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MASTER THESIS

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**„ The Denial of Hormone Therapy for Male to Female Transgender Inmates
and State Obligations under International Human Rights Treaties:
Case Study Thailand “**

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“ Secure prisons are essential to making our justice system an effective weapon against crime. When prisoners convicted or awaiting trial - are entrusted to your care, they must know and the public must know that they will remain there until they are legally discharged...

The full contribution which our prisons can make towards a permanent reduction in the country's crime-rate lies also in the way in which they treat prisoners. We cannot emphasise enough the importance of both professionalism and respect for human rights.

”

President Nelson Mandela, 1998

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LIST OF ABBRIVIATION

AIDS	Acquired Immune Deficiency Syndrome
AMA	American Medical Association
APA	American Psychiatric Association
BSTc	Central subdivision of the bed nucleus of the stria terminalis
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All forms of Discrimination Against Women
CoE	Council of Europe
CPT	European Committee for the Prevention of Torture and inhuman or Degrading Treatment or Punishment
CSH	Cross-Sex Hormone
DSM	Diagnostic and Statistical Manual of Mental Disorders
DSM-5	Diagnostic and Statistical Manual of Mental Disorders Fifth Edition
FDA	Food and Drug Administration
FtM	Female-to-male transgender person
GD	Gender Dysphoria
GID	Gender Identity Disorder
GRS	Gender-Reassignment Surgery
HIV	Human Immunodeficiency Virus
HRT	Hormone Replacement Treatment
ICCPR	International Covenant on Civil and Political Rights
ICD-11	The 11th Revision of the International Classification of Diseases
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination

ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee of the Red Cross
ID card	Identification card
IMAP	International Medical Advisory Panel
IPPF	International Planned Parenthood Federation
LGBT	Lesbian, Gay, Bisexual, Transgender/Transsexual
MtF	Male-to-female transgender person
Nelson Mandela Rules	United Nations Standard Minimum Rules for the Treatment
NGO	Non-governmental Organization
NSWPC	National Social Welfare Promotion Commission
SoC	The Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People
SRS	Sex Reassignment Surgery
TGEU	Transgender Europe
UDHR	Universal Declaration of Human Rights of Prisoners
UN	United Nations
UNODC	United Nations Office on Drugs and Crime
WHO	World Health Organization
WPATH	World Professional Association for Transgender Health

1 INTRODUCTION

Transgender people in many countries around the world are facing various forms of discrimination in their everyday lives. This societal bias has brought transgender people less work opportunities and fewer income-generating options. Many of them turn to illegal path, especially sex work and drug trafficking. Therefore, large number of transgender people come into contact with criminal justice system each year.¹ However, being under correctional system is not the end of discrimination against transgender people but it is another beginning of the discrimination behind bars.

Regarding the placement process, the most widespread type of housing classifications used in most prisons is genitalia-based placement since the correctional systems still classify detainees only as 'male' and 'female'.² This method separates inmates solely by their assigned sex at birth. Consequently, transgender women will be housed in male prison.

This paper solely focuses on male to female (herein after referred to MtF) transgender inmates as they belong to the most vulnerable group in prisons. They are not only often discriminated against and suffered from humiliation, but they also facing a high risk of sexual abuse, verbal harassment and physical assault by other inmates and prison guards.³ More importantly, apart from violations by persons, some of their rights are as well violated by legal system. This research intends to examine whether the current correctional regulations regarding MtF prisoner healthcare have violated any human rights indicated in international human rights conventions which Thailand has signed as a state party.

1 B. Suriyasarn, *Gender identity and sexual orientation in Thailand*, Bangkok, ILO Country Office for Thailand, Cambodia and Lao People's Democratic Republic, 2014, p.20.

2 R.Mann, 'Treatment of Transgender Prisoners, Not Just an American Problem-A Comparative Analysis of American, Australian, and Canadian Prison Policies concerning the Treatment of Transgender Prisoners and a Universal Recommendation to Improve Treatment', *The Law & Sexuality: Rev. Lesbian, Gay, Bisexual & Transgender Legal Issues*, 2006, p.104.

3 G. Arkles, 'Safty and solidarity across gender lines: rethinking segregation of transgender people in detention', *Temple Political & Civil Rights Law Review*, vol. 18, no. 2, 2009, p. 526.

1.1 Problem Statement and Purpose of the Paper

Despite prisoner's legal status and some certain rights legally constrained, prisoners are able to enjoy the same fundamental rights as the general population outside prisons. There are several international human rights standards, directly and indirectly concerning the rights of prisoners, and guidelines for treatment of prisoners. These human rights documents, in which legal or non-legal binding, include Universal Declaration of Human Rights (UDHR); International Covenant on Economic, Social and Cultural Rights (ICESCR); International Covenant on Civil and Political Rights ICCPR); The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules); Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (1988) and the Basic Principles for the Treatment of Prisoners (1990).

According to the international human rights instruments mentioned above, all prisoners, as human beings, have the same inherent dignity and are entitled to receive medical care as well as mental treatment without discrimination based on any grounds. However, due to correctional setting of the restrictions, the access to health care for prisoners must be under a condition that the treatments are only required, if they deem to be 'adequate' or 'necessary for serious medical needs'.⁴ They do not have the right to medical care of their choosing. Thus, transgender inmates are often refused from receiving transgender-specific care.

The right of transgender prisoners in accessing assessment and treatment of their gender identity issue is still considered a controversial topic around the world. Due to the fact that there is no international standard giving a concrete answer to the question, whether hormone therapy is a necessary medical care, in which prison administration is obliged

4 T. W. Colopy, 'Setting gender identity free: Expanding treatment for transsexual inmates', *Health Matrix: The Journal of Law-Medicine*, Vol. 22, No.1, 2012, p. 229.

to provide correctional policies. The policies regarding treatment for transgender inmates are different from country to country. This lack of clear and strict standards also leads to differences in interpretation to what extent prison authority should provide gender affirming health care. As a result, transgender inmates are most likely to receive inappropriate treatments or inadequate medical care.

Thailand is one of those countries facing the increasing number of transgender population behind bars. Apart from dealing with a severe crisis of overcrowded prisons, finding the most appropriate treatments for transgender inmates is another major issue which poses a challenge to the correctional system.

Since Thailand has ratified every international human rights treaty concerning rights of prisoners, the Department of Corrections has been working on revision and reform of prison regulations as well as operative procedures in order to comply with human rights principles. The latest achievement related to transgender inmates is the pilot program established in 2017, which operates in three main prisons located in Bangkok and Pattaya. Under this program, transgender women who have undergone sex reassignment surgery (SRS) will be placed in female prisons while pre-operative transgender inmates will still be sent to male prisons but accommodated in separate wing from general population.⁵ Even though implementing this new regulation has a favourable progress for transgender treatment, hormone therapy is yet refused once transgender individuals enter into the criminal justice system. This is because, according to the current criminal law, hormone therapy for transgender people is for beauty, not for the medical purpose.⁶

After the thorough literature review in the field of my interest, I found out that there are only a few studies in Thailand which analyse the nexus between human rights and correctional healthcare system and explore how the denial of hormone treatment in

5 ‘3 คุกใหญ่จัดโซนแยกขังนักโทษเพศที่สาม (3 main prisons separate transgender inmates in special wing)’, *Komchadluek*, 21 March 2017, Available from <http://www.komchadluek.net/news/regional/266625>, (accessed 5 April 2018)

6 A. Saibouyai, *The Assessment on the Current Management of Transgender Inmates in Selected Thai Prisons*, Bangkok, UNDP report, 2017, p. 11.

prisons may result in the negligence of human rights fulfilment which leads to the breach of commitment to international human rights treaties. **This paper intends to find out whether hormone replacement treatment for MtF transgender people, the use of feminizing hormones to substitute for the lack of natural hormones produced in female body, is considered as medical care and whether the refusal of hormone therapy during detention violates any fundamental rights.**

To achieve this, I identify the following **problem statement**:

‘Despite prisoner’s legal status and some certain rights legally constrained during incarceration, all prisoners are still able to enjoy most basic human rights including right to healthcare and right to be free from discrimination. While global society has been advocating for rights of transgender individuals in all aspects, the right of transgender prisoners in accessing to treatment of their gender identity remains controversial. The lack of clear international standards in giving precise instruction to prison authority leads to inconsistent correctional healthcare system which can be resulted in inappropriate treatments or inadequate medical care. Hormone replacement treatment (HRT) is one of transgender-specific cares, however, HRT is not provided in Thai prisons since it is not regarded as basic medical need according to Thai correctional policy while the discontinuation leads to several health problems both physically and psychologically. The denial of this treatment may result in negligence of human rights fulfilment and the breach of country’s commitment to international human rights treaties.’

The aim of this research is to prove the **hypothesis** that *‘the denial of hormone treatment in prisons contributes to human rights abuse and leads to the breach of state obligations to international human rights treaties of which Thailand is a member’*.

Taking all of these into account, the main **question** to be answered in this master thesis is

‘To what extent has Thailand complied with its state obligations under international human rights treaties in terms of providing access to hormone treatment for male to female transgender inmates?’

To tackle the issue more precisely, sub-questions are set out as follows;

-) Who are transgender people?*
-) What is hormone replacement treatment (HRT) and can it be defined as a medical necessity for transgender people? What are the effects from termination of HRT?*
-) What are the human rights for prisoners and for transgender prisoners specifically according to the international treaties and the national laws?*
-) Which human rights are violated by the denial of HRT to transgender prisoners?*
-) How does the denial of HRT lead to the breach of state obligations to international human rights treaties?*

1.2 Methodology

The research strategy of this paper is based on the qualitative research, which mainly relies on interviews and observations, rather than numeric data such as scores or metrics.⁷ Even though quantitative data may help to generate unexpected or better insights about the phenomenon of interest.⁸

After selecting the research question and its sub-questions for further investigation, a wide range of literature review was conducted in order to understand more about the

⁷ A. Bhattacharjee, ‘Social Science Research: Principles, Methods, and Practices’, *Textbooks Collection*, 2012, p. 35, Available from http://scholarcommons.usf.edu/oa_textbooks/3 (Accessed 15 April 2018)

⁸ Ibid, p. 41.

current stage of knowledge and related information in the field of interest. Based on these reviews of literature, interview questions were developed so that the qualitative interviews could be formulated as a method to further collect empirical data. When the phase of data collection was accomplished, I compared and combined data collected from literature reviews and the semi-structured interviews as well as secondary data analysis. Then I moved to another step of analysing data from both theoretical and empirical research. Last but not least, I come to the conclusion of the paper.

1.2.1 Theoretical Research: Literature Review

The main focus in this research is on legal aspects which involve international legal framework, international human rights conventions related to rights of transgender prisoners, the national legal framework of Thailand and the Thai correctional healthcare system for prisoners. In addition to the legal approach, biological, psychological and medical approaches relevant for transgender persons are also taken into consideration such as gender identity, gender nonconformity, gender-specific treatment and effects from hormone treatment termination.

Different **data sources** provide different types of specific information. The key data sources used in this paper, which are classified by information they deliver, are as follows:

-) *medical, psychological and biological journals or articles*; information on gender identity, gender-specific treatment, effects from hormone treatment termination
-) *international human rights treaties*; standard treatment and human rights of prisoners
-) *legal texts*; national law and regulations regarding MtF transgender individuals, healthcare regulation for prisoners in Thailand
-) *UN and NGOs reports or published documents*; in-depth information about situation in prisons or specific issue on transgender inmates
-) *academic articles related to the topic*; general knowledge and information
-) *news or online articles*; current situation and general information

1.2.2 Empirical Research Method: Data Collection

Throughout this paper, qualitative method has been applied to collect data using a combination of primary and secondary sources. These techniques include semi-structured interviews with the key informants and desk review.

a) Secondary Data

Another method employed for data collecting in the process of empirical research for this paper is the desk review. This set of secondary data can be found in official documents (both from governmental and non-governmental organizations), or mass-media documents such as newspapers or magazines.⁹

Data collected from this method is a combination of qualitative and quantitative data. Qualitative data is of textual materials, such as legal information of current situation, whereas quantitative data is of statistics or scientific information such as number of transgender prisoners or medical data related to hormone treatment.

Apart from using legal documents, booklets, or public reports created by government agencies and non-governmental organizations such as UN or NGOs, newspaper, online video and online articles are also significant sources which provide a great variety of potential information. The advantage of using online platform is that it enables the access to the most up-to-date information on the situations related to the issue and a wide range of social opinions.

b) Primary Source: Interviews

In order to gain a better insight and more in-depth data on the issue of transgender people and their gender-specific care such as HRT in Thailand, interviews with transgender individuals as well as medical and human rights experts were arranged. After acquiring enough knowledge and information from a range of literature reviews. I decided to use

⁹ A. Bryman, *Social Research Methods*, 5th Edition, New York, Oxford University Press, 2016, pp. 543-552.

semi-structured interviews since during the interviews, which are focused on the subjective experiences and knowledge of the interviewees, new questions may arise during the conversation. Moreover, a free conversational flow is preferred, to help the interviewees feeling more at ease in expressing their personal stories and opinions. These interviews were conducted either face-to-face or by telephone when there were limitations in terms of time and places. In this assessment, note-taking and audio recording were used as the interview methods.

The key informants are transgender individuals who were currently taking hormone treatment, officials from the Department of Corrections, medical professions, human rights experts, and activists.

All the informants were verbally asked for their consent before the interviews and provided with certain information about the research. The key informants were also informed that their participation in this research was voluntary, so they could refuse to participate or leave the interview process at any time. In order to protect the interviewees' interests and future well-being, the confidentiality was guaranteed. If the interviewees prefer to be anonymous, they can be assured of anonymity that their identity are not to be disclosed in the paper.¹⁰ In this master thesis, all my key informants agreed to reveal their names. Nevertheless, I decided to keep their names anonymous to prevent future problems which may occur.

1.2.3 Data Processing

After required data were adequately collected both from primary and secondary sources, all the notes were organized and categorized into groups or sets of information, which then expanded for analysis.¹¹ The voice records from interviews were translated to English which were later combined with textual information and numeric data from

10 A. Bhattacharjee, 'Social Science Research: Principles, Methods, and Practices', *Textbooks Collection*, 2012, pp. 138-139, Available from http://scholarcommons.usf.edu/oa_textbooks/3 (Accessed 15 April 2018)

11 A. Hardon, C. Hodgkin and D. Fresle, *How to investigate the use of medicines by consumers*. Geneva, World Health Organization, 2004, p.69.

documentary sources. In this research, tables are also used for better visual understanding.

1.2.4 Data Analysis

Prior to the conclusion, all information obtained from data collection process was analysed and interpreted in accordance with the research questions of interest. I have decided to use the deductive reasoning as the main objective of this research to prove the hypothesis mentioned above.

For data analysis, I conducted a combination of qualitative and quantitative analysis. Qualitative analysis was used to determine the presence of human rights abuses and the extent of state compliance with international human rights conventions. Quantitative analysis was used to examine medical changes on the body concerning time of hormone intake and the extent of impacts caused by hormone termination on the body.

1.3 Definitions of terms

The following definitions are provided by the International Planned Parenthood Federation (IPPF)¹², S. Winter et al¹³ and E. Gore:¹⁴

Sex

A person's biological status as male, female or intersex. It includes physical attributes such as sex chromosomes, gonads, sex hormones, internal reproductive structures and external genitalia.

Transgender

An umbrella term referring to individuals whose gender identity and expression does not conform to norms and expectations traditionally associated with their sex assigned at birth.

12 The International Planned Parenthood Federation (IPPF), 'International Medical Advisory Panel (IMAP)'s Statement on Hormone Therapy for Transgender People', [website], 2015, p. 3, https://www.ippf.org/sites/default/files/ippf_imap_transgender.pdf (accessed 25 May 2018)

13 S. Winter, M. Diamond, J. Green et al, 'Transgender people: health at the margins of society', *The Lancet*, Vol. 388, 2016, pp. 391-392.

14 E. Gore, 'Medical Treatment for Gender Dysphoria: A Review of Risks and Benefits', [website], 2016, <http://aggietranscript.ucdavis.edu/medical-treatment-for-gender-dysphoria-a-review-of-risks-and-benefits/> (accessed 25 May 2018)

Gender

The inherent sense of masculinity and femininity including attitudes, feelings, and behaviours linked to the experience and expression of one's biological sex.

Gender identity

The personal experience of oneself as a boy or man, girl or woman, as a mix of the two, as neither, or as a gender beyond man or woman. It may or may not correspond with the sex assigned at birth.

Gender expression

The expression of one's gender identity, often through appearance and mode of dress, and also sometimes through behaviour and interests.

Gender non-conformity/ Gender incongruence

refers to the extent to which a person's gender identity, role or expression differs from the cultural norms assigned to people of a particular sex.

Gender Dysphoria (GD)

Long-standing distress resulting from incongruence between one's experienced and assigned gender

Sexual orientation refers to each person's capacity for emotional, physical and sexual attraction to, and intimate and sexual relations with, individuals of a different sex or gender (heterosexual), the same sex or gender (homosexual), or more than one sex or gender (bisexual).

Male-to-female transgender person/ MtF transgender person

An individual who is born as a natal male (male sex by birth) but whose gender identity is a woman (or in-between man and woman). Also known as transgender woman or trans woman.

Female-to-male transgender person

An individual who is born as a natal female (female sex by birth) but whose gender identity is a man (or in-between woman and man). Also known as transgender man or **trans man**.

Cisgender person

A person whose gender identity matches their sex assigned at birth, and who therefore, unlike transgender people, experiences no gender incongruence.

Gender Transition

A term often used to describe the process of moving from one sex/gender to another; sometimes this is done by hormone therapy or surgical procedures.

Gender-Reassignment Surgery (GRS)

Surgical procedures to alter an individual's sex to resemble their experienced gender

Hormone therapy/ Hormone treatment/ Cross-Sex Hormone (CSH)

Sex hormones administered to alter an individual's secondary sex characteristics (Androgens for transmen and estrogens for transwomen)

Intersex or intersexuality

A term used to describe individuals who develop atypically in regard to some or all aspects of their biological sex (chromosomal, hormonal, gonadal, or genital). Some medical professionals prefer the term 'disorders of sexual development'.

Primary sex characteristics

Physical characteristics present in the human body that are directly involved in reproductive function: namely the gonads and their accessory structures. The development of primary sex characteristics happens to the fetus in the womb.

Sex reassignment surgery (SRS)

Surgical procedures to alter an individual's sex to resemble their experienced gender

Secondary sex characteristics

Physical characteristics that are typically associated with "males"/"men" and "females"/"women" but are not necessarily related to reproductive function. Examples would include facial hair growth and deepening of the voice in men, and growth of breasts and increased fat deposits around the hips in women. The development of secondary sex characteristics usually begins at puberty, as the levels and patterns of secretion of the sex hormones in the body begin to change at that time.

1.4 Structure of the Paper

The **first Chapter** is started with introduction about background information of the topic and purpose of the study as well as research questions and sub-questions that guide the investigation of this thesis. This Chapter also outlines research methodology, research methods, structure and limitations in the study.

Chapter 2 presents definition of sex and gender as well as the causes of nonconformity between gender identity and anatomical sex. This chapter also provides information about Gender Dysphoria stated in Diagnostic and Statistical Manual of Mental Disorders (DSM-5) and the description of the specific characteristics of MtF transgender as well as some background about MtF transgender inmates as they are the main subject of this paper.

Chapter 3 presents information which will enable a greater understanding of why transgender people need healthcare that is different from general population and whether this specific healthcare should be recognized as medically necessary. The chapter also provides general knowledge of cross-sex hormone treatment, which is the most common and fundamental treatment used for gender transition, including the associated risks and adverse effects as well as the possible outcomes if the treatment is terminated.

Chapter 4 introduces a more profound understanding of the Thai laws relating to gender non-conforming people. It starts with an overview of national laws and the development of the existing provisions which have an impact on the lives of transgender people. The chapter then presents information concerning conditions of the healthcare system in terms of hormone treatment for MtF transgender individuals both in society at large and in close settings such as prisons.

Chapter 5 focuses on prison regulations concerning MtF transgender inmates. Firstly, this chapter provides background information about MtF transgender individuals in Thailand and how they become into contact with criminal system. Secondly, it gives the overview of prison regulations such as housing system and internal management. And lastly, policy on healthcare concerning hormone treatment for transgender inmates is clarified.

Chapter 6 presents human rights of prisoners and provides background of some important principles of on international legal frameworks which are related to prisoner rights. Then I analyse how the correctional law, which restricts the access to hormone therapy, directly or indirectly contributes to violations of human rights and whether there are any impacts on the fulfilment of state obligations to those legally binding treaties. The conclusion of my master thesis is presented in Chapter 7.

1.5 Limitations and Challenges

1.5.1 I believe that every person whose gender is not in conformity with his or her sex assigned at birth (known as LGBTI) have the same extent of right to gender specific healthcare during incarceration. However, due to time constraint, this paper will focus solely on MtF transgender inmates. Since each group has different needs of specific care, more researches should be conducted separately. Most importantly, focusing on one particular target group would enable the acquisition of more profound knowledge, which I prefer than little information on various groups.

1.5.2 Interviewing with key informants who are prisoner was relatively problematic. Conducting face-to-face or telephone interviews with current transgender prisoners was not possible due to prison restrictions. Therefore, I planned to interview former prisoners instead. Unfortunately, I could not reach them. As the result, transgender persons I had interviews with were the ones that have heard several stories about transgender individuals in detention from friends. Moreover, the main informant stopped replying my texts when I later asked for more insight information.

