



Artigos originais

Intransigent legislation: Public Policy analysis on the reality of trans lives

Legislação intransigente: Análise das Políticas Públicas na realidade das vidas trans

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Abstract: This paper engages in a comparative analysis of trans-positive political frameworks in Brazil, Canada, and Costa Rica. Our analysis focused on the protection of trans rights and access to gender-affirmative and trans-positive health care, as well as the legal mechanisms involved in changing one's name and gender designator. The information was gathered from January 2014 to September 2015, through virtual research in the official government websites and in the following databases: Medline, LILACS, SciELO and Google Scholar. The paper restricts this analysis in highlighting the necropower of Law and Medicine as instituted forces that throughout the "normalizing", homogenizing, moralizing, psychiatrizing and pathologizing process, dictate in society their rules. It is concluded that the human rights with regards access to the health and judicial systems, remain based on an invisible or psychiatric model. Therefore, in the examined countries we can conclude that the advancing steps show relatively limited progress, perhaps, because the gender perspective is still absent from the social debate.

Keywords: Transsexuality. Public Policies. Legislation & Jurisprudence. Necropolitics..

Resumo: Este trabalho envolve em uma análise comparativa das estruturas políticas trans-positivos no Brasil, Canadá e Costa Rica. A nossa análise incidiu sobre a proteção dos direitos trans e acesso a cuidados de saúde de gênero-afirmativa e trans-positivos, bem como os mecanismos legais envolvidos na mudança queridos nome e designador de gênero. A informação foi recolhida a partir de Janeiro de 2014 e Setembro de 2015, através da investigação virtual nos sites oficiais do governo e nas seguintes bases de dados: Medline, Lilacs, SciELO e Google Acadêmico. O documento restringe esta análise em destacar a necropower de Direito e Medicina como forças instituídas que ao longo da "normalização", homogeneizar, moralizante, psychiatrizing e processo de patologização, ditam na sociedade as suas regras. Conclui-se que os direitos humanos no que diz respeito ao acesso aos sistemas judiciais saúde e, permanecem com base em um modelo invisível ou psiquiátrica. Portanto, nos países analisados, podemos concluir que os passos de avanço mostrar o progresso relativamente limitado, talvez, porque a perspectiva de gênero ainda está ausente do debate social.

Palavras-chave: Transexualidade. Políticas públicas. Legislação & jurisprudência. Necropolítica.

1. Introduction

Trans and gender non-conforming people experience discrimination and marginalization as a result of societal stigma associated with gender identities that deviate from the norm or hegemonic identities.

Recent research shows that trans-identified people are disproportionately affected by high rates of unemployment, hostile working conditions, difficulty in finding housing, harassment, physical and sexual assault, violence, limited access to healthcare, criminalization, surveillance, and immigration problems and human rights violations during imprisonment.¹⁻⁵

In light of these systemic inequities, countries like Brazil and Canada have enacted regulations that provide legal protection to trans identified persons. In addition, nations such as

Costa Rica have also recently begun to implement actions that protect the human rights claimed by this population.

In this sense, recent international research strongly recommends that gender categories needs to be expanded in order to include a more diverse representation of identities in public health programs and to reduce the social inequalities described above. 5-9

Despite these recommendations, progress has been slow. This could be due to the fact that there is a need to incorporate the subject of gender fluidity into public debates and policy arguments.

From this perspective, several questions arise as a result of these pressing social and human rights issues: How are sex, gender, body and sexuality comprehended and contemplated by competing models of contemporary law? How do public policies attend to the links between gender identity and citizenship recognition? What are the possibilities of legal support for an individual whose gender identity does not match the sex assigned to them at birth?

Subsequently, this paper engages in a comparative analysis of trans-positive political frameworks in Brazil, Canada, and Costa Rica. Our analysis focused on the protection of trans rights and access to gender-affirmative and trans-positive health care, as well as the legal mechanisms involved in changing ones name and sex designator.

This analysis contemplates the different forms of trans expression that have been modulated by both socio-political responses, as well as the legal bodies that determine the subversive and symbolic limits of (non)normative embodiment.

To this end, this manuscript integrates a bibliography analysis of the nuances of bio-politics/necropolitics, inclusion/exclusion, acceptance/rejection, and integration/neglect. Simultaneously, addresses the lack of public policies related to the provision of health-care for trans-identified individuals, and the bureaucratic, legal, and financial obstacles this population faces when trying to obtain identity documents that match their current gender identity and expression.

