Identity affirmed - Identity denied.
Transgender people at the margins in Hong Kong

Sam Winter, University of Hong Kong

This presentation

- Transsexualism
- A slope from stigma to sickness
- Living on the slope in HK
  - HK’s health policy and legal environment
    - Current requirements for a gender affirmative ID card
- CFA judgment in case of ‘W’
  - HK Government’s response
- The MAB and what is wrong with it
  - What is happening elsewhere in the world?
What is transsexualism?

A desire to live and be accepted as a member of the opposite sex, usually accompanied by a sense of discomfort with, or inappropriateness of, one's anatomic sex and a wish to have hormonal treatment and surgery to make one's body as congruent as possible with one’s preferred sex’.

What is transsexualism?

A desire to live and be accepted as a member of the opposite sex, *usually accompanied by a sense of discomfort with, or inappropriateness of, one's anatomic sex and a wish to have hormonal treatment and surgery to make one's body as congruent as possible with one's preferred sex*. (Definition of ‘transsexualism’, ICD-10, WHO, 1992).
About transsexualism

• Trans women (assigned as male, experience is female)
• Trans men (assigned as female, experience is male)
• About experienced gender (gender identity),
  – not simply about dressing up and making up
  – not sexual orientation at all
• Biological predisposition?
• Reparative therapy unsuccessful, often damaging, ruled unethical (WPATH)
• The importance of gender affirmative policies
Trans people: stigma to infection and sickness

Stigma
- Prejudice + Discrimination
  - Poor social / emotional well-being
  - Harassment + Abuse
  - Violence

Marginalisation (social, economic, legal)
- Poor health services, Access
- Risky situations + behaviours
- Infection + sickness

Death

HIV+/AIDS
- Sex work
- Poverty
The HK legal and health policy environment

Gender affirming healthcare

But:

Little protection against discrimination

Gender recognition policies archaic
Current requirements for a gender affirmative ID card.

Persons applying to change the sex entry on their identity card should:

a) produce a medical proof which should indicate that the following criteria for the completion of SRS are met:

(i) for sex change from female to male
   removal of the uterus and ovaries; and
   construction of a penis or some form of a penis;
(ii) for sex change from male to female
   removal of the penis and testes; and
   construction of a vagina;
The CFA judgment in the case of ‘W’

- The marriage legislation must be interpreted to include ‘a post-operative male-to-female transsexual person whose gender has been certified by an appropriate medical authority to have changed as a result of sex reassignment surgery’ (150b)
- ‘W’ should be regarded in that legislation as a woman (150c)
- The above declarations shall not come into effect until another 12 months have passed
The CFA judgment in the case of ‘W’

• We would not seek to lay down a rule that only those who have had full gender reassignment surgery involving both excising and reconstructive genital surgery, qualify. We leave open the question whether transsexual persons who have undergone less extensive treatment might also qualify. (124).

• A compelling model may readily be found in the United Kingdom’s Gender Recognition Act 2004 ("GRA 2004") ...... (138)
The Government’s response to the ‘W’ judgement

• The Marriage (Amendment) Bill (MAB)
  – ‘full sex reassignment surgery’ (40a)

• Interdepartmental Working Group
  – Chaired by SoJ
  – Reps from CMAB, Food and Health, and Security
  – Two external members, both lawyers
What is wrong with the MAB?

For many trans people, surgery not a medical necessity
For many trans people, surgery not advisable
Arbitrarily differential treatment of two groups of people
Makes no sense on health grounds
Undermining of full consent
Coercive medicine (coerced sterilisation)
Threat to physical integrity of body
Undermines other well established rights in human rights law
Cruel, inhuman and degrading treatment
No person should have to undergo surgery or accept sterilization as a condition of identity recognition. If a sex marker is required on an identity document, that marker could recognize the person's lived gender, regardless of reproductive capacity. The WPATH Board of Directors urges governments and other authoritative bodies to move to eliminate requirements for identity recognition that require surgical procedures.'
American Medical Association
Statement: 9th June 2014
‘Conforming Birth Certificate Policies to Current Medical Standards for Transgender Patients’

‘that our AMA support elimination of any requirement that individuals undergo gender affirmation surgery in order to change their sex designation on birth certificates and support modernizing state vital statistics statutes to ensure accurate gender markers on birth certificates’.

Google: “AMA Birth Certificates”
Eliminating forced, coercive and otherwise involuntary sterilization: an interagency statement

WHO, in collaboration with OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF.

May 31, 2014

Google: “UN inter-agency sterilisation”
UN Interagency Statement

‘In many countries, transgender and often also intersex persons are required to undergo sterilization surgeries that are often unwanted, as a prerequisite to receiving gender-affirmative treatment and gender-marker changes. According to international and regional human rights bodies and some constitutional courts, and as reflected in recent legal changes in several countries, these sterilization requirements run counter to respect for bodily integrity, self-determination and human dignity, and can cause and perpetuate discrimination against transgender and intersex persons. (p7)
Legal, regulatory, policy and practice actions.

Recommendations: Laws, regulations and policies

- Ensure that sterilization, or procedures resulting in infertility, is not a prerequisite for legal recognition of preferred sex/gender. (p13)
Trends in legal gender recognition

Surgery NOT required

Hormones NOT required

Medical services NOT required
Argentina
Gender Identity Law (2012)

• 18+
• Complete an application form
• Send it to National Bureau of Statistics
• Provide new first name if needed.

• Provisions for children < 18
Thank you!

FOR MORE INFORMATION CONTACT
sjwinter@hku.hk