1.5.3 All transgender informants are working in human rights field, so they are relatively knowledgeable about their rights. Yet, the overall number of these people represents only a small percentage of the total number of transgender people in Thailand. Therefore, they cannot accurately represent transgender individuals across the country, whether or not, they are aware about their human rights.

2 SEX AND GENDER: UNDERSTANDING TRANSGENDER

Before going into details about the experience of transgender persons, it is of great significance to understand that “gender identity” exists apart from “sex assigned at birth”. Below I present the literature, mostly from a medical standpoint, on gender. The term ‘transgender’ will be further illustrated.

In most occasions, the words “Gender” and “Sex” have come into common usage as a synonym for each other. These two terms are often used interchangeably while the context helps to make a clearer understanding of particular instances. However, distinctions between the terms are noticeable since a slight difference in meaning can be perceived. Gender cannot always be completely replaced by sex and vice versa. In certain circumstances, the former can be more appropriate than the latter when it comes into certain issues such as transsexuality and intersexuality.¹⁵ Therefore, even though the conceptual distinctions between gender and sex remain ambiguous, yet the difference should be recognized in order to avoid confusion and psychological misunderstanding of “identity”.¹⁶

The term “sex” is related to a person’s anatomical structure in terms of biological and physiological characteristics which includes external genitalia, chromosomal makeup, hormones, and internal sexual organs.¹⁷ Whereas “gender” is socially constructed and more related to a person’s self-image and self-expression of sexual identity; a psychological and emotional sense of the individual’s gender role; and social perception toward an individual.¹⁸ Therefore, ‘gender identity represents a person’s innate sense of feeling either male, female, ambivalent or neutral.’¹⁹

15 M. Diamond, ‘Sex and gender are different: Sexual identity and gender identity are different’, *Clinical Child Psychology and Psychiatry*, 7(3), 2002, p. 321.

16 Ibid.

17 A. Barnes, ‘The Sexual Continuum: Transsexual Prisoners’, *New Eng. J. on Crim. & Civ. Confinement*, 1998, pp.600-601.

18 Ibid,

19 Ibid, p 601.

While our society is dominated by the traditional binary notion of gender of male and female with the belief that ‘gender is to sex as feminine is to female and masculine is to male’²⁰, it is expected that people will fit into one of these two categories.²¹ However, in reality, feminine is not always associated to female and, on the other hand, masculine is also not always associated to male. In the other words, gender identity exists apart from anatomical sex assigned at birth.²² Due to the separation between sex and gender, there are individuals whose gender identities are incongruity with physical characteristics of the body at birth. They are called “transgender”.²³

Transgender is an umbrella term applied to those groups of individuals whose self-image of sexual character and gender expression²⁴ diverge from society’s gender norms and roles.²⁵ A transgender person is generally described as someone whose inner gender identity and outward expression differ from their biological sex.²⁶ Female-to-male (FtM)

20 Ibid.

21 R. Mann, ‘Treatment of Transgender Prisoners, Not Just an American Problem-A Comparative Analysis of American, Australian, and Canadian Prison Policies concerning the Treatment of Transgender Prisoners and a Universal Recommendation to Improve Treatment’, *The Law & Sexuality: Rev. Lesbian, Gay, Bisexual & Transgender Legal Issues*, 2006, pp. 94-95.

22 T. Cox, ‘Medically Necessary Treatments for Transgender Prisoners and the Misguided Law in Wisconsin’, *Wis. J. L. Gender, & Soc’y*, Vol. 24, 2009, pp. 342.

23 C. Gorden, C. Hughes, D. Roberts et al, ‘A Literature Review of Transgender People in Prison: An ‘invisible’ population in England and Wales’, *Prison Service Journal*, Vol. 233, 2017, p. 13.

For the sake of uniformity, the term “transgender” will be used throughout this paper as an umbrella term. The definition of this term is encompassing every person whose gender identity is incongruent with biological sex and has or has not undergone any form of medical treatment or surgery for sex change.

See A.W. Howell, ‘A Comparison of the Treatment of Transgender Persons in the Criminal Justice Systems of Ontario, Canada, New York, and California’, *Buffalo Public Interest Law Journal*, Vol. 133, 2009-2010, p. 139.

24 *gender expression* refers to the way a person communicates gender identity to others through behavior, clothing, hairstyles, voice, or body characteristics.

See American Psychological Association (APA). ‘Answers to your questions about transgender people, gender identity, and gender expression’, [website], 2011, <http://www.apa.org/topics/lgbt/transgender.aspx> (accessed 20 April 2018)

25 UN Office on Drugs and Crime (UNODC), ‘Handbook on Prisoners with Special Needs’, [website], 2009, p. 103, https://www.unodc.org/pdf/criminal_justice/Handbook_on_Prisoners_with_Special_Needs.pdf, (accessed 20 April 2018)

26 P. Boldt and C. Phillips, ‘Prison accommodation for transgender people’, *The Journal of The Law Society of Scotland*, 17 January 2011, Available from <http://www.journalonline.co.uk/Magazine/56-1/1009076.aspx>, (accessed 20 April 2018)

transgender people are those who were born with female bodies but identify themselves as male, in contrary, male-to-female (MtF) transgender people are those who were born with male bodies but have a female gender identity.²⁷ The definition of transgender identity is solely based on self-identified gender, not a medical intervention.²⁸ This is because a transgender person may or may not undergo a genital reassignment surgery to transform their body and remain living in their biological sex.²⁹

Although gender nonconformity and homosexuality are often talked about in the same sphere, transgenderism or desired gender identity are of different aspects of human sexuality and differ from sexual preference or sexual orientation.³⁰ ‘The bottom line is that sexual orientation, being lesbian or gay, has nothing to do with gender identity, and they’re really parallel lines’.³¹ Sexual orientation concerns the enduring physical, erotic or emotional attraction whereas transgenderism is all about gender identity or the innate sense of feeling male or female.³² Thus it is important to note that sexual attraction is independent of gender identity. Homosexual persons may not have gender nonconformity and remain male or female complying with their biological sex while transgender persons have gender identity which is contrary to their sex assigned at birth.³³ However, transgender individuals can be straight, lesbian, gay, bisexual, or asexual, the same as non-transgender people.³⁴ (see Table 1)

27 APA, 2011.

28 J. Blight, *Transgender inmates*, Canberra, Australian Institute of Criminology, [website], 2000, http://aic.gov.au/media_library/publications/tandi_pdf/tandi168.pdf (accessed 22 April 2018)

29 Ibid.

30 A. J. Rudolph, and J. C. A. Meshelemiah, ‘Gender Identity Disorders in Prisons: What Are the Legal

Implications for Prison Mental Health Professionals and Administrators?’, *The Prison Journal*, Vol. 90, 2010, p. 273.

31 Howell, p. 136.

32 J. V., *Transgenderism*, [website], <http://www.ict.griffith.edu.au/joan/ts/ts.pdf>, (accessed 17 April 2018)

33 Ibid.

34 H. Looy and H. Bouma, III, ‘The Nature of Gender: Gender Identity in Persons Who Are Intersexed or Transgendered’, *Journal of Psychology and Theology*, Vol. 33, No. 3, 2005, p. 169.

Table 1. Human Sexuality: Sex and Gender ³⁵

	SUBCATEGORIES	MALE	FEMALE
Biological Sex	chromosomes	XY	XX
	genitals, external	penis, testes/scrotal sacs	clitoris, labia, vagina
	genitals, internal	vas deferens, seminal vesicles, bulbourethral glands, prostate gland	ovaries, oviducts, uterus, cervix, upper vagina
	hormones	higher testosterone, dihydroxytestosterone	higher estrogen & progesterone, low testosterone
	reproductive functioning	ejaculation, semen (fertile)	menses, ovulation (fertile)
Gender	gender identity, gender role	male/masculine	female/feminine
	Gender Dysphoria or GD (formerly called Gender Identity Disorder or GID)	self-perception as female/ reconstructed as female Male-to-Female Transgender Individual	self-perception as male/ reconstructed as male Female-to-Male Transgender Individual
Sexual Orientation	sexual preference	heterosexual, homosexual, bisexual, asexual	

³⁵ Looy and Bouma, p.167.

To understand more about transgenderism, it is important to keep in mind that there is a clear distinction between the concepts of “sex” and “gender”. Sex is the anatomy of an individual's reproductive system and secondary sex characteristics, while gender is the inherent sense of masculinity and femininity. Likewise, gender identity and gender incongruence are not the same as sexual orientation. Transgenderism is more about persons’ experience of who they are, whereas sexual preference is about whom they are attracted to.³⁶

2.1 Gender Nonconformity: Nature or Nurture

A lot of people have it in their head that we wake up and decide to be trans. I want people to know that it's not a choice. Nothing has happened in my life to make me trans. I was born trans.

Keith Reynolds³⁷

One of the most prominent discussions about transgenderism falls upon the question of what causes gender nonconformity. Living in an opposite sex of the one assigned at birth is a choice transgender people choose to be or they were born this way. Many people have the idea that being a transgender is an option or is a consequence of the uprising during childhood and that gender identity can be changed. These misconceptions lead to the perception that transgender persons do not deserve specific care or extraordinary treatment other than what people receive in general. Therefore, medical care of transgender individuals, especially gender affirmative treatment, has often been met with resistance.³⁸ However, what I want to argue here is that being a transgender is neither a choice nor something that is determined by surrounding environment. And what causes a transgender can be explained by scientific evidence. Several studies have been

36 S. Winter, M. Diamond, J. Green et al, p. 390.

37 K. Lyons, ‘Transgender stories: ‘People think we wake up and decide to be trans’, the Guardian, 10 July 2016, Available from <https://www.theguardian.com/society/2016/jul/10/transgender-stories-people-think-we-wake-up-and-decide-to-be-trans> (Accessed 29 July 2018)

38 Boston University Medical Center. ‘Transgender: Evidence on the biological nature of gender identity.’, *ScienceDaily*, www.sciencedaily.com/releases/2015/02/150213112317.htm (accessed August 4, 2018).

conducted in order to explain how the gender identity is constructed; whether a person “becomes” transgendered by the upbringing and surrounding environments; or a person actually “is” one by biological conditions.

There is a growing amount of scientific evidence stating that the causes of transgendered conditions are more likely due to a person’s nature rather than the nurture a child receives during childhood.³⁹ One of the classic ways to justify the potential contribution of genetic factors to the development of transgender identity is the study of twins.⁴⁰ Several twin studies compared the concordance for transgender identity among identical twins or monozygotic twins, who share the exact same genetic background and are raised in the exact same environment, versus fraternal twins or dizygotic twins, who do not share the same genes but are raised in the exactly same environment.^{41 42 43} The results show that monozygotic twins or identical twins have a higher chance of concordance for transgender identity than dizygotic twins or fraternal twins. These studies indicate that gender identity is influenced by genetics or biological traits rather than environmental factors.⁴⁴

Another experiment, which strongly supports the argument that gender identity is not determined by environmental or social factors is the famous case of John/Joan in 1960s by Dr. John Money.⁴⁵ One of the twin boy’s external genitalia was accidentally mutilated

39 J. V., *Transgenderism*.

40 K. J. Wu, ‘Between the (Gender) Lines: the Science of Transgender Identity’, *SITN Harvard University blog*, [web blog], 25 October 2016, <http://sitn.hms.harvard.edu/flash/2016/gender-lines-science-transgender-identity/>, (accessed 21 April 2018).

41 G. Heylens, G. De Cuypere, K.J. Zucker, et al., ‘Gender identity disorder in twins: a review of the case report literature’, *J Sex Med*, Vol. 9, 2012, p. 751.

42 M. Diamond, ‘Transsexuality Among Twins: Identity Concordance, Transition, Rearing, and Orientation’, *International Journal of Transgenderism*, Vol.14, No.1, 2013, p. 24.

43 J.M. Bailey, M.P. Dunne and N.G. Martin, ‘Genetic and environmental influences on sexual orientation and its correlates in an Australian twin sample’, *J Pers Soc Psychol*, Vol. 78, 2000, pp. 524–536.

44 M. Diamond, 2013, p. 24.

45 L. Bader, ‘Gender Identity: Nature vs. Nurture?’, *The Evolution of Human Sexuality*, [website], 2014, <https://sites.psu.edu/evolutionofhumansexuality/2014/04/07/gender-identity-nature-vs-nurture/> (accessed 21 April 2018).

during circumcision.⁴⁶ The 8 month-old baby went through sex-change operation and was raised as a girl.⁴⁷ With the belief that the baby boy would become feminine by the parents' upbringing and hormone substitution, nonetheless, the outcome was turned out as a failure after the boy reassumed his male identity when he was 14 years old.⁴⁸

In addition to the study of twins, numerous researches based on biological basis have been conducted. Several biomedical studies show that the incongruity between sex and gender is related to brain structure which governs gender development and responses to sex hormone in the uterus.⁴⁹

Transgender people tend to have brain structures more closely resembling that of cisgender persons whose gender transgender individuals identify themselves with, rather than the one of their biological sex.⁵⁰ To be more precise, male to female transgender persons have brain structures which are more similar to cisgender women while female to male transgender persons have brain structures which are more similar to cisgender men, even though some of the study subjects; both transgender and cisgender persons, were on hormone which is not corresponding to their anatomical sex.⁵¹

The incongruity between sex and gender is also due to the development of the brain and the rest of the body being under different hormonal influences.⁵² More researches on neuroanatomical study suggest that what hormones the foetus is exposed to during brain development in the womb determine its gender identity. In the other words, "gender identity develops as a result of an interaction between developing brain and

46 J. Colapinto, 'JOHN / JOAN', The Rolling Stone, 11 December 1997, p. 54, Available from <https://www.healthyplace.com/gender/inside-intersexuality/the-true-story-of-john-joan/> (accessed 21 April 2018).

47 Colapinto, pp. 54-55.

48 L. Bader, *Gender Identity: Nature vs. Nurture?*.

49 Colopy, 'Setting Gender Identity Free: Expanding Treatment for Transsexual Inmates', *Health Matrix: The Journal of Law Medicine*, Vol.22, 2012, pp.231.

50 Looy and Bouma, p. 170.

51 Wu, *Between the (Gender) Lines: the Science of Transgender Identity*.

52 Colopy, p.231.

sex hormones”⁵³, In this case, receptors for sex hormones, either oestrogen or testosterone, are the key players here. During this period, the lack of or inadequate levels of sex hormones in accordance with biological sex leads to the nonconformity between gender identity and anatomical sex.⁵⁴ To be more precise, transgender women (biological males but having female gender identity) are more likely to have a longer version of a receptor gene which reduces the effectiveness in receiving androgen and testosterone.⁵⁵ While these sex hormones play an important role in forming male sex characteristic, the decrease in testosterone levels during the brain development period may prevent the completion in the process to masculinize the brain resulted in a more feminized brain and female gender identity.⁵⁶

Referring to another study on the sexual differentiation of human brain, gender nonconformity can be resulted from the fact that sexual differentiation of genitals and sexual differentiation of the brain are developed in different period of pregnancy.⁵⁷ Sexual organs, according to biological assigned sex, develop during the first two months of pregnancy, whereas sexual differentiation of the brain starts later in the second half of pregnancy.⁵⁸ As these two processes take place in different periods of time, each process can be influenced independently by different factors. If there is any disturbance on the process of sexual differentiation of the brain when the foetus has already completely developed sexual organs, the brain is likely to develop gender identity differently from what should be.⁵⁹ In this case, female brain can be found in

53 J.-N. Zhou, M.A. Hofman, and L.J.G. Gooren et al, ‘A sex difference in the human brain and its relation to transsexuality’, *Nature*, Vol.378, 1995, p.68.

54 Ibid.

55 L. Hare, P. Bernard, F.J. Sánchez, et al, ‘Androgen Receptor Repeat Length Polymorphism Associated with Male-to-Female Transsexualism’, *Biological Psychiatry*, Vol.65, No.1, 2009, pp. 93-96.

56 Ibid.

57 D. F. Swaab, and A. Garcia-Falgueras, ‘Sexual differentiation of the human brain in relation to gender identity and sexual orientation’, *Functional neurology*, Vol. 24, No. 1, 2009, p. 17.

58 Swaab, and Garcia-Falgueras, p. 21.

59 L. Simon, L. R. Kozak, V. Simon et al, ‘Regional Grey Matter Structure Differences between Transsexuals and Healthy Controls—A Voxel Based Morphometry Study’, *PLoS ONE*, Vol.12, Issue 12, 2013, p. 2.

male body structure and vice versa.⁶⁰ Also from this study, there is no evidence proving that postnatal environment has any effects on development of gender identity.⁶¹

In sum, transgenderism is not a “choice” but is genetic in origin. It should also be noted that gender identity may be hidden but will never be changed, thus cannot be denied.⁶² Therefore, transgender health needs or gender specific treatment are of biological nature and should not be rejected just because they ‘feel’ different from societal expectation.

2.2 Gender Dysphoria (GD): Diagnosis and treatment

This sub-chapter will provide background information on gender dysphoria which is internationally accepted as a justified reason for transgender people to receive gender specific care. I will also point out how important the treatment is for a transgender person who is suffering from the symptoms and what will happen physically and psychologically, if this condition is ignored or the treatment is denial. Then I will address the possible means to treat the symptoms.

Any person, whose preferred gender identity is persistently incongruent with assigned sex at birth and this intense feeling continues more than six months, can be diagnosed with gender dysphoria according to the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) published by the American Psychiatric Association (APA).⁶³ This Diagnostic and Statistical Manual of Mental Disorders (DSM) is a manual used by clinicians and psychiatrists to diagnose and classify all categories of mental disorders for all age.⁶⁴ Persons with gender dysphoria need a diagnosis in order to get access to gender specific care and treatment which support their mental health, namely counselling, cross-sex hormones and sex reassignment

60 Swaab, and Garcia-Falgueras, p. 21.

61 Ibid, p. 17.

62 T. W. Colopy, ‘Setting Gender Identity Free: Expanding Treatment for Transsexual Inmates’, *Health Matrix: The Journal of Law Medicine*, Vol.22, 2012, pp.231.

63 American Psychological Association. (APA). ‘Gender Dysphoria’, [website], 2013(a), https://www.psychiatry.org/.../DSM/APA_DSM-5-Gender-Dysphoria.pdf (accessed 25 April 2018)

64 Ibid.

surgery.⁶⁵ The diagnostic name used to define these symptoms and behaviours is Gender Dysphoria (GD).⁶⁶

2.2.1 Gender Dysphoria Diagnosis

Gender dysphoria (GD), previously called Gender Identity Disorder (GID), is a diagnostic term describing a condition of a person feeling discomfort or experiencing distress due to the incongruence between gender identity and anatomical assigned sex.⁶⁷ The term GD replaced GID in 2013 by the DSM-5. The main reason to change diagnostic name from “disorder” to “dysphoria” is to avoid the stigmatized effects from the notion that a transgender is “disordered”.⁶⁸ Also, the new diagnostic name is more appropriate to the symptoms and behaviours which transgender persons experience.⁶⁹

Gender nonconformity itself is neither a mental illness nor a psychological disorder. This fact was confirmed by the announcement of the World Health Organization (WHO) in June 2018 that gender dysphoria was not a mental disorder.⁷⁰ The latest International Classification of Diseases (ICD-11) has reclassified gender dysphoria as a sexual health condition.⁷¹ ‘The diagnosis of “transsexualism” was renamed “gender incongruence” and moved from the “Mental and Behavioural Disorders” chapter to the “Conditions Related to Sexual Health” chapter.’⁷²

Instead, the state of being diagnosed with GD is considered as a mental condition which should be treated.⁷³ The most crucial element of being diagnosed with GD is that there

65 Ibid.

66 Ibid.

67 Gorden, p. 13.

68 Ibid, p. 2.

69 Ibid, p. 1.

70 World Health Organization (WHO), ‘ICD-11: Classifying disease to map the way we live and die’, [website], 2018, <http://www.who.int/health-topics/international-classification-of-diseases> (accessed 5 August 2018)

71 Ibid.

72 T. Fitzsimons, ‘Transsexualism’ removed from World Health Organization’s disease’ manual, NBC News, 21 June 2018, Available from <https://www.nbcnews.com/feature/nbc-out/transsexualism-removed-world-health-organization-s-disease-manual-n885141> (accessed 5 August 2018)

73 A. Mandal, ‘Treatment for Gender Dysphoria’, [website], 2012, <https://www.news-medical.net/health/Treatment-for-Gender-Dysphoria.aspx> (accessed 25 April 2018)

must be a strong discomfort feeling of cross-gender identity which causes significant distress and impairment in different areas of functioning in life⁷⁴ Thus, not all transgender individuals suffer from or experience GD.⁷⁵

To further elaborate, when a transgender person is completely content with living in a wrong body and is not severely distressed with the mismatch between sex and gender, he/she will not be diagnosed with GD. In contrast, a transgender person, who finds the discrepancy between sex and gender identity a source of discomfort and distress, feels disgust of being trapped in a wrong body or has problem functioning socially can be diagnosed with GD.⁷⁶ The APA has described on this issue as following:

A psychological state is considered a mental disorder only if it causes significant distress or disability. Many transgender people do not experience their gender as distressing or disabling, which implies that identifying as transgender does not constitute a mental disorder. For these individuals, the significant problem is finding affordable resources, such as counselling, hormone therapy, medical procedures and the social support necessary to freely express their gender identity and minimize discrimination. Many other obstacles may lead to distress, including a lack of acceptance within society, direct or indirect experiences with discrimination, or assault. These experiences may lead many transgender people to suffer with anxiety, depression or related disorders at higher rates than non-transgender persons.⁷⁷

GD can occur at any stage of life and at any age.⁷⁸ This condition may appear at the very young age or not until reaching adulthood. In order to make a precise gender dysphoria diagnosis for all age groups, DSM-5 provides separate criteria specifically

74 Gorden, Hughes, Roberts et al, p. 1.

75 American Psychological Association. (APA), *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*, Arlington, VA, American Psychiatric Association, 2013(b), p.451.