In many cases, the overwhelming absence of trans-positive and affirming health care policies, as well as the negligence in the implementation and enforcement of any existing ones, means that many trans-individuals report having experienced difficulties and stigma when accessing routine health care and these problems are compounded when seeking specific transition-related medical support.

Some studies have reported that trans identified people who are unable to find a trans-positive and competent healthcare provider, and therefore, unable to access hormone-therapy; have a higher risk of developing mental health issues, such as depression, anxiety, and suicidal ideation. 10 Furthermore, these individuals are more likely to resort to self-administered "do it yourself" transitions. 11

The Trans PULSE study (2010), for example, conducted in Ontario, Canada, found that out of 433 trans individuals receiving hormone-therapy, 27% reported having administered hormones in the past without a prescription. In lieu of supervised medical-care, these respondents felt that they had no other option, but to turn to the Internet for transition-related information and supplies.12

Similarly, some authors reported that the lack of access to transition-related services in Latin America has resulted in a high proportion of trans individuals turning to the Internet or word-of-mouth for transition related instructions and resources. Resulting in, individuals self-injecting cooking oil and industrial silicone, as well as accessing and administering street-sourced hormones without medical supervision.13

2. Methods

This review engages a descriptive and interpretive research, based on contemporary legal frameworks in Brazil, Canada and Costa Rica. The collected data includes annual reports, laws, codes, ordinances, regulations, bills, national policies and other scientific publications that addresses the objectives of this study.

This paper takes into consideration policies within three countries of the Americas (North America, Central America and South America), as well as the three most spoken languages in the region.

The information was gathered from January 2014 to September 2015, through virtual research in the official government websites and in the following databases: Medical Literature Analysis and Retrieval System Online (Medline), Latin-American and Caribbean Center on Health Sciences Information (LILACS), Scientific Electronic Library Online (SciELO) and Google Scholar.

The scientific articles that strengthened the discussion were found by using the following descriptors according to Health Sciences Descriptors (DeCS): "Public Policies", "Legislation as Topic" and "Legislation & Jurisprudence", as well as their translations in Spanish and Portuguese.

The Boolean expression "and" was used as a research resource when associated with the descriptor "transgender". Original research articles, reflections and literature reviews in Spanish, English and Portuguese, that cover transgender legislation as the main topic of their analysis were included as part of this research.

3. Results

3.1 Brazil

Access to healthcare

Brazil's public Unified Healthcare System (UHS) was created in 1988, and focuses its commitment on the principles of universality, equity, and integrity, and ensures full and free access to its more than 203 million inhabitants.¹⁴⁻¹⁵

In September 1997, the Federal Council of Medicine (FCM), through resolution 148/97, approved the provision of sex reassignment surgeries, under the condition that only public university hospitals are permitted to conduct them, at no fee and under experimental standards.

These procedures must meet the regulations and guidelines of resolution No. 196/1996 of the National Council of Health, the entity in control of practice and research with human subjects.¹⁶

Policy changes were introduced in 2002 and 2011, leading to the creation of new and improved laws (FCM resolution no. 1652/2002 and the Integral National Policy of Health for Lesbian, Gay, Bisexual, Gender Non-conforming people and Transgender individuals).

The most significant improvements occurred in 2013, when a new regulatory framework was established. These regulations gave new meaning to the gender affirmation process at the UHS, by including hormone therapy procedures, as well as gender reaffirmation surgeries and other complementary surgeries.¹⁷⁻²⁰

The new legislation demanded that the Ministry of Health implement specific procedures in order to ensure the inclusion of trans individuals in their system. It also clarified the rights and duties of patients, as well as the possibility of using an individual's preferred name in hospitals and health care facilities.²¹

In 2013, UHS created new guidelines that highlight the steps to be followed by healthcare providers while working with trans and gender non-conforming individuals undergoing gender transition.

This process ensures: a) comprehensive attention to trans populations, by not restricting or centralizing the therapeutic goal to gender affirming surgeries or other somatic interventions; b) the involvement of an interdisciplinary and multidisciplinary health care team, including psychiatrists, endocrinologists, general practitioners, nurses, psychologists, social workers, gynecologists, urologists and plastic surgeons; c) to avoid any type of discrimination and stigma among the healthcare institutions.²¹

According to this regulatory policy, Brazil currently provides different levels of medical attention: ambulatory care (first level of health care) and specialized hospitalization (fourth level of health care).

