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Dear Minister

OPEN LETTER: THE NORWEGIAN GOVERNMENT MUST FULFIL THE RIGHTS OF TRANS INDIVIDUALS

I am writing to you to express Amnesty International's concerns on the recommendations and conclusions of the Norwegian Directorate of Health to the Ministry of Health and Care Services (HOD) with regard to the health treatment of trans individuals in Norway.¹

Amnesty International is calling on you to ensure that trans individuals can enjoy their human rights, and in particular their rights to the highest attainable standards of health, the right to be free from cruel, inhuman and degrading treatments and the right to be equal before the law, without discrimination on the ground of gender identity.

Amnesty International is particularly concerned about the pathologization of trans identities, and in particular the classification of "transsexualism" as a mental and behavioural disorder, the limited access for trans individuals to health care and the practices on the basis of which sterilization is a requirement to obtain gender legal recognition.

ACCESS TO HEALTH CARE

The right to the highest attainable standard of health without any discrimination is established by articles 12 and 2.2 of the International Covenant on Economic Social and Cultural Rights (ICESCR), and by articles 11 and E of the Revised European Social Charter. Norway has ratified both instruments and is therefore bound to fulfil the right to the highest standard of health for everyone.

The Committee on Economic, Social and Cultural Rights, which is tasked to monitor the implementation of the ICESCR, has clarified that states party must prevent any discrimination on prohibited grounds, including gender identity, in the provision of health-care and health services (General Comment No. 14: The Right to the Highest Attainable Standard of Health). The Committee has explained that gender identity is a prohibited ground of discrimination, although not explicitly

¹ Consistently with the Yogyakarta principles on the Application of International Human Rights Law to Sexual Orientation and Gender Identity, Amnesty International refers to transgender, or trans, people as individuals whose gender expression and/or gender identity differs from conventional expectations based on the physical sex they were assigned at birth. Trans is a political umbrella term used to describe a wide range of identities, experiences, and people whose appearance seem to conflict with the binary gender norms of society, including transsexuals, transgender, travesti, gender queers, cross dressers, drag queens, drag kings, and many more.

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mentioned by article 2.2. of the ICESCR (General Comment No. 20: Non-discrimination in Social, Economic and Cultural Rights).

The Norwegian National Health System relies on the classification of "transsexualism" as a mental and behavioural disorder on the basis of the definition provided by the World Health Organization (WHO) International Classification of Diseases (ICD-10).² This definition is stigmatizing for trans individuals and is used to restrict access to health treatments for trans people who are not diagnosed with "transsexualism". In fact, according to current practices, only trans individuals diagnosed by the National Hospital (OUS, Rikshospitalet) with "transsexualism" have the right to access both hormonal and surgical treatments. According to the information available to Amnesty International, some trans individuals who are not diagnosed with "transsexualism" can currently access hormonal treatments, at their own expense, upon prescription of their general practitioner.

The recommendations of the Directorate of Health suggest that in the future only the National Hospital should be entitled to provide hormonal treatment to individuals diagnosed with "transsexualism". As a consequence, general practitioners will not be able to prescribe hormonal treatments to those trans individuals who are not diagnosed with "transsexualism". Amnesty International is concerned about the possible negative consequences, including unsupervised hormone use, should this recommendation of the Directorate of Health be implemented.

Restricting the access to hormonal and surgical treatment only to trans people who are diagnosed with "transsexualism" is at odds with the Recommendations from World Professional Organisation for Transgender Health (WPATH) on Medical Necessity of Treatment, Sex Reassignment, and Insurance Coverage for Transgender and Transsexual people according to which "state healthcare providers and private insurers should eliminate transgender or trans-sex exclusions and to provide coverage for transgender patients including the medically prescribed sex reassignment services necessary for their treatment and well-being, and to ensure that their ongoing healthcare (both routine and specialized) is readily accessible".³

COERCED STERILIZATION

There is currently no specific legislation in Norway regulating legal gender recognition for trans individuals. The possibility to change legal gender falls under the Tax Directorate at the Ministry of Finance, which is responsible for the registration of the population. Such a change is made possible only upon certification provided by the National Hospital that "a real sex conversion" has taken place. "Real sex conversion" implies comprehensive gender corrective surgery, which includes the removal of testicles or ovaries and amounts thus to sterilization. In practice, sterilization is a mandatory requirement to obtain gender legal recognition.

The practice requiring sterilization as a mandatory condition applicable to trans individuals to obtain gender legal recognition violates a set of human rights including the right to be equal before the law without any discrimination (International Covenant on Civil and Political Rights-ICCPR, article 16 in conjunction with article 2 and article 26), the right to the highest attainable standard of health (article 12 ICESCR); the right to be free from cruel, inhuman or degrading treatment or punishment (article 7 ICCPR,).

With regard to lesbian, gay, bisexual, trans and intersex persons, the UN Special Rapporteur on Torture and other Cruel, Inhuman and Degrading Treatment or Punishment recently called upon all States "to

² "Transsexualism" (F 64.0) is defined by ICD-10 as a "desire to live and be accepted as a member of the opposite sex, usually accompanied by a sense of discomfort with, or inappropriateness of, one's anatomic sex and a wish to have hormonal treatment and surgery to make one's body as congruent as possible with the preferred sex".

³ http://www.wpath.org/medical_necessity_statement.cfm

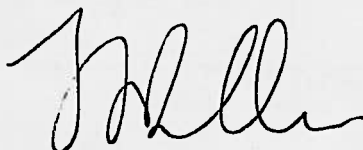
outlaw forced or coerced sterilization in all circumstances and provide special protection to individuals belonging to marginalized groups." ⁴

RECOMMENDATIONS

Amnesty International urges the Norwegian Ministry of Health and Care Services to:

- 1 Fulfil the right to the highest attainable standard of health for trans people without any discrimination on the ground of gender identity by ensuring that they have full access to hormonal and surgical treatments without psychiatric diagnosis and on the basis of their informed consent;
- 2 Abolish the practice on the basis of which trans people can obtain gender legal recognition only upon a "real sex conversion" which entails comprehensive gender reassignment surgery and sterilization;
- 3 Allow trans individuals to change their name and the other gender markers on official documents issued by the state, including birth certificates, and on documents provided by other institutions, such as education certificates, through a quick, accessible and transparent procedure on the basis of the individual's self identification.

Yours sincerely,



John Dalhuisen
Director
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⁴ Report of the Special Rapporteur on Torture and Other cruel, Inhuman and Degrading Treatment or Punishment, Juan E. Mendez, A/HRC/22/53, 1 February 2013, par. 88