76 Looy and Bouma, p. 168.

77 APA, 2011.

78 APA, 2013(b), p. 451.

for children and for adolescents and adults.⁷⁹ As my research mainly focuses on general prisons where adult offenders are detained, only criteria for diagnosis in adolescents and adults will be discussed.

The diagnostic criteria for adolescents and adults involve a strong inconsistency between one's expressed or experienced gender and the assigned gender as well as significant distress or difficulty functioning socially. This condition lasts at least six months and is manifested by at least two of the following:⁸⁰

-) A marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics.
-) A strong desire to be rid of one's primary and/or secondary sex characteristics because of a marked incongruence with one's experienced/expressed gender
-) A strong desire for the primary and/or secondary sex characteristics of the other gender.
-) A strong desire to be of the other gender (or some alternative gender different from one's assigned gender)
-) A strong desire to be treated as the other gender
-) A strong conviction that one has the typical feelings and reactions of the other gender (or some alternative gender different from one's assigned gender).⁸¹

GD is a condition where a person experiences distressing and uncomfortable feelings because of the mismatch between biological sex and gender identity. They may start to have a strong and persistent cross-gender identification at the very young age. GD is recognised as medical condition which contributes to further psychological issues. But GD itself is not a mental illness. Additionally, the distress derived from GD can cause

79 N.C. Capetillo-Ventura, S.I. Jalil-Pérez, and K. Motilla-Negrete, 'Gender dysphoria: An overview', *Medicina Universitaria*, Vol. 17, 2015, pp. 55-56.

80 APA, 2013(b), p. 451.

81 Ibid.

impairment in social, occupational, or other important areas of functioning. Thus, medical intervention is considered necessary in order to alleviate the symptoms and reduce the chance of having mental disorders associated. Series of assessment by specialists are required for the diagnosis.

2.2.2 Treatment for Gender Dysphoria

GD is neither psychological disorder nor mental illness. Instead, it is a mental condition in which a person experiences significant distress or discomfort resulted from the incongruence between assigned sex and experienced gender identity. GD is associated with several mental health conditions and may cause severe deterioration of social, occupational and other important areas of functioning such as relationship with other people in society, family or work life.⁸²

Transgender people with GD are more likely to have higher rates of mental health conditions.⁸³ Suffering from GD can trigger symptoms of some mental illnesses include “mood disorders, anxiety disorders, schizophrenia, depression, substance abuse, eating disorders, and suicide attempts.”⁸⁴

GD can be alleviated through treatment which may or may not involve body modification.⁸⁵ Treatment options for people experiencing GD are ranged from psychological and medical to social treatment. According to *The Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People* (SoC) published by the World Professional Association for Transgender Health (WPATH), a manual used to understand the conditions and treatments for transgender people, the recommended treatment for GD includes the following:

82 ‘Gender Dysphoria’, Psychology Today, [website], 2018, <https://www.psychologytoday.com/us/conditions/gender-dysphoria> (accessed 26 April 2018)

83 J. Goldberg, ‘When You Don’t Feel at Home With Your Gender’, [website], 2016, <https://www.webmd.com/mental-health/gender-dysphoria#2> (accessed 27 April 2018)

84 Ibid.

85 The World Professional Association for Transgender Health (WPATH), *The Harry Benjamin International Gender Dysphoria Association's Standards of Care for Gender Identity Disorders* (7th ed.), [website], 2013, p. 9, <http://www.wpath.org/documents/Standards%20of%20Care%20V7%20-%202011%20WPATH.pdf>. (accessed 28 April 2018)

) changes in gender role and expression: adopt the desired gender role in daily life, live part time or full time in the opposite gender role consistent with gender identity.⁸⁶

) Psychological treatment (counselling or psychotherapy for individual, couple, family, or group): help a person to understand and explore gender identity, gender role and expression; assist a person to cope with distress and inner conflict between sex and gender; encourage family, couples, and friends to support, enhance understanding, and create supportive environment, etc.⁸⁷

) Hormonal treatment (hormone replacement therapy or HRT): feminize or masculinize the body by using cross-sex hormone.⁸⁸

) Surgical treatment (sex reassignment surgery or SRS): change primary and/or secondary sex characteristics to resemble those of the desired sex; correct the physical body to comply with the identified gender identity.⁸⁹

) Social treatment (social support): an alternative option in addition to psychological and medical treatment; assist individuals to “develop verbal and non-verbal communication skills that facilitate comfort with their gender identity”; create “offline and online support resources, groups, or community organizations that provide avenues for social support and advocacy”, etc.⁹⁰

Type and level of treatment are individualized and differ from person to person due to the fact that every single person is unique and different in anatomic, psychological or social situation.⁹¹ Some of them may only seek social support to feel comfortable with gender identity or want to be treated as opposite gender without altering the body, whereas some others may have a strong desire to change their physical appearance to the opposite sex by taking medical treatment such as HRT or SRS.⁹² These differences are

86 Ibid.

87 Ibid., p. 10

88 Ibid., p. 9.

89 Ibid, p. 10.

90 Ibid.

91 Ibid., p.5.

92 C. S. Osborne and A. A. Lawrence, ‘Male Prison Inmates With Gender Dysphoria: When Is Sex Reassignment Surgery Appropriate?’, *Arch Sex Behav*, Vol. 45, 2016, p.1649.

also applied to number of interventions a person is seeking in order to alleviate GD. Some of them may want to go through only one type of intervention while some others want two or more interventions.⁹³ After having gone through gender affirmative treatment, many transgender individuals with GD eventually found a gender role and expression they feel comfortable with.⁹⁴

2.3 Male-to-Female Transgender Person

Before discussing further issues on MtF transgender inmates, we should understand more about their distinctive nature and specific characteristics. This part will describe who they are and how they become one.

People with gender nonconformity often begins to have the feeling of being born in the wrong sex since childhood and continue into adulthood.⁹⁵ Cross-gender behaviours can be apparent as early as two years of age, which is the beginning of development period in expressing behaviours and personal interests according to their felt gender.⁹⁶

MtF transgender individual is an anatomical male who was born with male genitalia but desires to be or claims himself as female and adopt female gender roles. Since at the young age, MtF transgender persons usually refuse to take part in boy's games or activities and prefer to play with girls and dolls. They may wear girl's clothes, change hairstyles or even adopt a new name in accordance with their preferred gender.

According to scientific evidence, the structure of the brain of MtF transgender persons is more similar to those of cisgender women than of cisgender men. Several researchers' study on a region of the brain called the central subdivision of the bed nucleus of the stria terminalis (BSTc), an area in the brain which is essential for sexual behaviour. In MtF transgender persons, cisgender women and cisgender men in order to find out whether

93 Ibid.

94 WPATH, p. 5.

95 Gorden, Hughes, Roberts et al, p. 14.

96 'Gender Dysphoria', Psychology Today.

transgender individual's brain is resembled the assigned sex or chosen sex.⁹⁷ The findings reveal that MtF transgender individuals have BSTc more resembling that of cisgender women than cisgender men both in volume⁹⁸ and cell density (or number of neurons).⁹⁹ In other words, a MtF transgender person has a female-sized BSTc. 'The size of BSTc is not influenced by sex hormone levels developed in adulthood and not related to age'¹⁰⁰ and is also dependent of sexual orientation.¹⁰¹

As mentioned above, gender nonconformity is independent of sexual orientation. Thus, a particular sexual orientation cannot be implied based on gender nonconformity.¹⁰² The typical MtF transgender persons are sexually attracted to anatomical males with male gender identity.¹⁰³ From this point of view, they seem to be homosexual to others but in facts they are heterosexual.¹⁰⁴ This is the same condition as straight women has sexual attraction to men. However, a MtF transgender person who is attracted to other women will be identified as homosexual (lesbian or gay woman). It is also possible that MtF transgender persons will be sexually attracted to both sex or neither.¹⁰⁵

MtF transgender people are often seen as being different and not in conformity with social norms. They are more likely to experience extreme social exclusion leading to social marginalization, increased vulnerability in physical and mental health conditions, the denial of healthcare, limited access to education and employment, and

97 Zhou, Hofman, Gooren et al, p.68.

98 Ibid.

99 F.P.M. Kruijver, J-N. Zhou, C.w. Pool et al, 'Male-to-Female Transsexuals Have Female Neuron Numbers in a Limbic Nucleus', *The Journal of Clinical Endocrinology & Metabolism*, Vol.85, No.5, 2000, p. 2034.

100 Zhou, Hofman, Gooren et al, p.68.

101 Ibid.

102 K. L. Eckstrand, H. Ng, and J. Potter, 'Affirmative and Responsible Health Care for People with Nonconforming Gender Identities and Expressions', *AMA Journal of Ethics*, Vol. 18, No. 11, 2016, p. 1108.

103 J. P. Watson, J. M. Annear, and M. Yaffe, 'Aspects of the psychopathology of sexual behaviour', *Journal of the Royal Society of Medicine*, Vol. 70, 1977, p. 791.

104 Looy and Bouma, p. 169.

105 Zhou, Hofman, Gooren et al, p.68.

loss of opportunities for economic and social advancement.’¹⁰⁶ ¹⁰⁷ Limited income-generating options and extreme poverty, particularly caused by discriminations on education and employment, force transgender people to be involved with illegal work or black market.¹⁰⁸ Negative attitudes and hatred toward transgender people, especially bias profiling by law enforcement officers and the misconception of transgender people being violent and deceptive,¹⁰⁹ have increased the risk of MtF transgender persons becoming involved with criminal justice system.¹¹⁰

2.4 Male-to-Female Transgender Prisoners

*The vast majority of people who are in prison are not there because they are bad or violent people who have done bad or violent things; they are there because they are people of color, poor people, people with disabilities, immigrants, trans people, women, queer people, or otherwise marginalized in society.*¹¹¹

Discrimination against transgender people is one of the major reasons leading to economic and social marginalization which causes poverty and pushes a large group of transgender individuals forward to illegal work.¹¹²

In prison settings, MtF transgender people are often marginalized and mistreated. Policies and prison systems within correctional departments in most countries fail to recognize gender variant people¹¹³ and are unable to respond effectively to the

106 V. Divan, C. Cortez, M. Smelyanskaya et al, ‘Transgender social inclusion and equality: a pivotal path to development’, *Journal of the International AIDS Society*, Vol. 19(3Suppl 2), 2016, p. 1.

107 F. H. Romeo, ‘Beyond a medical model: Advocating for a new conception of gender identity in the law’, *Colum. Human Rights L. Rev.*, Vol. 36, 2005, pp. 713-715.

108 Ibid.

109 Ibid.

110 Ibid.

111 G. Arkles, ‘Safety and solidarity across gender lines: rethinking segregation of transgender people in detention’, *Temple Political & Civil Rights Law Review*, vol. 18, no. 2, 2009, p. 519.

112 L. Sexton, V. Jenness, and J. Sumner, ‘Where the Margins Meet: A Demographic Assessment of Transgender Inmates in Men’s Prisons.’, *Justice Quarterly*, Vol. 27, No. 6, 2009, pp 855.

113 Ibid.

increasing number of non-gender conforming inmates within their walls.¹¹⁴ Current correctional laws still have a concrete line between male and female in classifying and housing prisoners, while transgender people are those who cross the line¹¹⁵ and go beyond 'the traditionally boundaries of sex and gender.'¹¹⁶ Hence, when MtF transgender people end up passing through criminal justice procedure and become suspects or offenders, they often cause difficulties which are associated to legal and practical issues as well as pose a set of challenges to correctional system¹¹⁷ such as 'breach of rules about clothing and makeup; risk of sexual, physical and emotional victimization from other people in prison; safety; and health care.'¹¹⁸ Nevertheless, among numerous complications, which correctional department are facing, the most substantial challenge is the placement process.

There are two types of housing process within prison systems; *genitalia-based placement* and *identity-based placement*.¹¹⁹ Genitalia-based placement method will categorize prisoners solely based on anatomical sex without considering experienced gender identity; whereas identity-based placement will house transgender inmates by taking self-identified gender into account whether or not he/she has undergone SRS before the incarceration.¹²⁰ Unfortunately, the most widespread type of housing classifications used in the majority of prisons in the world is genitalia-based placement.¹²¹ According to this policy, MtF transgender inmates will be placed in male facilities with general male population. This reflects the fact that there is no categorical place for gender variant and this is a basic problem which transgender people face in

114 The National Lawyer's Guild, *Know Your Rights Manual for the Transgender Community: Criminal Law*, [website], 2011,

<http://www.nlgsf.org/sites/default/files/resources/TKYRCrimManual.pdf>, (accessed 8 May 2018)

115 B. Shah, 'Lost in the gender maze: Placement of transgender inmates in the prison system', *Journal of Race, Gender, and Ethnicity*, vol. 5, No.1, 2014, p.40.

116 Blight, p. 1.

117 Ibid.

118 Gorden, Hughes, Roberts et al, p. 13.

119 Mann, p. 104.

120 C. Peek, 'Breaking out of the Prison Hierarchy: Transgender Prisoners, Rape, and the Eighth Amendment', *Santa Clara Law Review*, vol. 44, no. 4, 2004, p. 1219.

121 Ibid.

all aspects of life.¹²² Unfortunately, things reach to the worst when they come in contact with criminal justice system.¹²³

Prison life in general seems to be difficult for everyone, but it appears to be much more problematic for MtF transgender inmates. Being housed according to anatomical sex identified in legal document has severe consequences. Transgender inmates are more likely to suffer from mental health conditions including depression and suicidality.¹²⁴ Apart from experiencing transphobia¹²⁵ within male prison environment¹²⁶, they are the most vulnerable group facing the high risk of physical abuse, verbal harassment and sexual assault, not only by other male inmates but also by prison staff.¹²⁷ As a consequence, it is obvious that ‘transgender individuals are not compatible with a system that relies on and requires gender boundaries to function’¹²⁸ and the binary definition seems to be ‘inadequate for describing or classifying transgender people.’¹²⁹

Although, “appropriate placement” is crucial for well-being and safety of transgender inmates, “availability of medical treatment” is more important to their survival as well as physical and mental health conditions.¹³⁰ One of the major concerns is that MtF transgender inmates may not receive appropriate and adequate treatment especially in

122 Faithful, p. 5

123 Shah, p. 42.

124 Gorden, Hughes, Roberts et al, p. 12.

125 ‘Transphobia is defined as an “irrational fear of, and aversion to” transgender persons or gender non-conformity. Individual, structural or institutional manifestations of transphobia include discrimination, criminalization, marginalization, social exclusion and violence on grounds of (perceived) gender identity and gender expression’

See Council of Europe, ‘Discrimination on grounds of sexual orientation and gender identity in Europe’, 2nd edition, [website], 2011, p. 132,
<http://www.coe.int/t/Commissioner/Source/LGBT/LGBTStudy2011en.pdf> (accessed 20 May 2018)

126 Ibid., p.19.

127 B. Moulton, L. Seaton, *Transgender Americans: A Handbook for Understanding*, Human Rights Campaign Foundation, 2005, p. 42.

128 L. Jones and M. Brooks, ‘Transgender Offenders: A Literature Review’, *Prison Service Journal*, Vol. 206, No. 2, 2013, p. 13.

129 D. Routh, G. Abess, D. Makin et al, ‘Transgender Inmates in Prisons: A Review of Applicable Statutes and Policies’, *International Journal of Offender Therapy and Comparative Criminology*, Vol. 61, No. 6, 2017, p. 647.

130 Mann, p. 97.

terms of gender specific care.¹³¹ Most prison policies often provide blanket healthcare policy despite individual health needs.¹³² According to what MtF transgender inmates are facing in prison environment, the concept of “gender identity” should be added to consideration not only in classification process but also in healthcare system in order to be ‘more precise and to take into account the greater diversity of ways that inmates identity themselves.’¹³³

Conclusion

When a transgender person comes into contact with prisons, inadequate and inappropriate healthcare is one of most typical problems derived from the current legal system which does not effectively address transgender inmates’ specific needs.¹³⁴ The poor management and treatment of transgender people in prisons is resulting from the lack of related research and the inadequacy of prison policies.¹³⁵ Despite the growth in advocacy for transgender people and their equality around the world, the experience of transgender people in closed settings such as prison is ‘an under-researched area’.¹³⁶ The majority of research associated to the issue has been conducted in the USA.¹³⁷ This lack of research as well as the absence of specific provisions for prison authorities emphasize transgender people’s invisibility in prison and the ignorance of their equality, safety and well-being despite the fact, that transgender inmates tend to have more problems than general prison populations.¹³⁸ Therefore, research regarding care and treatment should be undertaken more in Thai context in order to explore the specific needs of transgender persons and provide comprehensive information for improvement in correctional healthcare system in Thailand.

131 Jones and Brooks, p. 13.

132 D. Stroumsa, ‘The State of Transgender Health Care: Policy, Law, and Medical Frameworks’, *American Journal of Public Health*, Vol. 104, No.3, 2014, pp. e31.

133 Routh, Abess, Makin et al, p. 647.

134 Gorden, Hughes, Roberts et al, p. 11.

135 Ibid., p. 12.

136 Ibid., p. 11.

137 Ibid.

138 Ibid.

3 TRANSGENDER SPECIFIC CARE: HORMONE THERAPY

*Many transgender people live on the margins of society, facing stigma, discrimination, exclusion, violence, and poor health. They often experience difficulties accessing appropriate health care, whether specific to their gender needs or more general in nature. Some governments are taking steps to address human rights issues and provide better legal protection for transgender people, but this action is by no means universal.*¹³⁹

Specific health care needs for transgender population have often been overlooked, and continue to be, not only within correctional settings but also in society at large.¹⁴⁰ These medical barriers to accessing adequate and appropriate care might result from prejudices against transgender people or the lack of knowledge of health care personnel.¹⁴¹ Limited access to or denial of such medical care have profound effects on both short- and longer term well-being and leave these individuals at high risk for negative health outcomes.¹⁴²

This chapter presents information which enables a greater understanding of why transgender people need of healthcare do differ from general population and whether this specific healthcare should be recognized as medically necessary. The chapter also provides general knowledge of cross-sex hormone treatment, which is the most common and fundamental treatment used for gender transition, including the associated risks and adverse effects as well as the possible outcomes if the treatment is terminated.

139 S. Winter, M. Diamond, J. Green et al, p. 390.

140 Stroumsa, pp. e31-e32.

141 Ibid.

142 Ibid.

3.1 Needs of Transgender Specific Care

Despite the fact that transgender persons require a unique set of mental and physical treatment, governments in most countries, particularly within criminal justice system, often fail to comprehensively address the specific medical needs of these particular populations.¹⁴³

Transgender specific health needs also include transition-related medical care or gender-confirming therapy which ‘is designed to assist an individual with the adjustment of primary and secondary sex characteristics to align with gender identity.’¹⁴⁴ The American Medical Association (AMA) recognizes such therapies, comprising of hormone therapy and gender reassignment surgery as forms of essential therapeutic treatment for transgender people who are diagnosed with GD.¹⁴⁵ These medical treatment options involved in body modifications, such as masculinization or feminization of the body, are considered medically necessary for many transgender people in order to alleviate GD.¹⁴⁶

Transgender people suffering from GD are those who consistently have a strong feeling of discomfort and experience distress due to the discrepancy between anatomical sex and preferred gender identity at the level, that has detrimental effects on their well-beings in daily life. GD ‘receives the status of a psychiatric condition by its inclusion in the DSM-5 and has been recognized in the medical community as a legitimate mental health condition, with potential physical manifestations.’¹⁴⁷ Psychological problems which arise when GD is left untreated may cause physical problems as the consequence. Therefore, AMA has clearly stated the importance in alleviating symptoms caused by GD as following:

143 Ibid.

144 Ibid.

145 American Medical Association (AMA), ‘Resolution 122 (A-08)’, [website], 2008, p.1, http://www.tgender.net/taw/ama_resolutions.pdf (accessed 18 May 2018)

146 Ibid.

147 E. Agbemenu, ‘Medical Transgressions in America’s Prisons: Defending Transgender Prisoners’ Access to Transition-Related Care’, *Colum. J. Gender & L.*, Vol. 30, No. 1, 2015, pp. 6-7.