The first level consists of clinical follow-ups that must meet trans peoples' general needs, as well as pre and post-surgical procedures (only for individuals over the age of 21 years) and free

hormone therapy on a monthly basis, initiated after a psychiatric diagnosis (for individuals over the age of 18 years).²¹

The fourth level refers to gender affirming surgical procedures, as well as pre and post-surgical health care support. Surgical procedures may be performed by meeting specific requirements, and after two years of supervised attention provided by the Specialized Service Team of outpatient care.²¹

The following surgical procedures are included under this legislation: bilateral orchiectomy, penile amputation and vaginal reconstructive surgery, thyroplasty, bilateral mastectomy, hysterectomy with bilateral oophorectomy, bilateral colpectomy, and breast reconstructive surgery including bilateral silicone implants.²¹

The legislation also provides strategic stages of therapeutic support, including the following services: 1) reducing organic damage resulting from continuous use of hormones – harm reduction strategies; 2) psychotherapy, which could lead to improved social relationships among family, friends, and workplace; 3) social assistance to aid in overcoming discrimination and social exclusion; 4) post-surgery follow up of the gender reaffirmation surgery and other complementary surgeries.²¹

In pursuance of analyzing and discussing the execution of such inclusive and strong legislation, we searched for articles that addressed the implementation of these laws on a daily basis.

Consequently, we examined studies that evaluated the impact of the policy, which led us to the following details that challenge the implementation of the policy: a) there are currently only five hospitals located in five provinces that are authorized to perform such services and they are expected to meet the demand of the other remaining 22 provinces; b) although the existing resolutions allow for access to private institutions, this does not reduce the quantity of people who demand this type of healthcare in the public sector, since the precarious socio-economic reality faced by most trans people in Brazil restricts access to those private facilities; c) despite having an inclusive policy that seems to favor free access to sex/gender reaffirmation surgeries, there are still very limited financial and staffing resources (mainly at the community level) compared to the growing demand; d) the admission process for new users is limited in most of the programs; e) there are minimal political initiatives focusing on social inclusive actions to avoid stigma, discrimination, and death among the trans population; f) the average wait-times for sex/gender reaffirmation surgeries can reach four times higher than what is expected in regulatory frameworks, resulting in an eight to ten year wait period in some cases.²²⁻²³

Legal name change

The name category on key documents and forms provides stability to exercise civil rights and allows trans people to lead life more comfortably by having a name that matches their gender identity.

The legal name change process is an important aspect of affirming one's identity, as well as a crucial safety component for many individuals. This feature, most of the time, is not acknowledged by the legislation system or the medical professionals.

The ability to legally change one's name and gender marker continues to be linked to the pathological diagnosis of "gender dysphoria", issued by the American Psychiatric Association in 2013.

Consequently, trans people in Brazil are only permitted to legally change their name and gender marker after providing proof that a "sexual reassignment surgery" (SRS) has been performed.

After submitting a medical certificate along with a psychiatric statement to the national registry, the legal process of changing one's name and gender marker may commence. This allows the medical discourse to be a determining factor for authorizing any type legal modification.

Therefore, the possibility of legally changing one's name and gender marker revolves around surgeries and validates the medical (necro)power. In Brazil, there appears to be a subliminal process to adequate the individual to society and simultaneously establish consistency between the performance of their gender identity and a set of physical attributes.²⁴

If a person is only granted the right to update their name and gender marker after surgery, what happens to those who do not wish to perform any surgery, but identify as a trans or non-binary?

Unfortunately, there are no federal laws that address this reality. However, as a "palliative measure", some provinces created the "social name" category, which regulates the respect for gender identity, but only in social micro-spheres: as in some universities, schools and ministries.

The social name does not require any evidence of sexual, physical, or psychological change, however, as mentioned, has a reduced validity in the national sphere.

This feature is considered a unique Brazilian creation that is part of a historical process of poor recognition of human rights.²⁵ Similar to racial rights and women's rights, these rights are only recognized at a local level and not on the broad national level.

This in turn does not add any value to the social realities of this population. What is implicit in the Brazilian public policy that regulates the change of name and the gender marker is the same principle that hinders other changes. This is the naturalization of the sex-gender binomial and the low acceptance of other identities that challenge the artificiality of this social construction.

