International Covenant on Civil and Political Rights. A reduction to a binary understanding of sex/gender also forces those who are intersex, born with ambiguous genitalia, to undergo psychiatric assessment and surgery for recognition as one of the two legal genders.</p>
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**B. International Covenant on Civil and Political Rights and  
International Covenant on Economic, Social and  
Cultural Rights**

<b>Direction Number</b>	<i>内授中戸字 No.0970066240</i>
<b>Violation or loss of rights protection of current Article of Law, Regulations, Directions to ICCPR, ICESCR or general recommendations.</b>	<p><i>1. Those seeking legal gender change from female to male must submit medical certification to the government authorities, including the mental assessment of two psychiatrists with the diagnosis of "gender identity disorder" (DSM-IV TR) or "gender dysphoria" (DSM-V), and the surgical removal of female reproductive organs (breasts, uterus and ovaries) by a certified medical hospital or clinic.</i></p> <p><i>2. Those seeking legal gender change from male to female must submit medical certification to the government authorities, including the mental assessment of two psychiatrists with the diagnosis of "gender identity disorder" (DSM-IV TR) or "gender dysphoria" (DSM-V), and the surgical removal of male</i></p>

	<p><i>reproductive organs (penis and testis) by the certified medical hospital or clinic.</i></p>
<p><b>Violation to Article or Concluding Observations and Recommendations of ICCPR, ICESCR.</b></p>	<p><b>ICCPR</b></p> <p>Article 7</p> <p>No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.</p> <p>Article 26</p> <p>All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</p> <p><b>ICESCR</b></p> <p>Article 12</p> <p>1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.</p> <p><b>Concluding Observations and Recommendations</b></p> <p>28. Experts find in the report that transgender persons are commonly thought to suffer from a kind of mental illness, and that persons with gender identities differing from their biological sex suffer many forms of discrimination, including bullying in schools. Through dialog with government representatives, the Committee observed that the dominant point of view is that gender identity is only about sexual orientation. This is also evident in the description of gender equality education offered in schools.</p> <p>29. Experts recommend that Taiwan’s Ministry of Education (MOE) take the lead in developing and implementing effective</p>

	<p>information and awareness-raising initiatives on the equal right of everyone regardless of gender identity, to enjoy economic, social and cultural rights. In particular the MOE should ensure the implementation of the Gender Equality Education Act by requiring schools to undertake targeted measures for the protection and promotion of the rights of students who are marginalized and disadvantaged because of their gender identities. The Experts urge the MOE to develop appropriate educational materials with a view to addressing homophobic biases that affect students' perceptions of gender identities other than their own.</p> <p>54. The Experts are concerned about the life situation of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons. As in many other countries, such persons frequently face exclusion, marginalization, discrimination and violence by large parts of the general population, and in schools, resulting in high suicide rates and physical and mental health problems.</p>
<p><b>Reasons of Violation</b></p>	<ol style="list-style-type: none"> <li>1. Human dignity, the preservation of individual autonomy, and the liberty of individual development are the core values of liberal and democratic constitutional government. Gender identity is an inseparable part of one's gender that cannot be evaluated or decided by another governmental organization or specialist such as psychiatrists or psychologists.</li> <li>2. There can be no discrimination or unreasonable difference in treatment on the basis of gender or gender identity.</li> <li>3. Forcing transgender people to undergo surgery infringes on human rights, reproductive rights and bodily autonomy. The government insults the dignity of transgender, intersex and gender-nonconforming individuals through these regulations, and punishes these people who desire legal gender change to pay the price of infertility, surgical complications, and psychological anguish.</li> </ol>

	<p>4. There exists multi-faceted sex discrimination due to the stereotypes of male and female bodies, such as that a man cannot have female reproductive organs such as breasts, uterus or ovaries, and vice versa. There is also the presumption that a person who has male reproductive organs will surely commit a crime, which violates the spirit of equality in the International Covenant on Civil and Political Rights. A reduction to a binary understanding of sex/gender also forces those who are intersex, born with ambiguous genitalia, to undergo psychiatric assessment and surgery for recognition as one of the two legal genders.</p>
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**C. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

The current Decree ignores the condition of one’s age, physical and mental health, forcing people to undergo the cruel sex reassignment surgery which is done under general anesthesia. Every one of us has bodily autonomy. These kinds of decrees from government discriminate against sex and gender diverse people and insult their dignity. In addition, they also have to pay the price of surgical complications, psychological anguish, and loss or reproductive ability. On humanitarian grounds, the surgery requirement for legal gender change must be eliminated. The government has no right to restrict us by acts, regulations or decrees.