[GD], if left untreated, can result in clinically significant psychological distress, dysfunction, debilitating depression and, for some people without access to appropriate medical care and treatment, suicidality and death ... Delaying treatment for [GD] can cause and/or aggravate additional serious and expensive health problems, such as stress-related physical illnesses, depression, and substance abuse problems, which further endanger patients' health and strain the health care system.¹⁴⁸

According to SoC by WPATH, the recommended process of diagnosis and treatment for people experiencing GD comes in 5 stages; 'diagnostic assessments, psychotherapy, hormone therapy, real-life experience as living as the opposite sex through dress and mannerisms, and, if desired, sexual reassignment surgery.'¹⁴⁹ All these stages of gender specific treatments should be under care and supervision of mental health and/or medical professionals.¹⁵⁰

During the stage of "diagnostic assessments", criteria from the DSM-5 can be used for a diagnosis of GD. Not only identifying whether a transgender person is experiencing GD or not, but this phase also allows psychologist and/or psychiatrist to assess the level of severity their patients are suffering from stigma associated with GD.¹⁵¹ The outcome from each evaluation is subjective due to the fact that health professionals can identify issues only based on their patients' self-report, not the 'observed behaviour in a clinical setting or results from a medical test.'¹⁵²

Therefore, this should be noted that treatment for transgender people is individualized and must be individually evaluated. Each person needs different types and levels of treatment.¹⁵³ Some individuals may only seek help from psychotherapy or psychiatric counselling, where they can discuss their gender-related distress with mental

148 AMA, pp. 1-2.

149 Routh, Abess, Makin et al, p. 652.

150 Howell, p. 139.

151 Agbemenu, p. 7.

152 Howell, p. 138.

153 Routh, Abess, Makin et al, p. 652.

professionals, and be able to reconcile the incongruences between sex and gender identity by 'integrat[ing] their trans- or cross-gender feelings into the gender role they were assigned at birth ... [without feeling] the need to feminize or masculinize their body.'¹⁵⁴ Some transgender persons may only want to change gender role and expression, whereas other individuals may find medical interventions essential to alleviate their GD.¹⁵⁵ While some people desire both hormone treatment and SRS to modify their physical appearance to be aligned with gender identity, some of them may need only one of these medical treatment options to fulfil their self-satisfaction.¹⁵⁶

For MtF transgender individuals, either before or after the initiation of hormone treatment, they may seek several techniques, such as laser treatments or electrolysis, to remove facial and/or body hair as this method is considered one of the crucial elements for transitioning to a female role.¹⁵⁷ Along with this process, they must live full-time as opposite sex and adopt self-identified gender role in their daily life at least for one year.¹⁵⁸ This stage provides a chance for transgender persons to spend time examining real life experience in living openly as desired gender.¹⁵⁹ Once they are confident and ready to make full physical transformation, they may seek to undergo SRS but they must be in the care of psychologist and/or psychiatrist closely during the process of decision making.¹⁶⁰ Nonetheless, not every transgender individuals desire to undertake SRS.¹⁶¹ Additionally, MtF transgender persons may also seek and obtain plastic surgery such as facial cosmetic surgery, breast augmentation or size reduction of Adam's apple.¹⁶²

154 WPATH, p. 8.

155 Ibid.

156 Human Rights Watch, 'Transgender Prisoners, Identity, and Detention: Policy Recommendations', [website], 2006, http://outcast-films.com/films/cu/transgender_prisoners.pdf (accessed 19 May 2018)

157 K. Wylie, G. Knudson, S. I. Khan et al, 'Serving transgender people: clinical care considerations and service delivery models in transgender health', *Transgender health* 2, Vol. 388, 2016, p.406.

158 Howell, p. 139.

159 Agbemenu, p. 7.

160 Howell, p. 139.

161 Agbemenu, pp. 6-7.

162 Howell, p. 139.

However, the most common and fundamental treatment for transgender persons undergoing a medical transition is hormone therapy.¹⁶³ Regards to my paper, I have chosen to focus on hormone treatment for MtF transgender individuals and see whether this treatment should be provided or denied during incarceration. To achieve this, it is important to firstly understand hormone therapy and its effects on body and/or mind of an individual.

3.2 Hormone Therapy

Hormone therapy, sometimes referred to as “cross-sex hormone therapy”,¹⁶⁴ is considered a standard practice for transgender men and women in acquiring desired secondary sex characteristics and changing physical body to match psychological gender identity.¹⁶⁵ For the past years, number of transgender people in seeking cross-sex hormone therapy as a part of transition process has been increasing.¹⁶⁶ It is well documented that hormone therapy is a medically necessary intervention for gender non-conforming individuals with GD in order to alleviate the symptoms and decrease the suffering.¹⁶⁷ This medical care leaves the results that contribute to the improvement of over-all psychological conditions as well as quality of life.¹⁶⁸

However, since there are risks and side effects needed to be considered,¹⁶⁹ the initiation of feminizing hormone treatment should be undertaken under the supervision of qualified professionals along with the recommendations from the psychologist and/or

163 Wylie, Knudson, Khan et al, p. 403.

164 Gender Identity Research and Education Society (GIRES), ‘A guide to hormone therapy for trans people’, [website], 2007, p. 6, <http://www.teni.ie/attachments/9ea50d6e-1148-4c26-be0d-9def980047db.PDF> (accessed 21 May 2018)

165 Wylie, Knudson, Khan et al, p. 403.

166 C. A. Unger, ‘Hormone Therapy for Transgender Patients’, *Translational Andrology and Urology*, Vol 5, No. 6, 2016, p. 877.

167 Wylie, Knudson, Khan et al, p. 406.

168 Ibid.

169 GIRES, p. 6.

psychiatrist.¹⁷⁰ Serious health conditions and the presence of other medical conditions, especially during HIV treatment, should also be considered before making decision.¹⁷¹

3.2.1 Sex Hormones: Origin and Effects

“Hormones” are chemical messengers in the body produced by a collection of glands in endocrine system then released into bloodstream.¹⁷² These chemical messengers circulate throughout the body via the blood carrying signals and instructions telling other cells ‘how to function, when to grow, when to divide, and when to die’.¹⁷³ Hormones influence and regulate most of bodily functions ranging from the most basic needs such as hunger or thirst to very complex systems such as reproduction as well as emotions and mood.¹⁷⁴ The main hormone-producing glands include Hypothalamus, Parathyroid, Thymus, Pancreas, Thyroid, Adrenal, Pituitary, Pineal, Ovaries (only on women) and Testes (only in men).¹⁷⁵ There are more than fifty different types of hormones¹⁷⁶ identified in human body and among them are “sex hormones”.¹⁷⁷

Sex hormones play a crucial role to prompt and regulate the development of sex characteristics which are the primary sex characteristics¹⁷⁸ or sex organs that develop in

¹⁷⁰ Wylie, Knudson, Khan et al, p. 403.

¹⁷¹ Ibid.

¹⁷² Hormone Health Network, ‘What Are Hormones, And What Do They Do?’, [website], 2018, <https://www.hormone.org/hormones-and-health/hormones/hormones-and-what-do-they-do> (accessed 23 May 2018)

¹⁷³ O. Ashbee and J. M. Goldberg, ‘Hormones: A guide for MTFs’, [website], 2006, p. 2, https://apps.carleton.edu/campus/gsc/assets/hormones_MTF.pdf (accessed 21 May 2018)

¹⁷⁴ Hormone Health Network.

¹⁷⁵ Ibid.

¹⁷⁶ Each type of hormones usually affects only on some certain cells called “target cells”. These target cells bear specific “receptors” responded only to a specific hormone. In the other words, a given hormone has a specific molecular shape that will be able to fit only into a certain receptor but not others.

See Hudson's FTM Resource Guide, *Hormones and the Body: A Brief Overview*, [website], 2017, <http://www.ftmguide.org/hormonebasics.html#sexcharacteristics> (accessed 23 May 2018)

¹⁷⁷ Hormone Health Network.

¹⁷⁸ In boys, a strong form of testosterone prompts the development of the penis and testicles. Without this input of testosterone, girls develop the clitoris and labia, ovaries, uterus and vagina.

See Ashbee and Goldberg, p. 5.

utero and the secondary sex characteristics¹⁷⁹ which develop during puberty.¹⁸⁰ Sex hormones comprises of oestrogen, testosterone and progesterone which are produced mainly in the "gonads"; Ovaries (producing oestrogen, testosterone and progesterone) and Testes (producing testosterone and sperm).¹⁸¹

Testosterone is often referred to as a “male” hormone and has masculinising effects, while oestrogen and progesterone are often referred to as “female” hormones which have feminising effects.^{182 183} However, all these kinds of sex hormones are presented in both men and women but in different amount and in different patterns of secretion (both in the womb and again during puberty).¹⁸⁴ Despite the fact that Testes produce only testosterone and sperm, whereas Ovaries can produce all sorts of sex hormones, a small amount of oestrogen can also be found in men body. This is because ‘some testosterone is converted into oestrogen’.¹⁸⁵ Consequently, both testosterone and oestrogen can be produced naturally in all men and women.¹⁸⁶

Apart from regulating primary and secondary sex characteristics, sex hormones also have effects (along with genetic factors) on ‘the development of the reproductive system, the brain and physical characteristics such as height and build, the way fat is distributed in the body and the muscle bulk.’¹⁸⁷ Moreover, sex hormones have effects in supporting general health and well-being throughout an individual lifetime.¹⁸⁸ However, the amount of sex hormones produced will be naturally decreased as an individual gets older.¹⁸⁹

179 In girls these include breasts, periods, a more rounded shape, underarm hair and an inverted triangle of pubic hair; in boys they include facial and body hair, a prominent Adam’s apple, a deepening of the voice, an enlargement of the penis and testicles, erections, a diamond shape of pubic hair and increased height and muscle bulk.

See GIRES, p. 6.

180 Ashbee and Goldberg, p. 2.

181 Hormone Health Network.

182 Hudson's FTM Resource Guide.

183 GIRES, p. 5.

184 Hudson's FTM Resource Guide.

185 GIRES, p. 5.

186 Ibid.

187 Ibid.

188 Ibid., p. 6.

189 Ibid.

3.2.2 Male-to-Female Hormone Therapy

Hormone treatment is considered as an important component in medical treatment and a mainstay treatment for many transgender individuals with GD whether or not the person has undergone SRS.¹⁹⁰ While the treatment plan is individually evaluated and a person may receive one or multiples interventions, cross-sex hormone therapy is most widely used and is often the only medical intervention accessed by transgender persons during transition period to feminize or masculinize their physical appearance to be congruent with gender identity.¹⁹¹ This is because hormone therapy is much less expensive than SRS but highly effective in changing secondary sex characteristics¹⁹². It also has been shown to have positive outcomes in improving psychological functioning in transitioning individuals.¹⁹³

Hormone therapy for transgender persons can be separated into two stages; firstly, the suppression of natural testosterone produced by the body and, secondly, the feminization or masculinization of physical characteristics by exogenous hormones.¹⁹⁴ The first stage of treatment helps to increase the effectiveness of prescribed hormones used in the second stage.¹⁹⁵

In MtF transgender individuals, anti-androgen¹⁹⁶ is used as hormone blocker to interrupt testosterone production with the aim to reduce androgenic effects and suppress masculinizing characteristics or male physical traits, while oestrogen, with similar dosage prescribed for a post-menopausal woman¹⁹⁷, is used to feminize the body and as a mainstay treatment.¹⁹⁸ Anti-androgen is often prescribed in addition to

190 Ibid., p. 7

191 Unger, p.877.

192 J.M.W. Hughto and S.L. Reisner, 'A Systematic Review of the Effects of Hormone Therapy on Psychological Functioning and Quality of Life in Transgender Individuals', *Transgender Health*, Vol.1, No.1, 2016, p. 22.

193 Unger, p.877.

194 Ibid.

195 GIRES, p. 7

196 Unger, p. 877.

197 Howell, pp. 153-154.

198 Unger, p.877.

oestrogen. However, the anti-androgen may not be necessary for transgender individuals who have undergone SRS since the major source producing testosterone, the testes, are removed.¹⁹⁹

When transgender individuals consume oestrogen as a part of feminizing hormone for a period of time, several changes both physically and psychologically are expected to occur as follows:²⁰⁰

) Physical Outcome of Hormone Therapy

Feminizing hormone or sometimes referred to as oestrogen therapy²⁰¹ will induce physical changes which vary from person to person in terms of the amount of change and time interval for physical effects to occur after the treatment is initiated.²⁰² However, the ‘higher doses of oestrogens may not lead to more rapid or dramatic clinical changes’²⁰³ but anti-androgenic therapy, which plays a vital part to suppress androgen and block the effects of testosterone, will be an adjunct to help a transgender person achieving maximum changes.²⁰⁴ These physical changes include breast growth, body fat redistribution, decreased muscle strength, softer skin, decreased facial and body hair growth, decrease testicular size and erections.²⁰⁵ Anti-androgens and oestrogen affect the entire body, thus it is not possible to choose only some changes in some part of the body.²⁰⁶ The approximate timeline of physical effects to occur is shown in Table 2.

199 The International Planned Parenthood Federation (IPPF), ‘International Medical Advisory Panel (IMAP)’s Statement on Hormone Therapy for Transgender People’, [website], 2015, p. 6, https://www.ippf.org/sites/default/files/ippf_imap_transgender.pdf (accessed 25 May 2018)

200 Unger, p. 880.

201 E. Moore, A. Wisniewski and A. Dobs, ‘Endocrine Treatment of Transsexual People: A Review of Treatment Regimens, Outcomes, and Adverse Effects’, *The Journal of Clinical Endocrinology & Metabolism*, Vol. 88, No. 8, 2003, p. 3144.

202 WPATH, p.36.

203 Moore, Wisniewski and Dobs, p. 3148.

204 Unger, p. 880.

205 Cox, p. 344.

206 Ibid.

Table 2. Effects and Expected Time Course of Feminizing Hormones²⁰⁷

Effect	Expected Onset	Expected Maximum Effect
Body fat redistribution	3-6 months	2-5 years
Decreased muscle mass/ strength	3-6 months	1-2 years
Softening of skin/decreased oiliness	3-6 months	unknown
Decreased libido	1-3 months	1-2 years
Decreased spontaneous erections	1-3 months	3-6 months
Male sexual dysfunction	variable	variable
Breast growth	3-6 months	2-3 years
Decreased testicular volume	3-6 months	2-3 years
Decreased sperm production	variable	variable
Thinning and slowed growth of body and facial hair	6-12 months	> 3 years
Male pattern baldness No regrowth, loss stops	1-3 months	1-2 years

Table 2 has shown that the degree and rate of physical changes are varied from person to person due to the differences in how well the body responding to hormones.²⁰⁸ These differences depend on factors that are different in every person such as age, the number of hormone receptors in the body, and how sensitive the body is to the medication.’²⁰⁹ These results cannot be predicted prior to the therapy.

207 WPATH, p. 38.

208 Ashbee and Goldberg, pp. 7-8.

209 Ibid.

) Psychological Outcome of Hormone Therapy

For transgender individuals with GD, the discomfort with their biological sex can be a stressful situation causing clinical distress or impairment in important areas of functioning.²¹⁰ Consistent stress and distress lead to a higher risk of having major mental disorders which also severely affect numerous aspects of life functions.²¹¹ The most significant aim of hormone therapy is to make transgender individuals feel more comfortable with themselves, increase self-satisfaction, and help them to overcome the distress by reducing discrepancy between physical appearance and gender identity.²¹²

Given that hormone therapy may be the only medical intervention transgender individuals seek to alleviate sufferings, the majority of studies mainly examine the effects of SRS or SRS together with hormone treatment on mental health and well-being of transgender people with GD.²¹³ These researches have suggested that SRS ‘improves gender dysphoria individuals’ well-being, increasing their personal and general satisfaction, self-confidence with body image and quality of life’²¹⁴ while ‘SRS together with hormone therapy were strongly associated with improved psychological functioning.’²¹⁵ However, in the recent years, more researchers have seen the importance of assessing the effects of hormone treatment alone.²¹⁶ There is an increase in number of studies which evaluate the specific relationship between hormone therapy and the psychological functioning of transgender individuals with GD.²¹⁷

210 M. Colizzi, R. Costa, V. Pace et al, ‘Hormonal treatment reduces psychobiological distress in gender identity disorder, independently of the attachment style’, *J Sex Med*, Vol. 10, No. 12, 2013, p. 3049.

211 GIREs, pp.6-7.

212 R. Costa and M. Colizzi, ‘The Effect of Cross-Sex Hormonal Treatment on Gender Dysphoria Individuals’ Mental Health: A Systematic Review’, *Neuropsychiatric Disease and Treatment*, Vol.12, 2016, p.1954.

213 Ibid.

214 Ibid.

J.M.W. Hughto and S. L. Reisner, ‘A Systematic Review of the Effects of Hormone Therapy on Psychological Functioning and Quality of Life in Transgender Individuals’, *Transgender Health*, Vol 1, No. 1, 2016, p. 30.

215 Ibid., p. 22.

216 Ibid., p. 30.

217 Ibid.

‘Feminizing’ hormone therapy has important psychological benefits.’²¹⁸ Longitudinal studies, which conduct observations of the same subjects over a period of time²¹⁹, have found positive psychological effects of hormone treatment.²²⁰ After the initiation of hormone therapy, transgender individuals experience significant changes in mental health status and psychological well-being,²²¹ since the cross-sex hormone therapy helps to decrease psychological stress level^{222 223} and to reduce symptoms of other mental disorders associated with GD.²²⁴ More specifically, the findings demonstrate a reduction in symptoms of anxiety²²⁵, less body uneasiness,²²⁶ lower dissociative symptoms,²²⁷ lower social distress,²²⁸ less psychiatric distress,²²⁹ reduced depressive

218 Ashbee and Goldberg, p. 7.

219 Costa and Colizzi, p.1964.

220 Colizzi, Costa, Pace et al, p. 3049.

221 Unger, p.880.

222 Cortisol levels and perceived stress of 70 transgender individuals were measured before and twelve months after the initiation of hormone treatment. The result found that both perceived stress and cortisol levels in treated transgender individuals were significantly reduced and reached normal range.

See Colizzi, Costa, Pace et al, p. 3049.

223 57 individuals with GD were assessed by using the Symptom Checklist-90 (SCL-90). The result showed that overall psychoneurotic distress decreased after the initiation of hormone therapy. Significant decreases were found in the subscales such as anxiety, depression, interpersonal sensitivity, and hostility.

See G. Heylens, C. Verroken, S. D. Cock et al., ‘Effects of different steps in gender reassignment therapy on psychopathology: a prospective study of persons with a gender identity disorder’, *J Sex Med*, Vol. 11, p. 119.

224 Ibid.

225 187 transsexual patients reported of having high subclinical levels of social distress, anxiety, and depression. The result found that patients under cross-sex hormonal treatment displayed a lower prevalence of these symptoms than patients who had not initiated hormonal therapy.

See E. Gómez-Gil, L. Zubiaurre-Elorza, I. Esteva et al, ‘Hormone-treated transsexuals report less social distress, anxiety and depression’, *Psychoneuroendocrinology*, Vol. 37, No. 5, 2012, p. 662.

226 The result showed that MtF individuals undergoing cross-sex hormone therapy had less body uneasiness compared with those without treatment. However, for the most effective impact on body uneasiness, controlling of both length and daily dose of treatment is vital.

See A.D. Fisher, G. Castellini, E. Bandini et al, ‘Cross-sex hormonal treatment and body uneasiness in individuals with gender dysphoria’, *J Sex Med*, Vol. 11, No. 3, 2014, p. 709.

227 Dissociative symptoms in 118 transgender individuals with GD were evaluated. The result found that when after treated with hormone therapy, transgender individuals with GD reported lower dissociative symptoms.

See M. Colizzi, R. Costa and O. Todarello, ‘Dissociative symptoms in individuals with gender dysphoria: is the elevated prevalence real?’, *Psychiatry Res*, Vol. 226, 2015, pp. 173–180.

228 Gómez-Gil, Zubiaurre-Elorza, Esteva et al, p. 622.

229 118 transgender individuals were assessed to evaluate the presence of psychiatric diseases/symptoms and to compare psychiatric distress after one year of hormonal intervention. The

symptoms,²³⁰ better mental health,²³¹ less functional impairment²³², higher self-esteem, and higher mental health-related quality of life,²³³

Although, cross-sex hormone treatment have been reported to effectively alleviate the psychological symptoms derived from GD, it cannot “medically cure” the mental illnesses associated, nor any other gender-reaffirming procedures such as psychotherapy or SRS.²³⁴ In the other words, hormone therapy has no “direct” effect on mental well-being.²³⁵ Instead, this method significantly has “indirect” effect on the reduction of distress, lower level of suffering, the improvement of quality of life and better social integration.^{236 237} As Costa and Colizzi have stated that:

Mental distress may be considered a reaction to the nonsatisfaction arising by the incongruence between the individual’s experienced gender and biological sex. Cross-sex hormonal treatment is supposed to mitigate such incongruence, inducing desired physical changes that could eventually be responsible for the individual’s better mental state and psychological well-being. In other words, thanks to the body changes obtained, gender dysphoria individuals may experience a reduction in their mental distress.²³⁸

result found the decrease in psychiatric distress and functional impairment comparing to before the initiation of hormone treatment.

See M. Colizzi, R. Costa and O. Todarello, ‘Transsexual patients’ psychiatric comorbidity and positive effect of cross-sex hormonal treatment on mental health: results from a longitudinal Study’, *Psychoneuroendocrinology*, Vol. 39, 2014, p. 65.

230 Gómez-Gil, Zubiaurre-Elorza, Esteva et al, p. 622.

231 Colizzi, Costa and Todarello, 2014, p. 65.

232 Ibid.

233 67 transgender individuals while 73 percent received hormone therapy were assessed. The result found that ‘hormonal therapy was an independent factor in greater self-esteem, less severe depression symptoms, and greater “psychological-like” dimensions of QoL.’

See A. Gorin-Lazard, K. Baumstarck, L. Boyer et al, ‘Hormonal therapy is associated with better self-esteem, mood, and quality of life in transsexuals’, *J Nerv Ment Dis*, Vol. 201, No. 11, p. 996.