3.2 Canada

Access to the healthcare system

The Canadian healthcare system is regulated by the federal government and managed locally by each province. Medical service costs are paid by monthly installments and/or taxes and vary for each provincial jurisdiction.²⁶

Access to gender affirmation services and procedures differ from one province to another, and there are few federal laws that regulate gender affirming procedures and services. However, Bill C-279 is a federal law that would allow for the protection of trans individuals at a national level, but is currently stuck in the Senate.

The purpose of Bill C-279 is to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an equal opportunity as other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, color, religion, age, sex, sexual orientation, gender identity, marital status, family status, disability or conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.²⁷

Due to the various legal regulations in each province, we decided to take a deeper look into one of Canada's largest provinces, Ontario (ON). This province is located in the mid-east region of the country, and its healthcare system is considered to be one of the best in the world, which is publicly financed through the Ontario Health Insurance Plan (OHIP).²⁸

Ontario was the first Canadian province to admit gender identity in the human rights legislation and is the first province to prohibit "Conversion Therapy" for lesbian, gay, bisexual, and trans persons, by physicians who practice within its healthcare system.^{27,29}

Since June 2008, the province of Ontario implemented coverage for several gender reaffirming surgeries through OHIP, with important limitations. However, the process that trans people must follow in order to receive hormones or access to surgeries, varies significantly. Access to these resources may occur through a General Practitioner/family doctor or directly through the two juridical recognized institutions, as specialized centers and trans community providers: Gender Identity Clinic of the Centre for Addiction and Mental Health (GIC-CAMH) and the Sherbourne Health Center, located in Toronto³⁰.

According to the newsletter 4480 of the Ministry of Health and Long-Term Care (2008), gender confirming surgical procedures, including genital reconstruction and mastectomy, are covered through OHIP. However, OHIP does not cover the following surgeries for male-to-female transgender individuals: breast enlargement, breast augmentation, and breast reconstruction surgery.

In order to be covered by OHIP for gender confirming surgeries, patients are expected to complete the GIC-CAMH program and must be recommended for surgery by CAMH.

Patients that are eligible to have these surgeries financed through OHIP must undergo surgery at the Centre Metropolitain de Chirurgie Plastique in Montreal, Quebec, because there are currently no specialized hospitals that perform these types of surgeries in the Province of Ontario.³¹

When analyzing the provincial legislation, we could perceive that the power given to the GIC-CAMH limits and conditions that every trans person who wants to get any surgical procedure through the health insurance has to move sometimes (for long periods of time) to Toronto, which is where the GIC-CAMH is located.

This last aspect, displays the hegemony of the psychiatrizing and pathologizing model and evidence that the total of public institutions that deal with trans people, work under a psychiatric model.

In addition, this decision of the Ontario government to create only one management organ should be questioned, mainly if we consider the demand volume, the waiting lists and the high rates of suicide in the province, for this particular population.¹⁰

On the other hand, in spite of Ontario not having a comprehensive network for the attention of trans people, there is a possibility to access to the services of hormone therapy through the health community centers after being assessed by a nurse practitioner or by a family doctor, who must follow the "Guidelines and Protocols for Comprehensive Primary Health Care for Trans Clients and the Standards of Care for the Health of Transsexual, Transgender, and Gender nonconforming people".³¹

The previous scenario shows the efforts (perhaps not always well succeeded) of developing and linking the political axis for trans care to the primary care attention, and not related to the specialized attention.³⁰

However, in spite of this reality being approved by the health policies, some studies developed in Toronto have identified the difficulties, barriers and discrimination that trans people still have to face when interacting with their family doctor.¹¹

Access to name and gender marker change

Several of the laws and policies related to legal name and identification change in Canada require surgical sex reassignment evidence in the form of a physician's letter, however, these requirements vary from province to province.

In Ontario, the process can take anywhere from one to two years and begins with the completion of a form at a Service Ontario location, which is the governmental agency responsible for the national inscription of newborns and changes in the name structure.

Nowadays to change the sex designation marker on the driver's license, birth certificate, and health card in Ontario demands an easy process that includes: a) A completed Application for a Change of Sex Designation on a Birth Registration b) A completed Statutory Declaration by a Person for a Change of Sex Designation on a Birth Registration.³²

This declaration requires the person to affirm that they have assumed (or have always had) the gender identity that accords with the change in sex designation on their birth certificate, that they are living full-time in this gender identity, and that they intend to maintain this gender identity.³²

The requirements also include a completed application form for a birth certificate and all previously issued birth certificate and certified copies of your birth registration. It is also mandatory a letter from a practicing physician, psychologist, or psychological associate authorized to practice in Canada that supports the request to change the sex designation on the birth certificate.³²

The letter must state that the physician or psychologist has either treated or examined the person and supports that request to change the sex designation on the driver licence, birth certificate and further legal documents.