**D. Convention on the Rights of the Child**

Owing to the Decree, a person applies changing legal gender must receive psychiatric assessment and sex reassignment surgery. In the case of teenagers under 20, they cannot decide or receive a surgery by themselves. This condition results in difficulties in changing legal gender. The government does not acknowledge their gender identity and deprives their basic right of survival, complete development, protection and cultural and social livings. Additionally, the decree violates the basic

four principles of the Convention on the Rights of the Child, that is, non-discrimination, amplifying the benefits of children, the rights of survival and development, and respect to children. The Taiwanese government fully ignores these principles by this unfriendly decree.

## **IV. Response to 2nd CEDAW Government Report**

### **5.16.6**

Although *The Book of Gender* was published by the Ministry of Education, it is not included in the official course material for sex/gender equality education. Good as the intention was, what it has achieved is rather limited. Despite the inclusion of transgender topics in the book, there are still plenty of school officials who have no idea how to properly handle transgender students when faced with them, causing infringement on the right to education for transgender students. Furthermore, government officials, lacking awareness of gender diversity, still handle transgender-related issues in terms of rigid binary thinking. *The Book of Gender*, written by experts in the field of sex/gender, is rich and progressive in its content. Due to the failure to adequately promote the book, however, it is dishonest of the government to claim it as their credit to the improvement of sex/gender equality.

### **16.5.2**

When Tsai Ya-ting(蔡雅婷), a male-to-female transsexual, applied for the National Identification Card in July, 2000, she was rejected by the authorities because her ID photo, in which she appeared feminine and long-haired, did not match the stereotypical image of her legal sex (male).

Responding to the case, the Ministry of the Interior then released a public statement, saying “Cross-dressing contradicts with one's real sex and should be kept to oneself. To apply for the National ID Card, one should submit a photo that matches their real sex.”

Ai Lei(艾蕾), then head of the 4th Division of Taipei's Civil Affairs Department, pointed out, “After we loosened the restriction on names, those with gender confusions are free to choose between masculine and feminine forms. However, the ID photo will lead to misjudgment [of one's gender]. The National Identification Card is an official document, for which correctness is necessary, so it is mistaken to consider this issue from the perspective of human rights. It is not that the government

wants to interfere with one's self-identification but that the National Identification Card should be registered with one's legal sex, based on the principle of equality.”

Fast forward to 2003, Tsai Ya-ting committed suicide by lying on a train track on December 11th, a day after the International Human Rights Day.

On December 21st, 2005, the 6th-generation National Identification Card was issued nationwide. Its format and color were no longer made distinct according to one's sex/gender, and the ID photo was valid as long as it matches one's day-to-day looks.

The Tsai Ya-ting incident demonstrated that the government of Taiwan, with its arrogance and insistence on gender stereotypes, not only trampled on human rights but caused the death of an innocent. It was not until two years later that the 6th-generation National Identification Card was stripped of such restrictions.

### **16.5.3**

1. The National ID Number, being gendered, begins with 1 for males and 2 for females without an option for citizens to choose a gender-neutral number. For the transgender community, gender marking is a private matter, and therefore the National ID Number and sex/gender column can potentially expose relevant private information to other people.

2. According to the Joint Credit Information Center (JCIC), after one changed their National ID Number, pertinent information, including gender, id number, name before and after the change, will be automatically transferred to the JCIC, which will then inform related banks with said information.

3. During police patrolling, if the subject of interrogation has a record of changing their National ID Number, M-Police, the mobile computer that patrolling police are equipped with, will automatically indicate in a conspicuous fashion the id number before and after the change.

4. Per Abbygail Wu's case at the customs of Taiwan Taoyuan International Airport, authorities unrelated to household registration, e.g., the bureau of

immigration, were able to retrieve the interrogated person's complete household records, which might contain private information including the change of gender and National ID Number and other unmentioned ones.

5. In Jiyi Wu's household records, she is marked as “eldest daughter” but titled “husband.” Because “husband” does not belong to the Notes section, it is directly viewable and cannot be changed to a non-masculine title. Thus, this act of gender-marking may lead to the exposure of one's private matters.