234 Wylie, Knudson, Khan et al, p. 406.

235 Costa and Colizzi, pp.1964-65.

236 Ibid., p.1965.

237 Wylie, Knudson, Khan et al, p. 406.

238 Costa and Colizzi, p.1965.

Additionally, hormone treatment is not the only major factor which helps transgender individuals to experience the improvement of psychological comfort and overall quality of life. Supports from surrounding people especially family, friends, as well as colleagues should also be taken into account.²³⁹

3.2.3 Risk and Side Effects of Hormone Therapy

It cannot be denied that all medical interventions carry risks and it is impossible to predict which adverse effects will occur to which person as this depends on a number of personal factors.²⁴⁰ There is no right proportion of hormones combination, dose or type of medication.²⁴¹ Thus, the initiation of hormone treatment should be under supervision of medical professionals and the therapy should be individualized based on a person's goals, health, current medical conditions and body reaction to medication.^{242 243}

However, due to the lack of qualified health professionals on endocrine system in Transgender individuals or the legal restrictions related to hormones for transgender people²⁴⁴, self-administration of hormones is a common practice in Thailand.²⁴⁵ Internet and peer networks are the primary sources to get information on type and dosage.²⁴⁶ The problems arrive when information from these sources is incorrect or transgender individuals increase the dose or frequency on their own in an effort to experience more drastic changes or speed up the feminizing process.²⁴⁷ 'Taking hormones in this unsupervised way can adversely affect the functioning of liver or heart, and increase the risk of thromboembolism. [In an addition,] the chances of these adverse effects are higher

239 E. Gómez-Gil, L. Zubiaurre-Elorza, I.E.de Antonio et al, 'Determinants of quality of life in Spanish transsexuals attending a gender unit before genital sex reassignment surgery', *Qual Life Res*, Vol. 23, No. 2, 2014, p. 669.

240 WPATH, p. 39.

241 Ashbee and Goldberg, p. 5.

242 WPATH, p. 44.

243 Ashbee and Goldberg, p. 5.

244 Interview with Mr. D., Chonburi, 25 June 2018.

245 IPPF, p. 10.

246 Ibid.

247 Ibid.

if there is associated problematic alcohol use.’²⁴⁸ The risks and side effects derived from feminizing hormone treatment can be summarized in Table 3.

*Table 3. Risks and possible side effects of MTF Hormone Therapy*²⁴⁹

General risks	<ul style="list-style-type: none"> • increased strain on liver increased risk of liver disease 	
Estrogen	Risks <ul style="list-style-type: none"> • increased risk of blood clots (risk of death or permanent • increased risk of diabetes and heart disease • increased risk of gallstones • may be increased risk of noncancerous tumour of pituitary gland • not known if breast cancer risk is increased 	Possible side effects <ul style="list-style-type: none"> • increase in blood pressure • nausea or vomiting • increase in frequency or severity of headaches/migraines • milky discharge from nipples
Anti-androgens	Risks <ul style="list-style-type: none"> • low blood pressure • changes to heart rhythm due to high levels of blood potassium 	Possible side effects <ul style="list-style-type: none"> • skin rash

The long-term effects from undergoing hormone treatment are not yet confirmed.²⁵⁰ But in the short- to mid-term therapy it is considered safe if transgender individuals are treated under appropriate medical consultation.²⁵¹ The severity of adverse effects also depends on health, current medication, dose, method of administration, and age.²⁵²

²⁴⁸ Ibid.

²⁴⁹ Ashbee and Goldberg, p. 15.

²⁵⁰ K. Humphries-Waa, ‘The use of hormone therapy in the male to female transgender population: issues for consideration in Thailand’, *International Journal of Sexual Health*, Vol. 26, 2014, p. 46.

²⁵¹ Ibid.

²⁵² Ibid.

Health monitoring after initiation of cross-sex hormone therapy is likewise necessary. Transgender individuals under treatment should also have their hormonal levels in blood measured regularly in order to prevent or evaluate the chance of any adverse effects as well as to modify dose regulations that are most suitable for each person.²⁵³ ‘A key goal of monitoring is to avoid supra-physiological blood levels of estrogen, which may increase risks of thromboembolic disease, liver dysfunction and the development of hypertension.’²⁵⁴

3.3 Termination of Feminizing Hormone Treatment

The rapid withdrawal of cross-sex hormone therapy may lead to ‘physical distortion and severe psychological stress’²⁵⁵ as well as increase ‘risks for psychiatric symptoms and self-injurious behaviours.’²⁵⁶ According to the Standard of Care, ‘the consequences of abrupt withdrawal of hormones ... when medically necessary include a high likelihood of negative outcomes such as surgical self-treatment by auto castration, depressed mood, dysphoria, and/or suicidality.’²⁵⁷ Moreover, Transgender Europe (TGEU)²⁵⁸ stated that the possible negative health implications can occur when an ongoing hormone treatment is immediately ceased as following:

Interrupting hormone intake can have serious consequences and is by definition a decision to be taken by the individual concerned, on medical advice. Immediate physical consequences may include joint and muscle aches, tiredness and irritability, and increased sweating and flushes. In the long term, the client will develop osteoporosis, and will

253 Interview Mr. D

254 K. Humphries-Waa, p. 47.

255 Human Rights Watch, p.8.

256 Ibid.

257 WPATH, p.68.

258 Transgender Europe is a membership based organisation which was established on the first European Transgender Council in Vienna in November 2005 and formally registered as an Austrian charitable organisation. TGEU works for the equality of all trans people in Europe.

See Transgender Europe (TGEU), ‘About Us’, [website], <https://tgeu.org/about/>, (accessed 28 June 2018)

have increased risk of type 2 diabetes and cardiovascular disease. Unwanted withdrawal of medically necessary hormone replacement therapy will also have serious psychological consequences, such as an acute reduction in well-being, depression, anxiety, and possibly self-harm and suicidality.²⁵⁹

Most physical changes brought on by feminizing hormones are reversible.²⁶⁰ Only breast growth and sterility can be permanent.²⁶¹ However, a greater attention should be paid to the return of psychological symptoms caused by GD. Psychological effects cannot be visibly perceived or measured as easy as physical changes. Especially for those that have been treated for a long time, the sudden halt of hormones intakes will cause a drastic change of hormonal levels. This change consequently contributes to hormone imbalance which affects daily life functions.²⁶²

259 TGEU, *Coming Out*, ILGA-Europe et al, ‘Bogdanova v. Russia (Application No. 63378/13)’, 2015, p. 4, https://tgeu.org/wp-content/uploads/2015/07/Bogdanova-v-Russia_third-party-intervention-FINAL.pdf (accessed 28 June 2018)

260 Ashbee and Goldberg, p. 9.

261 Ibid.

262 Interview with Mr. D

Conclusion

The needs of transgender people are often overlooked as there is limited information on gender specific healthcare as well as the lack of visibility in the society. Transgenderism itself is not a mental illness, in the contrary, the distress derived from the feeling of conflicts between body and gender leads to GD which is contributed to numbers of mental illnesses such as depression, anxiety disorder and suicidality. These psychological symptoms caused by GD negatively affect several aspects of life functions and, eventually, lead to a lower quality of life. Even though, mental disorders can be treated or cured by medication, unless the root causes are eliminated, these symptoms can reoccur anytime. Hormone therapy, as one of the gender reaffirming treatments, cannot directly cure mental illnesses but it helps to alleviate the psychological symptoms and reduce the distress by feminizing or masculinizing physical appearance to be congruent with gender identity.

Internationally, hormone treatment has been considered as medically necessary intervention for transgender people that suffer from GD. Even though hormone treatment can bring about a variety of benefits, the risks and the adverse effects can be expected as well. Therefore, medical professionals should properly prescribe the initiation of the treatment. Doses and types of hormone intakes should be individually evaluated while taking into account the current medication and health conditions of each individual. Follow-up is also necessary in order to check the progress and to adjust hormonal intervention in the most suitable way for each person in each stage of transition. In addition, once these transgender people have been taking hormone treatment for a period of time, the abrupt termination of the treatment will result in several negative consequences both physically and psychologically. Thus, the withdrawal of hormone treatment should also be under medical supervisions.

4 NATIONAL LAWS AND HEALTHCARE SERVICE CONCERNING TRANSGENDER PEOPLE

We realise that transgender is an underserved population. At first, even myself, I thought that transgenders and MSM [men who have sex with men] were the same, which is wrong. Totally wrong. They have different cultures. They want different services.

Emeritus Praphan Phanuphak²⁶³

This chapter will introduce a better understanding of the Thai laws relating to gender non-conforming people. It starts with an overview of national laws and the development of the existing provisions which have an impact on the lives of transgender people. The chapter then presents information concerning conditions of the healthcare system in terms of hormone treatment for MtF transgender individuals both in society at large and in close settings such as prisons.

4.1 An Overview of National Laws

Thailand, where MTF transgender persons are highly visible, is considered as one of the leading countries in the world regarding tolerance towards transgender. Thai law does not criminalize homosexuality or ‘relations between individuals of the same sex.’²⁶⁴ The principle of equality and non-discrimination has been recognized in the Constitution of the Kingdom of Thailand B.E. 2560 (2017) which states in Section 27 as follow:

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.

263 M. Mahavongtrakul, ‘Transitioning healthcare’, the Bangkok Post, 5 Jan 2016, Available from <https://www.bangkokpost.com/lifestyle/social-and-lifestyle/816412/transitioning-healthcare> (accessed on 5 July 2018).

264 World Bank, *Economic Inclusion of LGBTI Groups in Thailand*, [website], 2018, p. 18, <http://documents.worldbank.org/curated/en/197901494585972561/Economic-inclusion-of-LGBTI-groups-in-Thailand> (accessed 28 July 2018)

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.²⁶⁵

Even though the protection on the grounds of “sexual diversity”, “sexual identity” or “gender” are not specifically mentioned in the protected category under these non-discrimination clauses, according to the intentions of the Constitution, these concepts are interpreted as inclusive in the ground of “sex”.²⁶⁶

However, the legislation marked as the first legal framework explicitly recognizing sexual orientation and gender identity is the Regulation on Prescribing a Target Person or Group of Persons to Receive Social Welfare B.E. 2555 (2012)²⁶⁷ which was issued by the National Social Welfare Promotion Commission (NSWPC) under the amendment of the Social Welfare Promotion Act B.E. 2546 (2003).²⁶⁸ This NSWPC regulation aims to enhance the quality of life of disadvantaged people, such as lower-income and disabled persons, through improved access to social services.²⁶⁹ This regulation represents the country’s first legal recognition of transgender people by classifying them as one of the 13 target population groups deemed facing difficulties and, thus, requiring special assistance to access social services.²⁷⁰ According to the Section 4 of the regulation:

265 The Office of the Council of State, Unofficial Translation of the Constitution of the Kingdom of Thailand, [website], 2017, <http://www.krisdika.go.th/wps/wcm/connect/d230f08040ee034ca306af7292cbe309/CONSTITUTION+OF+THE+KINGDOM+OF+THAILAND+%28B.E.+2560+%282017%29%29.pdf?MOD=AJPERES&CACHEID=d230f08040ee034ca306af7292cbe309> (accessed 26 July 2018)

266 B. Suriyasarn, p.20.

267 United Nations Development Programme Thailand (UNDP) and the Ministry of Social Development and Human Security (MSDHS), ‘Legal Gender Recognition in Thailand: A Legal and Policy Review’, [website], 2018, <http://www.th.undp.org/content/dam/thailand/docs/legal-gender-recognition-in-thailand-2018.pdf>, p. 19, (accessed 20 July 2018)

268 B. Suriyasarn, p.22.

269 Ibid.

270 Ibid.

A target person or group of persons qualified in receiving social welfare from Social Welfare Organizations under this regulation include child and youth, women, persons being sexually abused and their family, elderly persons, disabled or handicapped persons, urban community groups, indigent persons, homeless people, migrant and alienate workers, labours in informal economy, residents from southern border provinces, People living with HIV/AIDS and affected persons, undocumented persons, Thai citizen living in foreign countries, people in justice system and persons of diverse sexualities.²⁷¹

This regulation provides comprehensive definitions of persons of diverse sexualities and defines them as one of the thirteen target population groups who face difficulties and, thus, require special assistance to access social services.²⁷² The three main measures in NSWPC regulation for implementation whose objectives are to improve quality of people with sexual diversities are as follows:

1. Promote pride and value in gender diversity and correct prejudices in social values, tradition and belief systems that devalue human dignity of persons of diverse sexualities
2. Increase opportunity and options in employment, education, health for equal rights and protection of persons of diverse sexualities
3. Systematize social services and participation in policymaking and governance, and revise measures, rules, regulations, laws and policies that discriminate against persons of diverse sexualities²⁷³

271 ‘ข้อกำหนดคณะกรรมการส่งเสริมการจัดสวัสดิการสังคมแห่งชาติ ว่าด้วยการกำหนดบุคคลหรือกลุ่มบุคคลเป้าหมายเป็นผู้รับบริการสวัสดิการสังคม พ.ศ. ๒๕๕๕ (Regulation on Prescribing a Target Person or Group of Persons to Receive Social Welfare B.E. 2555 (2012)’, Available from <http://www.ratchakitcha.soc.go.th/DATA/PDF/2555/E/173/17.PDF> (accessed 3 August 2018)

Translated by the author

272 B. Suriyasarn, p. 22.

273 Ibid., p. 23.

Another progress in legal framework is the Ministry of Defense Regulation B.E. 2555 (2012), issued under the 1954 Military Service Act, that shows the improvement in treatment of transgender women in military recruitment.²⁷⁴ In Thailand, all men who turn 21 are obliged to attend military conscription and show up on the draft day, either to volunteer serving military service for six months or to ‘draw a lottery whether they will become military conscripts: red cards mean they will spend two years in reserved military service and black cards mean they will not be drafted.’²⁷⁵ All men who attends the military service selection process will be classified into four categories:

*Table 4. Military Conscription Categories*²⁷⁶

Category 1	Having a good physical condition
Category 2	Having a physical condition which is not as good as Category 1
Category 3	Having a physical condition which is not strong enough for military service at the moment because he is sick and cannot recover within 30 days
Category 4	People with a disability or having diseases which are set out in ministerial regulation

Prior to the 2012 regulation, transgender people were classified in category 4 and recorded in exemption documents (Sor Dor 43) as “permanent mental disorder” or other similar wordings.²⁷⁷ This Sor Dor 43 paper is an important legal document, as the proof of military service or exemption, for all Thai men in applying jobs in government, state enterprises and some private companies.²⁷⁸ Such wordings in Sor Dor 43 limit job opportunities as well as they cause numerous difficulties for transgender persons since the document labels them as having psychological abnormality.²⁷⁹

274 Ibid., p. 24.

275 Ibid., p. 23-24.

276 UNDP and MSDHS, p. 49.

277 Common terms used include “permanent mental disorder,” “mentally ill person,” “permanent mental deviancy,” “type 4 mental illness,” or “severe permanent mental disorder”

See B. Suriyasarn, p. 25.

278 Ibid., p. 24.

279 Ibid.

The significant change came in 2006 when a transgender person filed a lawsuit against the Ministry of Defence for the use of such wording and, in 2011, the Central Administrative Court stated that the word recorded in Sor Dor 43 was “inaccurate” and “unlawful.”²⁸⁰ The following year, Ministry of Defence issued a regulation to change the wording from “permanent mental disorder” to “gender not in accordance with birth sex”.²⁸¹ Ministry of Defence also re-classified transgender persons from category 4 to category 2 which is more accurate in terms of describing condition of transgender people.²⁸²

In 2015, Thailand has adopted the Gender Equality Act B.E. 2558 with the aim to criminalize the act of discrimination against a person on the ground of gender which explicitly includes transgender people.²⁸³ ‘The intention behind this law is to protect people from unjust discrimination and provide access to legal processes equally whether the person is male, female or a member of a sexual diversity group.’²⁸⁴ Section 3 of this act clearly defines the definition of discrimination that:

“Unfair gender discrimination” means any act or omission of the act which causes division, discrimination or limitation of any right and benefit either directly or indirectly without justification due to the fact that the person is male or female or of a different appearance from his/her own sex by birth.²⁸⁵

‘The interpretation of the Act for a person of “a different appearance from his/ her own sex by birth” originated from obligations under the ratification of the Convention on

280 Ibid., 24-25.

281 United Nations Development Programme Thailand (UNDP) and USAID, *Being LGBT in Asia: Thailand Country Report*, Bangkok, 2014, p. 23.

282 B. Suriyasarn, p. 24.

283 Ibid., p.19.

284 UNDP and MSDHS, p. 28.

285 There is currently no official English translation of Thailand’s Gender Equality Act. The translation provided comes from an unofficial English translation released by Human Rights Watch.

See Human Rights Watch (HRW), *Thailand Gender Equality Act*, [website], 2015, <https://www.hrw.org/news/2015/09/21/thailand-gender-equality-act> (accessed 28 July 2018)

the Elimination of All forms of Discrimination Against Women (CEDAW) which not only protects women but also those persons whose gender expression does not match their sex assigned at birth.²⁸⁶ This Act is the first Thai law that guarantees legal protection from discrimination on the ground of gender, making a significant milestone to ensure the rights of transgender individuals.²⁸⁷

However, despite the fact that a number of positive progresses and legislative improvements have been made in the last few decades, ‘laws and regulations that discriminate against transgender people still exist [as] Thai legal system strictly and explicitly identifies persons in the law only by the male and female genders,’²⁸⁸ believing that “gender identity” is firmly tied with “sex at birth”.²⁸⁹ In other words, legally, gender titles of all Thai citizens are either ‘male’ or ‘female’ according to their sex registered at birth. It is also clearly seen that Thai law is based on a binary concept of gender and several legal clauses use only the terms “man” and “woman” to refer to gender.²⁹⁰

Even though sex change in Thailand is legal and becomes a common practice, MTF transgender individuals who have already undergone SRS²⁹¹ are not allowed to change neither their “name title” nor “sex/gender” to match their gender identity and physical appearance.²⁹² The incongruence between personal information, especially name title, recorded in identification documents and the feminine appearance of ‘men’ often brings about difficulties and challenges in various situations particularly when doing legal transactions, travelling abroad, or applying for jobs.²⁹³ It is undeniable that this inability to change documents reflects the lack of gender recognition in Thai law.

286 UNDP and MSDHS, p. 28.

287 B. Suriyasarn, p. 93.

288 Ibid., p. 92.

289 UNDP and USAID, p. 25.

290 Ibid.

291 Sexual reassignment surgery (SRS) is not criminalized or discriminated against, and is in fact a common practice in Thailand.

See Ibid., p. 25.

292 Ibid., p. 32.

293 Interview with Mr. N, Bangkok, 18 June 2018.

Moreover, there is no current legal recognition on same-sex partnership and marriage.²⁹⁴ Thai law allows only a man and a woman to be legally married due to ‘the Department of Interior’s assumptions that all Thai persons who have the need to register their marriages are only couples of one male and one female.’²⁹⁵ Thus, they will be unable to enjoy the rights and legal benefits as well as to bear obligations that come with marriage contract as legal spouses.²⁹⁶ This includes conducting legal transactions, obtaining joint financial loans, co-managing spousal assets and property, obtaining health or life insurance benefits for spouses, receiving an inheritance, and engaging with medical personnel in making health decisions.²⁹⁷ Therefore, unless the regulations on the same sex partnership or marriage and the alteration of “gender” in identity documents are approved, MtF transgender will not be able to enjoy the rights to the same extent as the general population.

4.2 Hormone Treatment by the Healthcare Service for MTF Transgender People and the Existing Challenges

For its high reputation on cosmetic surgery and affordable medical services with highly experienced doctors, Thailand is one of the most well-known destinations for MTF transgender individuals seeking SRS and related procedures. Various treatment options to permanently change sex are available, yet there are no standards or clear guidelines for the treatment.²⁹⁸ Therefore, the Medical Council of Thailand enacted Regulation of the Medical Council Concerning Ethics in the Medical Profession Rules for Treatment in Sex Change Operations B.E. 2552 (2009) in order to ensure the protection of transgender individuals who intend to permanently transform sex organs and change physical characteristics from biological sex to preferred sex.²⁹⁹ This regulation aims to

294 Worldbank, p. 20.

295 UNDP and USAID, p. 28.

296 Worldbank, p. 58-59.

297 Ibid.

298 Thailand Law Forum, *Regulation of the Medical Council Concerning Ethics in the Medical Profession Rules for Treatment in Sex Change Operations 2552 B.E. (2009 A.D.)*, [website], 2009, <http://www.thailawforum.com/sex-change-operations-law.html> (accessed 20 July 2018)

299 Ibid.

maintain ethics in the medical profession and sets rules as well as criteria on who is eligible to undergo sex change operations.³⁰⁰ Nevertheless, criteria for hormone treatment are not included.

In spite of the high demands of Thai MTF transgender individuals in gender specific treatment, state welfare and private insurance do not cover treatments for gender reaffirming procedures; neither psychological assessment, hormone therapy nor sex change surgery.³⁰¹ Transgender people have no choice but to seek for the private treatment private and pay at their own expense.³⁰² The cost of transition healthcare in private hospitals or clinics is relatively high, especially of the SRS.³⁰³

The majority of MTF transgender individuals in Thailand, in particular those living with social disadvantage, are continuously experiencing various forms of discrimination across multiple socio-economic spheres which lead to limited job opportunities.³⁰⁴ These people are inevitably driven into financial difficulty³⁰⁵, which is often regarded as a major problem in attaining appropriate transition healthcare.