Currently, the Human Rights Tribunal of Ontario ordered the provincial government to cease requiring trans persons to have "transsexual surgery" in order to obtain a change of sex designation on their birth registration.

In the past the major difficulty in this procedure arises when an individual attempts to legally change their gender marker on official documents. Since the previous policies emphasized the need for written documentation of surgical status or psychiatric diagnosis of Gender Dysphoria.³²

Therefore, in order to modify the gender marker on the birth certificate, specific application forms needed to be completed. Specifically, the "Medical Certificate to Substantiate Transsexual Surgery was Performed" and "The Vital Statistics Amendment Act, 1990 Subsections 36 and 49", which has to be signed by two physicians, the one who performed the gender reaffirmation surgery and the one who attests that the surgery was effectively performed.

The process through which these gender markers changes are performed in Ontario, particularly, in how the authorization and authentication have to be received before any change happens, reinforces the fact that trans identities are peripherals and marginalized population in contrast to the cisgender identities.

Moreover, taking a closer look to the birth certificate, it is important to take into consideration that the gender marker on the birth certificate will not be completely changed from its original status but it will be modified. This also applies for any case of name change since in Ontario the previous names or genders are kept on the birth certificates, with the new names or genders.³²

Hence, the originals remain in between parentheses, but not crossed out, therefore, eternally visible. Even though trans identities are gradually overcoming to some institutional stigmatizing barriers in general, these legal ways of regulation continue to perpetuate the delegitimizing and unrecognizing of their citizenship.³⁰

3.3 Costa Rica

Transition-related Health Care and Sex Reassignment Process

Costa Rica within its legal system has no explicit laws or bills that sanction the possibility of making a safe transition process supported by its free healthcare system (Costa Rican Social Security System - CRSSS), which contradicts the values of solidarity, universality, unity, obligation, equality and equity advocated by its constitution in the Article 33 and 73.

In fact, there are little political or national regulations aimed exclusively at the protection of the trans population. The existing ones generalize and place the trans population within one part of the wide LGBTTI community, such as Law 777119, which refers to the prohibition of discrimination in different areas for people that have HIV-AIDS (healthcare system, work place and educational environments); or the National Decree 37071-S (former Executive Decree 34399-S) against the Homophobia Lesbophobia and Transphobia.³³⁻³⁴

The country lacks formal governmental support dedicated to the protection of the rights of sexual and gender minority populations that do not fit into the gender binary.

The one institution that cares for this particular population is the Office of Special Protection, which is part of the Ombudsman Ministry. However, this Office is not exclusive to the attention of LGBTTIQ community, but cares for other vulnerable groups, such as the elderly and people with disabilities.

Given this reality, it can be said that there is a significant constitutional void. This makes impossible to recognize the rights of trans people and does not guarantee a comprehensive healthcare system. This lack of process creates a bias that hinders access for any kind of transition process (hormonotherapy or surgeries) with quality and safety.

Even in the field of the recognition of other rights, limited progress is occurring. However, and despite the previously mentioned facts, in an investigation that studied the situation of human rights in Costa Rica, it was shown that trans participants were satisfied with the limited amount of legal rights they have.³⁵

Among these recognized advances they mentioned: the Photograph Regulation for the identity card which respects the image and sexual identity, (Bill that was promoted by the Supreme Court of Justice and that will be addressed below); The administrative guideline on healthcare services free of discrimination based on sexual orientation and gender identity (which was promoted by the Directorate of health services network, of the CRSSS in 2012); the vote of the

Constitutional Chamber which allows the conjugal visits from people of the same sex or different gender identity to people who are in a correctional institution; the agreements of the University Councils of public universities (University of Costa Rica, National University of Costa Rica and the Technological University of Costa Rica) declaring their campuses as spaces free of discrimination for sexual orientation and gender identity in 2011 and 2012.³⁵

Although these accomplishments are important and indicate some progress in terms of the social achievements of human rights, they are just gains that have an impact on the micro-social spheres. They neither have the status of public policies nor national laws since there are no decrees, guidelines, agreements or regulations with regards to this fact. This situation clearly shows that the voices and interests of the trans population have yet to be listened and attended to by the policy makers.