As the aforementioned cases demonstrate, the government of Taiwan has failed to achieve the goal “Household registration authorities should protect the privacy of transgender persons with records of gender change,” as stated in the 2nd CEDAW National Report.

#### **16.5.4**

The entry-exit Inspection system of every country was designed according the standards set by the International Civil Aviation Organization (ICAO). Anyone with a passport designed according to these standards must be permitted entry. We find it hard to agree that this measure is a sign of progressiveness on gender issues.

According to the passport standard ICAO9303 (PI, Sec. 4, 09II), The gender options allowed on the passport should include M, F, and X. The government of Taiwan, however, still does not offer the X option for citizens to freely to choose and register with.<sup>6</sup>

#### **16.26**

The research paper Transgender Registration Systems Around the World, commissioned by the Ministry of the Interior, was completed by Wang Chen-lin(王珍玲), a professor at Feng Chia University.

Some data in this paper are outdated. For example, it is stated in the paper that

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<sup>6</sup> Sex of the holder, to be specified by use of the single initial commonly used in the language of the State where the document is issued and, if translation into English, French or Spanish is necessary, followed by a dash and the capital letter F for female, M for male, or X for unspecified. –Machine Readable Travel Documents, ICAO Doc 9303 Sixth Edition, 2006

inhumane surgery is still being performed in Austria<sup>7</sup> and Germany<sup>8</sup> while, in fact, they have abolished this practice in 2009 and 2011 respectively. We have clarified this point at the Conference of Transgender Issues held by the Gender Equality Commission of the Executive Yuan, but thereafter the Ministry of Health and Welfare still cite the erroneous data in the paper as reasons against the furthering of human rights.

On page 82 of this research paper, the Conclusion and Suggestions section bears this passage: “Our research team postulates that the most comprehensive measure is to change the sex column in the household records to “biological sex” and add a “social gender” one, in addition to allowing transgender persons to change the (biological) sex on their birth certification under certain conditions, about which we can learn from the legislative cases in the UK.” Even though the Gender Equality Commission agrees with this ridiculous proposition, the gender and human rights advocacy groups concerned with this issue do not.

Our position is as follows: 1) “Social gender,” being born out of personal interaction, cannot be easily divided into the dichotomy of men/women and should never be noted in household records and on identity documents. 2) The display of social gender alongside biological sex in household records and on identity documents will only highlight the markedness of the transgender community, which is contradictory to the stated goal of the conference: to help transgender people assimilate into society at large. 3) As discussed above, the research team's suggestion to add a “social gender” column, as well as their regarding of SRS as the defining line between the biological sexes, is indicative of their insufficiency on gender awareness and professional knowledge about transgender and intersex people.

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<sup>7</sup> The Austrian Higher Administrative Court overruled the sterilisation requirement in April 2009, when it followed the claimant's argument that the required genital surgery would lead to a longer period of sick-leave that could result in a potential job-loss. - Human Rights and Gender Identity, Best Practice Catalogue P24 -Council of Europe, 2011

<sup>8</sup> Federal Constitutional Court – 1 BvR 3295/07, available (only in German ) at [http://www.bundesverfassungsgericht.de/entscheidungen/rs20110111\\_1bvr329507.html](http://www.bundesverfassungsgericht.de/entscheidungen/rs20110111_1bvr329507.html) see also Alternative Report Follow-up Germany 2011 submitted by German Women's Rights Organizations, at page 19, available at [http://www.institut-fuer-menschenrechte.de/fileadmin/user\\_upload/PDF-Dateien/Pakte\\_Konventionen/CEDAW/cedaw\\_state\\_report\\_germany\\_6\\_2007\\_Zwischenbericht\\_2011\\_parallel\\_en.pdf](http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/PDF-Dateien/Pakte_Konventionen/CEDAW/cedaw_state_report_germany_6_2007_Zwischenbericht_2011_parallel_en.pdf) (last visit Apr 2014).

At the Conference of Birth Certification and Gender Identity, held by the Ministry of the Interior on January 13th, 2014, Chien Yi-ling, a psychiatrist at National Taiwan University Hospital, referred to the intersex community with the term Disorder of Sex Development (DSD) and opined that surgery should be performed as soon as possible on newly-born infants with ambiguous genitals. The Organization Intersex International (OII) regards DSD as a pathologizing term for intersex people and urge the abolition of sex-corrective surgery, lest intersex children be afflicted with regret, anguish and trauma when they grow up. Additionally, at the beginning the the conference, a government official said, “Men and women are given different rights and mandates under the law of this country, so further consideration should be taken with regard to gender-change registration.”