Consequently, transgender people would seek out whatever health transition services they can afford.³⁰⁶ The less expensive treatment among all gender affirmative procedures is cross-sex hormones with monthly expenditure ranging from 150 to 450 Baht (US\$ 5–15).³⁰⁷ The vast majority of MTF transgender people, approximately 73-94% of the

300 The person must be over 18 years with parental consent, or 20 years old. In addition, the person must pass an evaluation and receive two statements from psychiatrists stating that the surgery must be performed.

See Thailand Law Forum

301 P. Chokrungruanont, G. Selvaggi, S. Jindarak et al, 'The Development of Sex Reassignment Surgery in Thailand: A Social Perspective', *The Scientific World Journal*. 2014, p.3.

302 Ibid.

303 S. Winter, *Lost in Transition: Transgender People, Rights and HIV Vulnerability in the Asia-Pacific Region*, Bangkok, UNDP Asia-Pacific Regional Centre, 2012, p. 33.

304 Wordbank, p. 16.

305 Ibid.

306 S. Winter, p. 33.

307 L. J. Gooren, T. Sungkaew and E. J. Giltay, 'Exploration of functional health, mental well-being and cross-sex hormone use in a sample of Thai male-to-female transgendered persons (kathoeys)', *Asian Journal of Andrology*, p. 282

whole group, has taken hormone treatment to transform their body.³⁰⁸ The initiation of the treatment usually starts during puberty without medical advice or physician guidance.³⁰⁹ Peer recommendations and social media are the primary source (or the only source) of information, regarding types and dosage, according to my informant.³¹⁰

Among teenage transgender individuals, ‘the most commonly used sex steroids are oral contraceptives, which are widely obtainable and affordable.’³¹¹ Contraceptive pills, which are also known as birth control pills, contain ‘a progestin-type of drug combined mostly with ethinyl oestradiol and sometimes the oestrogen mestranol,’³¹² can be easily obtained from pharmacies as medical prescriptions are not always required in Thailand, as I was informed by a Thai pharmacist.³¹³ Legally, pharmacists are able to give basic medical advice and make decision to dispense any medicines that are allowed to be sold in pharmacy. Only some types of restricted medicine are on prescription.³¹⁴ According to Drug Act B.E. 2530 (1987), medicines in Thailand are classified into four categories as follows:

- 1) household remedies - sales require no license
- 2) ready-packed drugs - can be sold in drug stores by nurses or other medical professionals
- 3) dangerous drugs - can be bought without a prescription but must be dispensed by pharmacists.
- 4) specially controlled drugs - may possess a potentially harmful effect on health, if misused or inappropriate. Sales require a prescription from

308 Karen, p. 5.

309 Ibid., p. 1.

310 Interview with Mr. D

311 Gooren, p. 283.

312 Ibid., p. 282.

313 Ibid., p. 283.

314 Interview with a pharmacist, Bangkok, 18 June 2018.

doctor and specially controlled drugs can be dispensed only in hospitals or permitted clinics.³¹⁵

Factors used to classify drugs into categories are the levels of risks and chances of having side effects on the body, both directly and indirectly.³¹⁶ Contraceptive pills are classified in category 3) which is considered safe if provided by a knowledgeable pharmacist.³¹⁷ Moreover, besides purchasing contraceptives from local pharmacies or internet, public hospitals or public health centres are also major sources providing free contraceptives of all sorts (oral, implantable, and injectable contraceptive) to female patients under Birth Control Service. While transgender women are not eligible in receiving the service, they would use this advantage by seeking help from female friends to get free contraceptive pills for them.³¹⁸

In addition to contraceptive tablets, the pure cross-sex hormones, namely anti-androgen and oestrogen, are also widely used and easily accessible as they can be purchased from local pharmacies, either directly or via a peer, and via the internet.³¹⁹ Pure hormone such as oestrogen can be administered in various ways such as in the form of ‘pill’ (oral application), skin patch or gel (transdermal application), and through injection (intramuscular application).³²⁰ Varying degree and rate of physical changes depend on the method of administration.³²¹ Injection tends to offer a faster feminizing results, but it carries higher risks for the users.³²² Unfortunately, even injective hormones are widely used among MtF transgender people in Thailand, even though all brands of injective

315 Ministry of Public Health, *Introduction to the Bureau of Drug Control*, [website], 2016, http://www.fda.moph.go.th/sites/fda_en/SitePages/Drug.aspx?IDitem=Introduction (accessed 15 July 2018)

316 N. Sukrod, *Principle of Thailand Medicine Reclassification Guidelines*, [website], 2015, [http://www.tsmia.or.th/RTD2015/5-THAILAND%20\(Sept%2017\)%20Drug%20reclassification%20guideline%20\(final\).pdf](http://www.tsmia.or.th/RTD2015/5-THAILAND%20(Sept%2017)%20Drug%20reclassification%20guideline%20(final).pdf) (accessed 15 July 2018)

317 Interview with a pharmacist

318 Interview with Mr. P, Bangkok, 20 June 2018.

319 Ibid.

320 O. Ashbee and J. M. Goldberg, p.3.

321 Interview with Mr. D

322 Karen, p. 11.

oestrogen are not approved by the Food and Drug Administration (FDA) of Thailand.³²³ These injective hormones cannot be sold or dispensed in hospital or pharmacy. Hence, the only way to obtain this type of hormone is the purchase in black market, ordering via internet or self-importing.³²⁴

Apart from stigmatization and discrimination, another challenge which is considered as a barrier for transgender people to access safe and appropriate transition healthcare is the lack of endocrinologists or trained professionals including doctor, physician, nurse and pharmacist, who are specialized in endocrine systems as well as other health issues associated with transgender people.³²⁵ The number of MTF transgender people across the country ranges from 0.3% to 0.6% of the total Thai population of around 66 million (2018),³²⁶ extrapolating at nearly 198,000 – 396,000 MtF transgender individuals nationwide.³²⁷ There are only two places in Thailand where trans-specific healthcare and counselling services are provided.³²⁸ One place is, particularly for transgender teens, called “Gender Variation Clinic” (or Gen-V Clinic), run by specialists on endocrine systems and hormones at Ramathibodi Hospital’s Child and Adolescent Health Center.³²⁹ The other is called “Tangerine Community Health Centre”, operated under the Thai Red Cross AIDS Research.³³⁰ Tangerine Centre is ‘Asia’s first clinic to provide a full range of health-care and counselling services specifically for transgender people...

323 Interview with Mr. D

324 Interview with a doctor, Pathumtani, 30 July 2018.

325 Interview with Mr. D

326 Mahidol University, ‘Current Thai Population’, [Website], 2018, <http://www.thailandometers.mahidol.ac.th/> (accessed on 3 August 2018)

327 The Development of Sex Reassignment Surgery in Thailand: A Social Perspective, p.2.

328 M. Mahavongtrakul, ‘Transitioning healthcare’, the Bangkok Post, 5 Jan 2016, Available from <https://www.bangkokpost.com/lifestyle/social-and-lifestyle/816412/transitioning-healthcare> (accessed on 5 July 2018).

329 M. Mahavongtrakul, ‘A Space for All’, the Bangkok Post, 9 September 2014, Available from <https://www.bangkokpost.com/news/health/431248/a-space-for-all> (accessed on 5 July 2018).

330 UNAIDS, ‘Advances in health services for transgender people in Thailand’, 21 June 2016, Available from http://www.unaids.org/en/resources/presscentre/featurestories/2016/june/20160621_thailand_transgender (accessed on 5 July 2018).

[including] hormone counselling and therapy, sexual and reproductive health services, psychosocial counselling and HIV testing.’³³¹ Both clinics are located in Bangkok.

Transgender people who attend health services in general hospitals or clinics often face ‘healthcare providers who are uncooperative or hostile, addressing or responding to the transgender people in a gender inappropriate way, adopting a mocking or ridiculing attitude, withholding or refusing healthcare, or even offering ‘reparation’ treatments.’³³² Certain transgender individuals also try to ask pharmacists for medical advices on doses and side effects of contraceptive pills or hormonal supplements to treat their menopause symptoms, which can also be used for gender transition. Instead of receiving the answers, transgender individuals often receive questions in return asking why they seek medications for women since they are men and some of them are even shunned in an offensive way.³³³ As a result, instead of consulting with medical professions, peers and internet turn out to be the main sources of information they rely on.

Consultation with psychiatrists is also a potential challenge for transgender community. The perception of most Thais towards psychological services is that mental illnesses are associated with “craziness” while transgender people strongly argue that there is nothing mentally wrong with transgenderism and no medication will turn them back to the gender which is biologically assigned by nature.³³⁴ Most of Thai transgender individuals visit a psychiatrist only when they decide to undergo SRS, not at the onset of having GD, since a psychological assessment paper signed by a qualified professional is needed for allowing surgeons to proceed with the surgery.³³⁵ Moreover, very few psychiatrists are interested and specialized in this field while most of them work in private settings, not in public hospitals where the cost of service is more affordable, though in the exchange of very long waiting queues.³³⁶ It is evident that the availability of healthcare professionals

331 Ibid.

332 S. Winter, p. 33.

333 Interviews with Mr. N

334 Interview with Mr. D

335 P. Chokrungruanont, G. Selvaggi, S. Jindarak et al, p. 3.

336 Ibid.

related to transgender issues is disproportionately low comparing to the visibility of transgender people across the country. All these challenges bring about the limited access to appropriate medical supervision and healthcare treatment.

Conclusion

Even though the acts of discrimination are legally prohibited under the Constitution of Thailand, Gender Equality Act while other legal frameworks begin to recognize persons of diverse sexualities, it is obvious that transgender individuals in Thailand are not completely legally recognized and, thus, cannot fully enjoy the same rights as the general population. They still face a wide range of hardships as the name title and sex cannot be legally changed in their identity documents. On top of that, there is no laws on same-sex partnership and marriage in which they can appreciate legal benefits and bear obligations that come with marriage contract as legal spouses.

Given the circumstances that there are the limited accessibility to healthcare in gender affirmative treatment, high expense for medical services which are specified for transgender people, as well as, the extensive availability of contraceptive pills and pure cross-sex hormones which can be purchased from local pharmacies or internet, MtF transgender persons still often undergo self-treatment without proper medical consultation. Most transgender women are not fully aware that the non-prescribed cross-sex hormones can ‘pose a considerable health risk behaviour contributing to morbidity and mortality.’³³⁷ This reality can be partly explained by the insufficient dissemination of accurate information and knowledge as well as the lack of professionals in the field who could competently give medical advice to those interested.

337 Karen, p. 18.

5 CORRECTIONAL REGULATIONS ASSOCIATED WITH MALE TO FEMALE TRANSGENDER INMATES

There are three requirements which must be met if the prison system is to be stable: they are security, control and justice. For present purposes, “security” refers to the obligation of the Prison Service to prevent prisoners escaping. “Control” deals with the obligation of the Prison Service to prevent prisoners being disruptive. “Justice” refers to the obligation of the Prison Service to treat prisoners with humanity and fairness

Lord Woolf, 1991³³⁸

As the Thai laws regarding MtF transgender people in general have already been acknowledged, this chapter will narrow down into a smaller scope of regulations specifically concerning MtF transgender inmates. It will provide information on MtF transgender inmates and their path to criminal justice system, housing system, internal management and prison regulations on gender specific healthcare.

5.1 Transgender People Behind Bars

Discrimination against transgender people is evident around the world. Even in Thailand, where MTF transgender people are highly visible and the society seems to be more tolerant, they have been experiencing significant levels of social exclusion and various forms of discrimination ranging from education or training, employment, career opportunity and advancement to buying or renting property, government services, health services as well as accessing to pension and other social security benefits.^{339 340}

338 A. Coyle, *Humanity in Prison : Questions of definition and audit*, London, International Centre for Prison Studies, 2003, p. 13.

339 Worldbank, p. 2-7.

340 B. Suriyasarn, p. 93.

The unequal treatment and the widespread discrimination, especially on the aspects of education and employment, undermines work opportunities and marginalizes transgender people which leads to disproportionate poverty and lower quality of life.³⁴¹ Limited access to jobs further pushes transgender people into the vicious circle of illegal works such as prostitution and drug trafficking, paving them the way to criminal justice systems.³⁴² Additionally, due to transphobic bias, law enforcement officers often prejudge MtF transgender persons that they are prone to engage in criminal activity, thus disproportionately more likely to be suspected and arrested.³⁴³

Number of LGBT inmates are varied from different sources ranging from 3,000³⁴⁴ to 4,000³⁴⁵ persons per year and the number is seemed to increase annually.³⁴⁶ According to the official statistic from the Department of Corrections in June 2016, there were approximately 276,000 male inmates detained in Thai prisons across the country.³⁴⁷ 1,838 out of the total male inmates were identified as MtF transgender persons while 34 of them had undergone SRS.³⁴⁸ Apart from the severe crisis of overcrowded prisons, transgender inmates pose another major challenge for prison management.³⁴⁹ With their unique characteristics and specific needs, the appropriate treatment such as the separation of settings, custody, training, healthcare as well as social welfare has to be taken into account.³⁵⁰

341 Worldbank, p. 48.

342 TGEU, Coming Out, ILGA-Europe et al, p. 8.

343 Interview with Mr. D

344 A. Saibouyai, p. 6.

345 N. Chitsawang, *Transgender Prisoners in Thailand Keep Growing*, [website], 2016, <http://thaicriminology.com/transgender-prisoners-in-thailand-keep-growing.html> (accessed 30 June 2018)

346 Ibid.

347 The Department of Corrections, สถิติผู้ต้องราชทัณฑ์ทั่วประเทศ พ.ศ. 2559 (*National Statistics of People in Detention 2016*, [website], 2016, <http://www.correct.go.th/stat102/display/result.php?date=2016-06-23&Submit=%E0%B8%95%E0%B8%81%E0%B8%A5%E0%B8%87> (accessed 2 July 2018)

348 ‘3 ลูกใหญ่จัดโซนแยกขังนักโทษเพศที่สาม (3 main prisons separate transgender inmates in special wing)’, *Komchadluek*, 21 March 2017, Available from <http://www.komchadluek.net/news/regional/266625>, (accessed 15 July 2018)

349 N. Chitsawang.

350 Ibid.

5.2 Prisoner Classification and Internal Management in Correctional Settings

According to the United Nations Standard Minimum Rules for the Treatment of Prisoners, ‘women deprived of their liberty should be held in accommodation which is physically separate from that of male prisoners in order to protect them against sexual harassment and abuse.’³⁵¹ This Standard Minimum Rule has set a significant guideline for countries across the world to follow which reflected in prison regulations in terms of housing.³⁵² Therefore, like most prisons in the world, Thailand’s Department of Corrections allocates prisoners to either male or female prison by using *genitalia-based placement*.³⁵³

Since MtF transgender individuals in Thailand are not able to change their name title “*Mister*” as well as gender “*Male*” in their civil registration record or national ID card despite having undergone SRS, when coming into contact with the criminal justice system, they will be incarcerated based on the sex specified in their identity documents which is based on “*sex assigned at birth*.”³⁵⁴ Consequently, they will be placed in the same facilities as cisgender male inmates. Moreover, because of the different methods in the body search and detention provisions between females and males, when they are charged or detained under criminal laws in Thailand, MtF transgender people will be treated according to birth-assigned gender rather than their preferred gender identity.³⁵⁵ and thus be placed in prisons for men.

However, MtF transgender inmates who had undergone SRS and were confirmed by a qualified physician will be housed in female facilities and be able to practice feminine mannerisms.³⁵⁶ In fact, very few numbers of them have gone through sex change operation. This is because sex surgery is relatively expensive and unaffordable for most transgender women. Therefore, most MtF transgender inmates have not undergone SRS

351 UNDP and MSDHS, p. 53.

352 Ibid.

353 Ibid.

354 Ibid.

355 Ibid.

356 N. Chitsawang.

and are still accommodated in male prisons, being subjected to possible harassment and abuse.

In terms of facility management which include inmate incarceration method, prisoner treatment approaches and human development programs, its implementation is based on the provisions outlined in the Correction Act B.E. 2560 (2017), a revised version of Correction Act B.E. 2479 (1936), and its substantial rules and regulations.³⁵⁷ MtF transgender inmates must follow the same prison rules as other male inmates.³⁵⁸ Apart from strict uniform regulations, MtF transgender inmates are required to cut their hair short.³⁵⁹ Most treatment approaches applied to MtF transgender inmates and cisgender male inmates are relatively similar, even though there are only some differences in terms of work assignment which is likely to be lighter for transgender inmates as they are perceived as having less physical capacity.³⁶⁰ Considering development programs, basically, all inmates can choose education and vocational trainings provided upon their personal interests and attend the classes 5-6 days a week.³⁶¹

In recent years, a significant progress has been made regarding housing system for MtF transgender inmates. In 2016, the Department of Corrections conducted a pilot project on management of transgender inmates in 3 main prisons; Klong Prem Central Prison, Min Buri Remand Prison, and Pattaya Remand Prison.³⁶² Under this pilot scheme, besides self-identity, a nursing official and a female assistant are the ones who perform medical examination physically and psychologically to assure that the inmates' gender identity does not need to conform to their "sex" in identity documents.³⁶³ During the

357 A. Saibouyai, p. 2, 10.

358 Ibid., p. 10.

359 UNDP and MSDHS, p. 56.

360 A. Saibouyai, p. 7.

361 Ibid., p. 10.

362 '3 คุกใหญ่จัดโซนแยกขังนักโทษเพศที่สาม (3 main prisons separate transgender inmates in special wing)', *Komchadluek*, 21 March 2017, Available from <http://www.komchadluek.net/news/regional/266625>, (accessed 15 July 2018)

363 A. Salvá, 'Separate prisons for LGBTI inmates in Thailand', *Equal Times*, 29 July 2016, Available from <https://www.equaltimes.org/separate-prisons-for-lgbti-inmates?lang=en#.W0sOwNIzbic> (accessed 25 July 2018)

day, MtF transgender inmates will work on tasks assigned or activities scheduled together with general population while during the night they will sleep in separated cells which are shared with male inmates who claim themselves as gay.³⁶⁴

Positive steps in promoting rights of this group can be seen in the recent years. Currently, the Department of Corrections is planning to set up an entire prison exclusively for LGBT inmates as a measure to keep them safe from sexual assault and prevent transmissible diseases from unsafe sex practices such as HIV/AIDS.³⁶⁵ It is a separate facility where every LGBT inmate from all over Thailand will be transferred to. Apart from safety and health issues, this new scheme would help making internal management easier for authorities in terms of control and treatment which more effectively meets with specific needs of LGBT inmates. However, the plan is still under discussion. There are arguments over the concern that it would be harder for families to visit and this system can be considered as a measure of segregation on the basis of their sexual orientation or gender identity.³⁶⁶

5.3 Prison Regulations on Healthcare for Transgender Inmates

With regards to the medical treatment, prisons provide basic healthcare services at the same level as state welfare. Every prison has a medical centre equipped with basic medical instruments and a nurse, employed by the Department of Corrections.³⁶⁷ A doctor will visit the prison twice or three times a week while specialized doctors such as dermatologists, psychiatrists, and dentists will come in on different days as scheduled.³⁶⁸ However, health care for MtF transgender inmates has long been a problematic issue for

364 EFE, *Thai transgendered inmates pilot separate jail cells to stop abuse*, [website], 2017, <https://www.efe.com/efe/english/life/thai-transgendered-inmates-pilot-separate-jail-cells-to-stop-abuse/50000263-3216345> (accessed 24 July 2018)

365 D. Kang, 'Thailand Considers Segregated Prisons For LGBT Inmates', *The wire*, 29 January 2017, Available from <https://thewire.in/gender/thailand-considers-segregated-prison-for-lgbt-inmates> (accessed 25 July 2018)

366 D. Kang

367 FIDH and Union for Civil Liberty (UCL), *BEHIND THE WALLS - A look at conditions in Thailand's prisons after the coup*, [website], 2017, https://www.fidh.org/IMG/pdf/rapport_thailand_688a_web.pdf (accessed 9 August 2018), p. 24.

368 Ibid.

prison authorities. Even though, all prisoners have a right to receive medical care, they do not have a right to choose a specific treatment.³⁶⁹ Transgender women's specific health needs cannot be fulfilled under the primary healthcare service provided. The denial of hormone treatment is a major problem for MtF transgender inmates as this therapy is claimed essential for their transition in order to regulate bodies and emotions³⁷⁰ and to maintain gender identity and well-being.³⁷¹

According to the prison regulations, hormones can be administered to prisoners only when being prescribed by a doctor and used specifically for healthcare purpose.³⁷² However, in Thailand, hormone treatment for transgender women is considered as being used for beauty, not for medical purpose.³⁷³ As transgender women may use exact the same types of hormones as menopausal women, it is not possible to request prescription from doctor unless they have undergone SRS.³⁷⁴

Similar to hormones, contraceptive pills 'are not allowed for use in male prison, where the pills are deemed unnecessary for male inmates.'³⁷⁵ While government allocates budget 'for prison management in which only basic needs are to be covered and these pills are not considered as the basic needs of male inmates.'³⁷⁶ Moreover, contraceptive tablets are also prohibited in female facilities.³⁷⁷ It is based on the reason that taking contraceptive is considered as a birth control method, while in fact birth prevention is not necessary during detention due to inmates housing system.³⁷⁸ As a result, there is no justification to disseminate contraceptive tablets in both prisons.

369 Lawyers' Rights Watch Canada, *Prisoners: The Right to Medical Treatment Summary of Preliminary Research*, [website], <http://www.lrwc.org/ws/wp-content/uploads/2014/10/DRAFT-Research-Medical-treatment-26-August-2013.pdf> (accessed 5 August 2018)

A. Coyle, 2002, p. 49.

370 EFE

371 A. Saibouyai, p. 10.

372 Ibid., p. 11.

373 Ibid.

374 Interview with a doctor

375 A. Saibouyai, p. 11.

376 Ibid.

377 Ibid.

378 Ibid.

It is to say that the Department of Corrections has denied transgender inmates access to hormones therapy as a matter of policy which can partly be considered as one of the consequences from applying a binary gender framework in prison management.³⁷⁹ Even though, prisoner treatment can be slightly flexible, the aim is mainly based on the comfort of prison authorities so that they can perform their duties easier, not with the purpose of responding to the real needs of inmates.³⁸⁰

Conclusion

MtF transgender persons in Thai society are widely visible and there are laws recognizing the existence of people with gender-variance as well as prohibiting discrimination on the ground of gender, yet they have been stigmatised and marginalized by various forms of discrimination. They are often facing problems regarding job opportunity which has driven them into disproportionate poverty. With less choices in life left, many of them turn to illegal activities and end up in prisons.

While the number of MtF transgender inmates is on the rise every year, the existing prison regulations do not precisely reflect the current situation. Due to the fact that the Department of Corrections is using genitalia-based placement to allocate inmates and no law allows MtF transgender individuals to change name title and sex in identity documents, these people will be sent to a male facility, unless having been undergone SRS, the status of which only a few number comparing to the total number of MtF transgender inmates have done. However, there is an improvement in prison management. Since 2016, the Department of Corrections launched a pilot project in 3 main prisons separating MtF transgender and gay inmates into isolated spaces during night time. There is also a plan in building a separate prison exclusively for LGBT but it is still under discussion.

379 Ibid.

380 Ibid., p. 10.

Under the current conditions, prison rules and regulations do apply to all inmates alike, to both MtF transgender inmates and cisgender male inmates. There is only a slight difference in distributing the work tasks. Apart from that, inmates can choose to attend activities available in prisons (i.e. education, vocational trainings or sports) based on their interests. Regarding the healthcare policy, all basic medical needs are provided. Prescription from physicians is needed if an inmate requires specific or unusual medicine. Whereas feminizing hormone or contraceptive can be easily purchased, the treatment is completely denied once entering to prisons no matter if the inmates have started the therapy prior to custody or undergone SRS. This is because, in Thailand, hormone treatment for transgender person is not recognized as a medication but as a mean for the beauty purpose. As the result, their hormone therapy cannot be continued without the prescription from doctor.

It cannot be denied that the lack of legal gender recognition and the reliance on the national ID card as the primary identification have significant implications for the detention of transgender people as offenders.³⁸¹ Nowadays, the binary definition of sex is seemed to be inadequate for describing or classifying transgender people. These experiences of transgender women in detention significantly highlight the importance of legal gender recognition for transgender people in Thailand.

381 UNDP and MSDHS, p. 53.

6 PRISONER'S RIGHTS: PROTECTIONS OR VIOLATIONS

*Treat people like dirt, and they will be dirt. Treat them like human beings, and they will act like human beings.*³⁸²

The correlation between prisoners and human rights has long been a controversial issue in Thailand. Many Thai people hold the belief that when a person violates the others' rights by committing a crime, then that person has already forfeited their own rights. Prisoners are usually seen as bad people which is associated with "evil act" or "violence" and they do not deserve to receive treatment as same as free individuals. This logic has wrongly shaped their understanding of how prisoners should be treated based on human rights perspective.

This chapter will present human rights of prisoners and provide background on some important principles of international legal frameworks such as international standards and international human rights conventions to which Thailand has ratified. Then I analyse how the correctional law which restricts the access to hormone therapy directly or indirectly contributes to violations of human rights and whether there are any impacts on the fulfilment of state obligations to those legally binding treaties.

6.1 Human Rights in Prison: Minimum Basic Principle

Human rights of prisoners are protected under several international human rights standards and guidelines including Universal Declaration of Human Rights (UDHR, 1948), International Covenant on Civil and Political Rights (ICCPR, 1966), International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984) United Nations Basic Principles for the Treatment of Prisoners (1990), Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1998), and

382 B. Dreisinger, 'Norway Proves That Treating Prison Inmates As Human Beings Actually Works', *HUFFINGTON POST*, 30 October 2017, Available from https://www.huffingtonpost.com/entry/norway-prison_us_578418b6e4b0e05f05232cb7 (accessed 30 July 2018)

the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules, revised in 2015).^{383 384 385}

The most fundamental principle of human rights is that they apply to anyone who is “human” and everybody is equally entitled to human rights without discrimination. Imprisonment does not transform a human being into a different kind of a living being. Thus, human rights apply to prisoners alike.³⁸⁶ International human rights laws and other related documents have outlined basic rights applicable to all human being regardless of differences on any grounds.³⁸⁷

UDHR, Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ICCPR, Article 26

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.

The Nelson Mandela Rules, Rule 2

The present rules shall be applied impartially. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status. The religious beliefs and moral precepts of prisoners shall be respected.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 5 (1)

383 The Human Rights Commission of New Zealand, *Prisoners’ rights*, [website], 2018, <https://www.hrc.co.nz/enquiries-and-complaints/faqs/prisoners-rights/> (accessed 1 August 2018)

384 Human Rights Watch, International Human Rights Standards Governing the Treatment of Prisoners, [website], <https://www.hrw.org/legacy/advocacy/prisons/stndrds.htm> (accessed 2 August 2018)

385 FIDH and UCL, p. 6.

386 R. Schon, *What Human Rights Do Prisoners Have?*, [website], 2016, <https://rightsinfo.org/prisoners-still-afforded-human-rights/> (accessed 30 July 2018)

387 United Nations Office on Drugs and Crime (UNODC), *Handbook on Prisoners with special needs*, New York, UNITED NATIONS PUBLICATION, 2009, pp. 6-7.

These principles shall be applied to all persons within the territory of any given State, without distinction of any kind, such as race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status.

United Nations Standard Minimum Rules for the Treatment of Prisoners, Rule 6 (1)

The following rules shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

However, some rights can be limited or restricted under certain circumstance with certain people at certain time. There are certain situations when the protection of other people's rights or interests of society outweigh rights of a person.³⁸⁸ Consequently, 'restrictions of human rights with regard to prisoners may be justified for reasons of security [or public safety], particularly the prevention of crime and disorder.'³⁸⁹ Nevertheless, this certainly does not imply that a person in custody would completely forfeit all his rights due to the legal status as an inmate.³⁹⁰

'People who are detained or imprisoned do not cease to be human beings, no matter how serious the crime of which they have been accused or convicted.'³⁹¹ A status of prisoner will not remove all basic rights belonged to human. While human rights are for everyone, all inmates still retain all their rights as human beings. They still have rights to receive human's basic needs and should not be treated as 'lesser human beings who have forfeited the right to be respected'.³⁹² Several international conventions and additional documents have affirmed these rights of persons deprived of liberty as follow:

388 Equality and Human Rights Commission, *How are your rights protected?*, [website], 2016, <https://www.equalityhumanrights.com/en/what-are-human-rights/how-are-your-rights-protected> (accessed 9 8 August 2018)

389 P.H.P.H.M.C.V. Kempen, 'Positive Obligations to Ensure the Human Rights of Ensure the Human Rights of Prisoners : Safety, Healthcare, Conjugal Visits and the Possibility of Founding a Family Under the ICCPR, the ECHR, the ACHR and the AfChHPR, Vol. 42, *Nijmegen: Wolf Legal Publishers*, 2008, p. 23.

390 Ibid., p. 21.

391 A. Coyle, *A Human Rights Approach to Prison Management*, London, International Centre for Prison Studies, 2002, p.31.

392 A. Coyle, 2002, p. 31.

Article 10 of the ICCPR, which specifies the protection of prisoners' rights:³⁹³

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

Principle 1 of Basic Principles for the Treatment of Prisoners:³⁹⁴

All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.

Principle 1 of Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment:³⁹⁵

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

Basically, the inevitable consequence of detention is the loss of liberty, which leads to the restriction of some human rights³⁹⁶ such as the right of freedom of movement, right to family contact, right to participate in political activities,³⁹⁷ whereas other basic rights remain, and authorities have an obligation to secure those human rights in prison.³⁹⁸

The Basic Principles for the Treatment of Prisoners has confirmed this by stating in Principle 5 that:³⁹⁹

Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.

393 OHCHR, *International Covenant on Civil and Political Rights*, [website], <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (accessed 9 August 2018)

394 A. Coyle, 2002, p. 33.

395 Ibid.

396 P.H.P.H.M.C.V. Kempen, p. 23.

397 A. Coyle, 2002, p. 32.

398 P.H.P.H.M.C.V. Kempen, p. 23.

399 OHCHR, *Basic Principles for the Treatment of Prisoners*, [website], <https://www.ohchr.org/en/professionalinterest/pages/basicprinciplestreatmentofprisoners.aspx>

While some rights can be restricted for a certain degree under prison environment, no circumstances will ever justify torture and ill-treatment. The rights not to be subjected to torture, or cruel, inhuman or degrading treatment or punishment are recognised as being absolute and cannot be taken away from anyone. All authorities responsible for the administration of prisons should be fully aware of the complete prohibition of this practice.⁴⁰⁰ As several international human rights standards state that:

[T]here are absolutely no circumstances in which torture or other cruel, inhuman or degrading treatment or punishment can ever be justified. Torture is defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person, other than that pain or suffering which is inherent in the fact of detention or imprisonment.⁴⁰¹

This statement has been confirmed in the UDHR, Article 5:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

The Nelson Mandela Rules, a set of ‘guidelines for good principles and practices in the treatment of prisoners and the management of institutions,’⁴⁰² reaffirms this statement in Rule 1:⁴⁰³

All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.

400 A. Coyle, 2002, p. 36.

401 Ibid., p. 34.

402 FIDH and UCL, p. 6-7.

403 UNODC, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, [website], https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf

Article 7 of ICCPR:

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.

The United Nations Human Rights Committee also explains in CCPR General Comment No. 21 as following:

[N]ot only may persons deprived of their liberty not be subjected to [torture or other cruel, inhuman or degrading treatment or punishment], including medical or scientific experimentation, but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the [ICCPR], subject to the restrictions that are unavoidable in a closed environment ... [and] the obligation to treat persons deprived of their liberty with dignity and humanity is a fundamental and universally applicable rule, not dependent on the material resources available to the state party.⁴⁰⁴

More importantly, what should also be concerned other than which rights a prisoner can retain during imprisonment is which obligations prison authorities have in order to assure those rights and whether the authorities do follow them.⁴⁰⁵ As Council of Europe (CoE) has stated in the human rights handbooks No. 7 that:

[E]very right may entail three kinds of obligation: the “obligation to respect”, which requires the state’s organs and agents not to commit violations themselves; the “obligation to protect”, which requires the state to protect the owners of rights against interference by third parties and to punish the perpetrators; and finally the “obligation to

404 Human Rights Watch

405 P.H.P.H.M.C.V. Kempen, p. 21.

implement”, which calls for specific positive measures to give full realisation and full effect to the right ... The European Court of Human Rights has for its part opted for a simpler, two-pronged approach, dividing states’ obligations into two categories: (a) negative obligations and (b) positive obligations⁴⁰⁶... [and] what distinguishes positive obligations from negative obligations is that the former requires positive intervention by the state, whereas the latter require it to refrain from interference.’⁴⁰⁷

Therefore, prison authorities, who are the representative of the state, have responsibility to bear both positive and negative obligations.⁴⁰⁸ In case of correctional settings, negative obligation includes not to torture or treat prisoners with inhuman and degrading manner, in the contrary, positive obligation is to ensure human rights of prisoners and provide conditions, which are consistent with human rights standards.⁴⁰⁹ Unless authorities can successfully fulfil these required obligations and undertake necessary steps to secure the guaranteed rights, prisoners will not be able fully enjoy human rights, no matter how many of these rights remain on the paper while they are being imprisoned.

406 J-F Akandji-Kombe, *Positive obligations under the European Convention on Human Rights: A guide to the implementation of the European Convention on Human Rights*, Belgium, Council of Europe, 2017, p. 5.

407 Ibid., p. 11.

408 P.H.P.H.M.C.V. Kempen, p. 21.

409 Ibid..

6.2 Transgender Inmates' Rights as Human Rights

*Sexual orientation and gender identity are integral to every person's dignity and humanity and must not be the basis for discrimination or abuse.*⁴¹⁰

Vitit Muntarbhorn⁴¹¹

The diversity of humankind and the rights of marginalized people such as transgender individuals are recognized under international human rights instruments and that all states are obliged to respect, protect and fulfill those guaranteed human rights.⁴¹² Yet, their rights to dignity, equality, health and security are reported to be violated.⁴¹³ Within transgender communities, transgender prisoners, together with transgender sex workers and those who are HIV positive, belong to the group of most vulnerable people that have a higher chance of facing a greater risk of marginalization and violence.⁴¹⁴

Generally, transgender people mainly consider the rights to health, to legal gender recognition and to freedom from violence and discrimination as their priorities.⁴¹⁵ This is because ignoring these issues is a key factor that 'marginalizes transgender people, negatively impacts their health and excludes them from the benefits of development.'⁴¹⁶

Currently, the most important binding international legal standards particularly for the protection of transgender individuals is the Yogyakarta Principles (2006). These principles

410 S. O. Corrêa and V. Muntarbhorn, *Introduction to the Yogyakarta Principles*, [website], 2006, <https://yogyakartaprinciples.org/introduction/> (accessed 4 August 2018)

411 Mr. Vitit Muntarbhorn (Thailand) was designated in September 2016 as the first UN Independent Expert on violence and discrimination based on sexual orientation and gender identity by the Human Rights Council.

See Office of the United Nations High Commissioner for Human Rights (OHCHR), *Vitit Muntarbhorn*, [website], 2016, <https://www.ohchr.org/EN/Issues/SexualOrientationGender/Pages/VititMuntarbhorn.aspx>, (accessed 4 August 2018)

412 United Nations Development Programme (UNDP), *Discussion Paper: Transgender Health and Human Rights*, [website], 2013, <http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/discussion-paper-on-transgender-health---human-rights.html> (accessed 3 August 2018)

413 Ibid., p. 1-2.

414 Ibid., p. 7.

415 Ibid., p. 1.

416 Ibid.

address a broad range of human rights standards and provides the most comprehensive guidelines to ensure effective protection of all persons from discrimination based on sexual orientation or gender identity.⁴¹⁷ Principle 1 of Yogyakarta Principles affirms the right to the universal enjoyment of human rights that:⁴¹⁸

All human beings are born free and equal in dignity and rights. Human beings of all sexual orientations and gender identities are entitled to the full enjoyment of all human rights

Regarding transgender inmates, the Principle 9 of Yogyakarta Principles addresses the right to treatment with humanity while in detention that:⁴¹⁹

Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Sexual orientation and gender identity are integral to each person's dignity.

The management of transgender inmates has long been a problem for prison authorities due to their unique characteristics and distinct needs, making a significant difference from general male inmates. The status as a transgender person does not limit that person's entitlement to enjoy the full range of human rights. However, the status as a transgender inmate may have a different outcome. Similar to cisgender prisoners, they are likely to confront with the consequence of detention, which is the loss of liberty, and to face limitations on the enjoyment of some human rights associated with their status whereas other fundamental rights and freedoms remain.

417 A. Saibouyai, p. 16.

418 The Yogyakarta Principles, *Principle 1: The Right to the Universal Enjoyment of Human Rights*, [website], 2006, <https://yogyakartaprinciples.org/principle-1/> (accessed 11 August 2018)

419 The Yogyakarta Principles, *Principle 9 :The Right to Treatment with Humanity while in Detention*, [website], 2006, <https://yogyakartaprinciples.org/principle-9/> (accessed 11 August 2018)

6.3 Healthcare Services for Transgender Inmates: Security Protection vs Personal Health Violation

Having a good health is an essential element of a person having a good life and being able to function normally as a member in community.⁴²⁰ Everybody should have equal chance to receive adequate healthcare in order to maintain decent physical and mental condition, especially those in closed settings such as prison.⁴²¹ In order to understand the right to medical care of MtF transgender people during imprisonment, it is, therefore, crucial to first explore the basics of prisoners' rights to medical care.

6.3.1 Prisoners' Rights to Medical Care

Basically, not only prison life is seemed to be difficult for anyone to live in, but the nature of prison also has a damaging effect on both the physical and mental health and well-being of prisoners.⁴²² Consequently, 'compared to the general population, the health needs within the prison population are typically higher in relation to physical and mental health and drug dependencies.'⁴²³

By arresting and depriving a person of liberty, the State takes the full responsibility and holds absolute obligation under international human rights laws to provide adequate medical care to ensure good health of prisoners as well as to establish appropriate prison conditions to secure the physical and psychological integrity and well-being.^{424 425} Typically, prisoners fully rely on prison authorities to access healthcare. The denial of treatment by authorities may eventually result in a serious impact on the health and well-being of the inmates. Prisoners may not be able to choose their own specific medical treatment, but they still retain their right to medical care which is at least in

420 A. Coyle, 2002, p. 49.

421 Ibid.

422 Ibid.

423 University of Essex, 4. *Health Care*, [website], <https://www.penalreform.org/wp-content/uploads/2017/02/Chapter-4-on-Healthcare-final.pdf>, p. 1, (accessed 6 August 2018)

424 Lawyers' Rights Watch Canada

425 A. Coyle, 2002, p. 49.

accordance with professional medical standards provided in the wider community.⁴²⁶

Article 12 (1) of ICESCR establishes:

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.

Principle 9 of Basic Principles for the Treatment of Prisoners:⁴²⁷

Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

However, the International Committee of the Red Cross (ICRC) has pointed out an interesting issue in addition to prisoners who receive only the basic healthcare service that:

Human rights instruments call for prisoners to receive health care at least equivalent to that available for the outside population. On the one hand, “**equivalence**” rather than “**equity**” has been called for because a prison is a closed institution with a custodial role that does not always allow for the same provision of care available outside. On the other hand, because prisoners are more likely to already be in a bad state of health when they enter prison, and the unfavourable conditions therein make the health situation even worse, the need for health care and treatments will often be greater in a prison than in an outside community.⁴²⁸

States have the obligations under international instruments to ensure the right to the highest attainable standard of health for their people. Apart from fundamental rights of all persons, prisoners have additional protection from the state as a result of their status. This is due to the fact that:

426 Lawyers’ Rights Watch Canada.

427 A. Coyle, 2002, p. 50.

428 H. Reyes, *Health and human rights in prisons*, [website], 2001, <https://www.icrc.org/eng/resources/documents/misc/59n8yx.htm> (accessed 9 August 2018)

the State has brought someone into a situation in which he cannot provide for his own health or safety as well as he generally would be able to in free society. It is therefore perfectly in line with the minimum basic principle that authorities are obligated actively to provide measures of healthcare as a compensation for the unintended consequences of imprisonment.⁴²⁹

During the imprisonment, health conditions of inmates are under the responsibilities of the state to take care of, whereas all medical treatment or nursing care provided by the prison administration are free of charge and comparable to what available in the outside community.⁴³⁰ The needs in relation to physical and mental health among inmates can be notably higher than general people. This is due to the nature of prison as well as environment in the closed settings that can place inmates into even more vulnerable positions and bring about detrimental effects on health and well-being.

6.3.2 Transgender Prisoners' Rights to Medical Care

With regards to MtF transgender inmates, a majority of transgender inmates in Thailand are from lower socioeconomic backgrounds and many of them already have poor health conditions prior to incarceration.⁴³¹ These pre-existing health problems, including mental health disorders, are primarily caused by negligence, substantial abuse, poverty, or their previous lifestyle.⁴³² 'These prisoners will need particular support, as will those many others, whose mental health may be significantly and adversely affected by the fact of imprisonment.'⁴³³

In addition to this, MtF transgender people basically have their own set of health issues and specific medical needs,⁴³⁴ especially those having been diagnosed with GD and

429 P.H.P.H.M.C.V. Kempen, p. 32.

430 'มาตรฐานการรักษา รพ.เรือนจำ (Medical Standards in Medical Correctional Hospital)' [online video], 2015, <https://www.youtube.com/watch?v=uSdL3EfXhOA> (Accessed 11 August 2018)

431 D. Routh, G. Abess, and D. Makin et al, p. 7.

432 A. Coyle, 2002, p. 49.

433 Ibid., p. 49.

434 D. Routh, G. Abess, and D. Makin et al, p. 7.

suffering from the symptoms. This condition certainly requires medical intervention known as gender specific treatment or gender affirming health care which includes psychotherapy, hormone therapy and sex reassignment therapy. This treatment markedly helps to alleviate psychological symptoms and reduce the chance of having associated mental disorders. And if GD is ‘left untreated, serious medical issues such as depression, suicidal thoughts, and auto-castration attempts can occur.’⁴³⁵

The Yogyakarta Principles have taken the importance of gender-related medical care in reducing the distress caused by GD into account by declaring in the Article 9 (b) that:

Provide adequate access to medical care and counselling appropriate to the needs of those in custody, recognising any particular needs of persons on the basis of their sexual orientation or gender identity, including ... therapy and access to hormonal or other therapy as well as to gender-reassignment treatments where desired

The United Nations Office on Drugs and Crime (UNODC) likewise set out recommendations for prison authorities related to Health Care of transgender inmates in the Handbook on Prisoners with special needs that:

To meet the special health care needs of LGBT prisoners, including treatment available in the community for gender dysphoria, such as hormone therapy, as well as sex reassignment surgery, if available in the community.