We are outraged by this position, for the government blatantly uses the law for gender inequality (different rights and mandates for men and women) against the policy for gender equality (gender-change registration), completely failing to acknowledge and examine the problematic nature of of the former, which is in violation of the CEDAW.

## **V. Specific recommendations:**

### **1. Freedom on gender application and registration:**

Base on the human dignity and the development of personality, which are parts of the liberal democratic constitutionalism, “gender identity” is also a part of “gender”, which is indivisible. “Gender identity” is an autonomy expression, which can not be determent by any third party.

Under the regulation of “legal gender change protocol”, the “sex reassignment surgery” and “mental assessment” should be removed from the current regulation. For the persons who are under-age and willing to change his/her/one’s gender, the person need the agreement from one of the legal guardians. If the guardian disagrees, the child welfares NGO/departments should be intervened and determent the situations based on the best interests of the child, along with his/her/one’s autonomous decision after fully disclosure and understanding of all the relevant information.

### **2. The third gender options:**

The third gender option should not be an assignation option, it should not also be an obliged, special marking option. It should be a free-to-choose option for every citizen, rather than a special remark for a certain type of people. The specific method of the gender remarks on the identification card should be “blank with no remarks” and the “de-gender” national identification number. Although it’s a “third gender option”, it’s actually a “de-gender option”. With the “third gender option” goes to public, the law and regulation can be “deeply review” for truly “gender equality”.

We divided gender and break down into the binary options, we think the gender is just “male” and “female”, as we are keep trying to make the border more clear on the gender, the border will be blurred as we try much harder, because there is some people can’t be fitted into the binary options. We discovered the gender is not simple enough to let human to understand it, that’s also the origin of the “beyond gender” which is a part of the ISTScare association name.

### 3. **Gender is human right.**

from the recommendations above, if the most fundamental “gender recognition” can not be done by the Taiwanese government, then it can not do anything on other “anti-discrimination”, because the governments do not care on people’s rights, lives and deaths.

## **VI. Questions recommendations:**

1. Is “gender identity” an illness? If so, why it’s not covered by the NHI (National Health Insurance) ?

If not:

Why the SRS surgery is needed forcibly? (The fully healthy organs are been removed)

Why the mental assessment is needed? (Violation of human dignity)

Why the mental assessment is needed before surgery?

Why the mental assessment and SRS surgery are needed to change legal gender?

Why the mental assessment is needed to change legal gender if the person didn’t do a mental assessment before the SRS surgery to change legal gender?

2. If the “biological sex” can’t be classified into the traditional binary gender of a person, due to his/her/one’s gender identity and social gender, how to process within the “legal gender change protocol”? Is it fully respect the person’s need?

3. The responsible authorities for the transgender/intersex gender registration is the Ministry of Internal Affairs and Ministry of Health Welfare, both the authorities have knew the demands from the NGOs and also knew the difficulties of the transgender/intersex people. But the attitude of both authorities shirked and come out the reason of “more consensus is needed” and “more researches are needed” and procrastinated. The authorities don’t see this as a critical and urgent issue on the surviving of the transgender/intersex persons.

## **VII. Attachment**

“**Attachment 1**” is the content of the official document issued by the JCIC for the purpose of informing banks with private information.

“**Attachment 2**” is The World Professional Association for Transgender Health (WPATH) on June 16, 2010 public declare: “No person should have to undergo surgery or accept sterilization as a condition of identity recognition.”

“**Attachment 3**” is Alternative Report Follow-up Germany 2011, submitted by German Women’s Rights Organisations

“**Attachment 4**” is Gesetz über die Änderung der Vornamen und die Feststellung der Geschlechtszugehörigkeit in besonderen Fällen (Transsexuellengesetz - TSG)

“**Attachment 5**” is Argentina Gender Identity Law. IDENTIDAD DE GENERO Ley 26.743 Establécese el derecho a la identidad de género de las personas

“**Attachment 6**” is Human Rights and Gender Identity, Best Practice Catalogue -Council of Europe, 2011

“**Attachment 7**” is the text of the notice placed at the restrooms in the 1st Student Activity Center of the National Taiwan University.

Remark: The attachments have been uploaded to the “CEDAW report” section on ISTScare website: <http://bit.ly/istscaref1>