Given that specific treatment provided in prison can only be based on clinical grounds and must be prescribed by a doctor, in this case, menopausal women are able to access hormones.⁴³⁶ In the contrary, transgender people who have not undergone SRS cannot be approved by a doctor as there are no medical indications for hormone therapy.⁴³⁷ On the other hand, MtF transgender people who had undergone complete sex surgery (or genital surgery) are desperately in need of hormone treatment whether or not they are

435 Ibid.

436 A. Saibouyai, p. 11.

437 Interview with a doctor

having GD.⁴³⁸ This is because, SRS includes the removal of testicles where the body will be no longer able to naturally produce hormone testosterone.⁴³⁹

Apparently, ‘these are only the surgical changes as additional hormone therapy is necessary for a variety of other changes in the body’⁴⁴⁰ as well as to maintain sex hormone in the body at the most appropriate level.⁴⁴¹ Provided that these MtF transgender individuals do not take sex-hormone replacement treatment, in which they obviously prefer hormone oestrogens, they will experience the same symptoms and health risks as men suffering from male menopause (also known as andropause) or the drop in testosterone production.⁴⁴² Male menopause can cause both physical and psychological problems include low energy, feelings of physical weakness, reduced muscle mass, decreased bone density, difficulty with concentrating and memorizing, insomnia, depression, low self-confidence, feelings of irritability and mood swings.⁴⁴³ These symptoms can get worsen as a person get older.⁴⁴⁴ Thus, in case of MtF transgender persons with SRS, this means that the longer they live without hormone replacement treatment, the worsen the symptoms can become.

Another reason that justifies the denial of hormone treatment, apart from being considered as beauty care rather than healthcare, is the concern over security.⁴⁴⁵ No external medicine or special medication is allowed to be self-brought from outside of prison by any means.⁴⁴⁶ The key purpose is to prevent illegal drug smuggling into prison. This is due to the possibility that the self-brought medicine may contain illicit

438 Ibid.

439 Ibid.

440 L. Moore, *This Is How Doctors Turn A Penis Into A Vagina*, [website], 2015, <https://www.cosmopolitan.com/sex-love/news/a50543/how-does-male-to-female-surgery-work/> (accessed 10 August 2018)

441 Interview with a doctor

442 B. Krans, *What Is Male Menopause?*, [website], 2018, <https://www.healthline.com/health/menopause/male> (accessed 10 August 2018)

443 Ibid.

444 Ibid.

445 Interview with an official from the Department of Corrections, Bangkok, 28 June 2018.

446 Interview with a prison guard, Bangkok, 3 July 2018

substances.⁴⁴⁷ Basic medication is provided at Medical Centre in prison, Whenever inmates' medical conditions are beyond the ability of the centre to treat, they will be firstly assessed and approved by Medical Officer then referred to the Medical Correctional Hospital, the first and only hospital exclusively for prisoners.⁴⁴⁸

Basically, all inmates can access to medical facilities and receive the health treatment at the equivalent standards available to the public at large. But once hormone treatment for transgender individuals is not considered medication, they are not granted to the treatment in any case. Unfortunately, prisoners entirely depend on the authorities to access healthcare treatment and other medical services. The denial of gender specific treatment due to prison regulation can have an acute impact on a prisoner's health and well-being.

6.4 State Obligations: Breach of or Obligated to

*ICCPR right to be treated with humanity and with respect for the inherent dignity of the human person, has a broader meaning than the right to life and the right not to be tortured or ill-treated, while it still includes the right to adequate medical care during detention.*⁴⁴⁹

The existing international human rights mechanisms have affirmed States' obligation to ensure effective protection of all persons from discrimination based on sexual orientation or gender identity and adopt necessary measures to address the particular health needs of transgender individuals with respect to human dignity. 'Many States now have laws and constitutions that guarantee the rights of equality and non-discrimination without distinction on the basis of sex, sexual orientation or gender identity'.⁴⁵⁰ Thailand is one of those states that has ratified all international human rights conventions meant to protect the rights of gender-diverse people and persons

447 Ibid.

448 'เปิดโรงพยาบาลราชทัณฑ์ (A visit to Medical Correctional Hospital)' [online video], 2016, https://www.youtube.com/watch?v=k89mDJi_I4 (accessed 11 August 2018)

449 P.H.P.H.M.C.V. Kempen, p. 34.

450 S. O. Corrêa and V. Muntarbhorn.

deprived of liberty. Thai government adopted the guidelines into national laws and implemented them with the purpose to improve health and living conditions of transgender inmates who are particularly vulnerable to both physical and mental health.

In the recent years, a significant improvement in providing safer environment for transgender inmates in Thai prisons has been made, nevertheless, specific health treatment of MtF transgender inmates remains a problematic issue for prison administrations. Although medical intervention for GD and hormone replacement therapy for transgender person having undergone SRS are considered necessary, all transgender inmates are forced to terminate hormone therapy once detained. This regulation does not take in to account the fact that many of these MtF transgender inmates had begun cross-sex hormone therapy long before the incarceration or even since their puberty and the discontinuation can cause them physical distortion and severe psychological stress.

‘The issue of the provision of adequate healthcare facilities to prisoners is central to the international standards.’⁴⁵¹ States have positive obligation under international human rights laws to provide appropriate medical care and protect the well-being of inmates. This obligation will become even more important when inmates are more vulnerable due to their severe health conditions.⁴⁵² Indeed, the failure of prison administrators to provide appropriate healthcare services or deliver timely medical assistance to those in need of medication has breached human rights of prisoners as follow: ⁴⁵³

451 The Irish Penal Reform Trust (IPRT), *IPRT Position Paper 4-Human Rights in Prison*, [website], 2009, http://www.iprt.ie/files/IPRT_Position_Paper_4_-_Human_Rights_in_Prison.pdf (accessed 11 August 2018)

452 Ibid.

453 Ibid.

RIGHT TO BE FREE FROM ALL FORMS OF DISCRIMINATION

*The discrimination transgender people face in prison systems is more than simple inequality: it can threaten dignity, safety, bodily integrity, and even life.*⁴⁵⁴

Another form of discrimination on the ground of gender can be manifested in the form of the negligence of gender-diverse people. The non-recognition of gender diversity has significant impacts on transgender inmates as it is considered critical for their health and well-being in prisons. It also contributes to a lack of guidance concerning the medical issues of transgender inmates.⁴⁵⁵ Moreover, the major factor in the prohibition of the use of cross-sex hormone and birth control pills among MtF transgender inmates is the ‘consequence of applying gender binary framework in prison management.’⁴⁵⁶ Unfortunately, due to the gender binary system, there is no justification to disseminate birth control pills or hormone oestrogens in male prisons under the provision that these supplies are not considered as medical needs for male.⁴⁵⁷ In some cases, transgender people may not ‘fit easily within the sex-segregated categories of women’s and men’s health conditions.’⁴⁵⁸

Because the notion of gender binary is intrinsically adopted in correctional policy and internal practice⁴⁵⁹, transgender inmates are unfairly refused to take hormone treatment based on their gender. In addition, the lack of precise understanding and adequate concern among prison authorities on the issue of gender-diverse people also has negative impacts on the protection of transgender inmates’ basic rights on different dimensions ranging from living condition to the security.⁴⁶⁰ For a transgender inmate to achieve the highest attainable standard of health and well-being during detention, it is important for

454 Human Rights Watch, 2006, p. 2.

455 Gorden, Hughes, Roberts et al, p. 21.

456 A. Saibouyai, p. 11.

457 Ibid.

458 UNDP, 2013, P. 17

459 A. Saibouyai, p. 18.

460 Ibid., p. 17.

prison authorities to acknowledge the existence of gender diversity and respect the right to self-determination of transgender people.⁴⁶¹

Under the principle of non-discrimination on the ground of gender, whether or not transgender inmates suffering from GD or having already undergone SRS, health condition is not the main reason used to justify a person to receive a specific healthcare. Instead, transgender individuals should be able to obtain specific treatment based on their “preferred gender”. However, not only within correctional system where the concept of diversity within the term “gender” must be acknowledged, but medical profession in Thailand should also start to realize that medical treatment is no longer restricted only for “male” or “female”. More importantly, gender affirmative therapy should be considered medical aspect of gender transitioning for people with diverse sexuality.

RIGHT TO HEALTH

*No person deserves to be subjected to degradation or be denied medical treatment based on their gender.*⁴⁶²

The UDHR clearly states that “**everyone has the right to enjoy the highest attainable standard of physical and mental health.**” Therefore, unquestionably, prisoners have the right to receive medical treatment to maintain good health and well-being during imprisonment. They may not be able to choose a specific treatment, instead of that, the prison authorities provide what is seemed to be the most appropriate treatment which is enough to meet the health needs of the prisoner. More importantly, prison authorities cannot deny treatment to any inmates in need of medication.⁴⁶³

461 M. Szydlowski, ‘Gender recognition and the rights to health and health care: Applying the principle of self-determination to transgender people’, *International Journal of Transgenderism*, Vol. 17, 2016, p. 199. pp. 199-211.

462 Equal Justice Project, *Transgender Prisoners’ Rights Ignored: Report on the Treatment of transgender Prisoners Under the Policies of the Department of Corrections*, [website], 2013, <http://equaljusticeproject.co.nz/wp-content/uploads/2013/07/equal-justice-project-transgender-prisoners-rights-ignored-report.pdf> (accessed 12 August 2018)

463 Equal Justice Project, p. 7.

In case of transgender individuals diagnosed with GD, ‘not treating gender dysphoria is no different to not treating diabetes or heart disease.’⁴⁶⁴ This is because all these health conditions correspondingly require specific treatments and if they are left medically untreated, the consequences can be very serious. Additionally, transgender inmates who had gone through sex surgery are also in need of hormone replacement therapy, although the adverse health outcomes from being untreated may not occur in a short term.

RIGHT TO BE FREE FROM TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

*[W]hen gender dysphoria goes undetected and undiagnosed, morbidity and mortality become significant.*⁴⁶⁵

The certain circumstances in which inmates are facing life threatening situations or the deficient physical conditions which cause the inmates suffering inhumanely without health care could be classified as inhuman or degrading treatment.⁴⁶⁶

The United Nations Human Rights Committee’s (HR Committee) has confirmed that the ‘adequate or appropriate and timely medical care must be provided to all detainees as part of state duties to ensure the enjoyment by all persons of the rights.’⁴⁶⁷ These protected rights are, not only, the right to be free from torture or cruel, inhuman or degrading treatment and punishment, but also the right to life.⁴⁶⁸ The UN Committee has further elaborated on this issue that ‘the State party by arresting and detaining individuals takes the responsibility to care for their life [and] it is incumbent on States to ensure the right of life of detainees, and not incumbent on the latter to request protection.’⁴⁶⁹

464 Gorden, Hughes, Roberts et al, p. 21.

465 Ibid., p. 21.

466 P.H.P.H.M.C.V. Kempen, p. 33.

467 Lawyers’ Rights Watch Canada

468 Ibid.

469 Ibid.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)⁴⁷⁰ also states that ‘An inadequate level of health care can lead rapidly to situations falling within the scope of the term inhuman and degrading treatment.’⁴⁷¹

Hormone therapy has long been a problematic issue for prison administrators. Medical professionals in Thailand do not consider hormone treatment as medication, unless having already undergone SRS. In any cases, the Department of Corrections recognizes hormone treatment as being used solely for beauty purpose. Therefore, hormone therapy will be immediately terminated once the inmates step into prison settings.

The prison regulation which restricts the access to hormone therapy, therefore, contribute to the violations of human rights including right to be free from all forms of discrimination, right to health and right to be free from torture or other cruel, inhuman or degrading treatment or punishment. These human rights violations inevitably breach the provisions of legally-binding international human rights treaties to which Thailand is a state party to.

Conclusion

According to international human rights standards and mechanisms, all persons deprived of their liberty should be treated at all time with humanity and with inherent dignity of a human being. Besides the right to liberty and a few other rights related, all prisoners still retain the most fundamental rights as free population is entitled to. All states have both negative and positive obligations to ensure and to protect the rights of people deprived of liberty as well as to provide prison preconditions where the inmates can enjoy the fundamental rights they retain during imprisonment.

470 A specific body, created by The Council of Europe, has the mandate to monitor ill treatment and the conditions of prisoners, including all aspects of health issues within prisons.

See H. Reyes.

471 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Health care services in prisons: Extract from the 3rd General Report of the CPT, published in 1993*, [website], <https://rm.coe.int/09000016806ce943> (accessed 12 August 2018)

Regarding transgender inmates, Thailand ratified all international human rights conventions which guarantee the non-discrimination and protect gender-diverse people. In the recent years, the Department of Corrections have adopted and implemented new regulations that ensure the good health and well-being of MtF transgender inmates who are particularly vulnerable to both physical and mental condition. However, despite the increasing number transgender people in correctional settings every year, transgender inmates remain a significant challenge for prison management, especially in the case of gender specific healthcare such as hormone treatment.

Hormone treatment is one of the gender affirmative procedures and is the most widely used among MtF transgender in Thailand. Whereas hormone therapy is internationally recognised as medical necessary to alleviate symptoms caused by GD and to maintain sex hormone levels within the normal range for those who had undergone SRS, prison administration considers the treatment a beauty purpose, which must be terminated as soon as a transgender person entering the prison compound. This restriction of hormone treatment in correctional settings constitutes the violation of human rights guaranteed in international human rights instruments.

7 CONCLUSION

“Transgenderism” exists because of the distinction between the concepts of “sex” and “gender”. “Transgender” is an umbrella term referring to individuals, whose gender identity and expression do not conform to norms and expectations, which are traditionally associated with sex assigned at birth. Thus, a transgender person is generally described as someone whose inner gender identity and outward expression differ from their biological sex. Being a transgender is not a “choice” but is “genetic in origin”. Therefore, transgender health needs or gender specific treatment are of biological nature.

Hormone therapy, sometimes referred to as “cross-sex hormone therapy”, is considered standard practice for transgender men and women in acquiring desired secondary sex characteristics and changing physical body to match psychological gender identity. Cross-sex hormone therapy has been shown to have positive physical and psychological effects on the transitioning individual and is a medically necessary intervention for gender non-conforming individuals with GD in order to alleviate the symptoms and decrease the suffering. Moreover, in the case of MtF transgender person who had undergone SRS, hormone treatment is considered vital element to maintain the level of sex hormone at the normal range which helps to sustain the well-being of a person. The outcomes tend to be favourable both physically and mentally, but there are risks and adverse effects needed to be aware of as well. The initiation or termination of hormone treatment should, therefore, be under supervision of qualified professionals.

In Thailand, cross-sex hormone therapy is most widely used within MtF transgender community and is often the only treatment used during transitioning period. This is because hormone therapy is easily accessible and much less expensive than SRS but highly effective in changing secondary sex characteristics. However, due to the inadequate accessibility and high expense of medical services specified for transgender people as well as the extensive availability of contraceptive pills and pure cross-sex

hormones, MtF transgender persons often undergo self-treatment without proper medical consultation. Most of them are not fully aware of the followed health risk mainly because there is no accurate information and sufficient knowledge provided.

Even though the acts of discrimination are prohibited under the Constitution of Thailand, Gender Equality Act and other frameworks, it seems that transgender individuals in Thailand are not completely-legally recognized and cannot fully enjoy the same rights as the general population. Transgender people still experience discrimination and social exclusion that result in social marginalization and less opportunities in several aspects of life. The discrimination on the ground of education and employment leads to limited income-generating options and extreme poverty. This results in the disproportionate number of transgender individuals being involved in criminalized economies and illegal work. Consequently, gender nonconforming people are seemed to be excessively represented in the criminal justice system.

During imprisonment, what inmates are deprived of is only the right to liberty together with a small number of rights that have been limited as a specific consequence of deprivation of liberty such as the right of freedom of movement, right to family contact, right to participate in political activities. Other fundamental human rights remain in force and prison authorities have an obligation to ensure the most optimal prison conditions for inmates as well as to secure the physical and psychological integrity and well-being of prisoners.

Regarding MtF transgender inmates, the notion of gender binary in Thai legislation has brought about significant impacts to the rights of transgender inmates in different dimensions ranging from living condition to healthcare. Apart from discrimination and violence inherent in prison, the discontinuation of hormone treatment is what MtF transgender inmates concern the most.

Hormone therapy has long been a problematic issue for prison administrators. The Department of Corrections does not consider hormone treatment as medication, but for beauty. Therefore, hormone therapy is to be immediately terminated once the inmates

step into prison settings. This regulation results from the misunderstanding of severity of physical and psychological distress which is inherent in GD, the importance of sex hormone levels in blood as well as the ignorance of gender-variance.

The prison regulation, which restricts the access to hormone therapy, thus contributes to the violations of human rights including right to be free from all forms of discrimination, right to health and right to be free from torture or other cruel, inhuman or degrading treatment or punishment. These human rights violations inevitably breach the provisions of legally-binding international human rights treaties to which Thailand is a state party to.

In order to provide a better protection for MtF transgender inmates, the gender binary notion seems to be inadequate for describing or classifying people in present days. The distinction between “sex” and “gender” should always be kept in mind. By adding the concepts of “gender identity” and “gender-diverse people” to the definition, the Department of Corrections will be able to plan and develop future policies or legislations with the aims to better foster the rights of gender-diverse people in correctional system. The recognition of gender diversity will be able to classify prisoners more precisely both in terms of housing and healthcare. In addition, more medical researches or studies on the topic of gender affirmative treatment for transgender people in Thailand should be conducted.

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APPENDIX I: RATIFICATION STATUS FOR THAILAND⁴⁷²

Treaty Description	Treaty Name	Signature Date	Ratification Date, Accession(a), Succession(d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment	CAT		02 Oct 2007 (a)
Optional Protocol of the Convention against Torture	CAT-OP		
International Covenant on Civil and Political Rights	CCPR		29 Oct 1996 (a)
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty	CCPR-OP2-DP		
Convention for the Protection of All Persons from Enforced Disappearance	CED	09 Jan 2012	
Convention on the Elimination of All Forms of Discrimination against Women	CEDAW		09 Aug 1985 (a)

472 OHCHR, *Ratification Status for Thailand*, [website], 2018, https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=172&Lang=EN (accessed 13 August 2018)

International Convention on the Elimination of All Forms of Racial Discrimination	CERD		28 Jan 2003 (a)
International Covenant on Economic, Social and Cultural Rights	CESCR		05 Sep 1999 (a)
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	CMW		
Convention on the Rights of the Child	CRC		27 Mar 1992 (a)
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	CRC-OP-AC		27 Feb 2006 (a)
Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography	CRC-OP-SC		11 Jan 2006 (a)
Convention on the Rights of Persons with Disabilities	CRPD	30 Mar 2007	29 Jul 2008

Table 5. Ratification Status for Thailand.

ABSTRACT (ENGLISH)

Despite prisoner's legal status and some certain rights legally constrained during incarceration, all prisoners are still able to enjoy most basic human rights including right to healthcare and right to be free from discrimination. While global society has been advocating for rights of transgender individuals in all aspects, the right of transgender prisoners in accessing to treatment of their gender identity remains controversial. Hormone treatment, as one of gender specific healthcare, is internationally considered medical necessary to alleviate the suffering the symptoms caused by Gender Dysphoria and to maintain sex hormone levels at normal range for those having undergone Sex Reassignment Surgery. However, according to Thai correctional regulations, hormone treatment is not provided in prisons while the discontinuation can contribute to physical and mental health problems. This thesis argues that the forced termination of hormone treatment breaches provisions of international human rights treaties and the state fails to fulfil its legal obligations to ensure fundamental rights of their people.

Keywords: Thailand, male-to-female, transgender, hormone treatment, Gender Dysphoria, prisoners, human rights, state obligation

ZUSAMMENFASSUNG

Ungeachtet der Rechtslage der Strafgefangenen und bestimmter während der Inhaftierung beschränkter Rechte, können alle Strafgefangene noch die grundlegenden Menschenrechte einschließlich des Rechts auf Gesundheitsversorgung und des Rechts auf ein Leben frei von Diskriminierung in Anspruch nehmen. Während die globale Gesellschaft die Rechte der Transsexuellen in jeder Hinsicht vertreten, blieben die Rechte der transsexuellen Strafgefangenen für den Zugang zur Behandlung ihrer Geschlechtsidentität jedoch umstritten. Die Hormontherapie als eine der geschlechtsspezifischen Behandlungen wird international als eine notwendige medizinische Behandlung betrachtet, um die Leiden von Symptomen zu mildern, die durch die Geschlechtsdysphorie verursacht werden. Für die Personen, die gerade eine geschlechtsangleichende Operation durchführen, ist die Hormontherapie auch wichtig, damit die Niveaus der Sexualhormone im Gleichgewicht gehalten werden können. Dennoch wird die Hormontherapie gemäß der thailändischen Grundvorordnungen der Justizvollzugsanstalten in den Haftanstalten nicht zugänglich, wodurch die Einstellung der Hormontherapie zu den körperlichen und geistlichen Gesundheitsproblemen beitragen kann. Diese Masterarbeit vertritt die Meinung, dass die erzwungene Einstellung der Hormontherapie als eine Vertragsverletzung der Bestimmungen vom internationalen Menschenrechtsvertrag gilt und dadurch kommt der Staat seinen rechtlichen Verpflichtungen nicht nach, um die Grundrechte von den betroffenen Personen in seinem Staat zu sichern.

Schlüsselwörter: Thailand, Mann zur Frau, Transgender, Hormontherapie,
Geschlechtsdysphorie, Strafgefangene, Menschenrechte,
Staatsverpflichtung