Additionally, another research developed by CEJIL and CIPAC in 2010, verified that in spite of the nearly non-existent rates of assassinations or homicides of trans people, the violations to their rights remain the most dramatic and the ones that receive the least public attention.

This fact was corroborated by Arguedas & Sagot (2013). For them, health is one of the most problematic areas for this population. Their findings highlighted that during the medical consultation there is still open discrimination and a lack of safety spaces for the trans population in public healthcare institutions.

Direct aggressions were reported in some institutions when people identified themselves as sexually diverse or trans. These aggressions were translated in the denial of service regardless of health conditions, and in the disrespect of their gender identity.³⁵

On the other hand, even though the CRSSS approved in their guidelines that the attention and care services should be free of gender identity discrimination, according to Arguedas & Sagot (2013), in the daily practice those guidelines are not upheld, particularly referring with hospital and clinical attention.

Legal name change

When reviewing the Costa Rican laws and bills, we verified that the progress with regards to the ability of changing the name and the gender marker in legal documents has been very incipient. For instance, they are not allowed to legally assume the chosen gender identity.

However, only one law was found that superficially talks about this regard: The Photographs Regulation for the identity card, pronounced in 2010, which favors (in a limited way) trans individuals, since they can have their adopted gender image in their identity document, through their photography. Prior to 2010 this was not possible.

This law stipulates that every person has the right to have their image and gender identity respected, at the time that their photograph is printed on national identity card (Costa Rica, Decree N. ° 08-2010, 2010).

We consider this as a limited enhancement because the Costa Rican legislation does not allow for the change of name and/or gender marker in any document, but it does accept the use of the image that corresponds to the reality of the individual.

In addition, there is also, another "palliative measure" that was created in order to minimize this constraint. Costa Rican ID cards allow for an additional field under the official name for a "preferred name" field.

In short, a person is allowed to include an "a.k.a" on their ID card. According to the Transvida Association – A professional organization devoted to the understanding and caring of trans people in Costa Rica – there are almost 500 trans people that use this feature on their ID card.³⁷

It is also important to emphasize that in March of 2015, the first step toward recognizing this civil right took place in Costa Rica. On that date, the first civil judge from San José, ruled in favor of the first trans person allowed a name change, based on two votes from the Constitutional Chamber (number 7.128, of year 2007, and number 16.877, year 2009).

This vote confirmed that gender identity should be protected as a human right and therefore the State must respect the name the person would prefer to be identified with.³⁷

The significance of this event, which will definitively create a precedent in other situations, is that no type of surgery or medical treatment was required in order to modify the name on the national identity documents.

The only requirements that were asked for this person were that she showed that the change was not being made to avoid justice but rather support her chosen lifestyle. For that reason, she had to present a criminal history report and three witnesses to testify that the person always lived according to the identified gender.

4. Analysis

We restrict this analysis in highlighting the necropower of Law and Medicine as instituted forces that throughout the "normalizing", homogenizing, moralizing, psychiatrizing and pathologizing process, dictate in society their rules, putting populations into two categories: the acceptable vs. the subversive. This dictatorial way of government reinforces the social and institutional stigma against the trans community.

Continuing this argument line, we have found two collective representations of political order in this analysis: the first one is related to the Costa Rican case in which transsexuality is considered as an invisible fact, which lacks of explicit public debate about the rights of trans citizens.

The second representation is related to the Brazilian and Canadian frameworks, which still places transsexuality as a pathology: "gender dysphoria". This reinforces the obsolete relationship between sex (genital) and gender indent. This, in spite of holding some sturdy legal structure, that warrantee the access to the health care and legislation system, its coverage is limited in terms of the real implementation.

Concerning the Costa Rican representation, this could be closely related to the influence of the Catholic Church in the decision-making processo. This as a consequence of in this country, religion still shows a significant influence among the government.³⁸

In recent years, the church has made enormous efforts to express their view points against all of the inclusive gender theories: refusing to accept abortion, divorce, same sex marriage, assisted reproduction, in vitro fertilization, morning-after pill and euthanasia.³⁸

Their position against transsexuality fights against the annulment of the anthropological understanding of sexual and gender difference arguing their bible/religious position. Consequently, since Catholicism is the official religion in Costa Rica, the influence of this doctrine when making and taking political decisions can silent the voice and acknowledgement of any other possibilities as in this case, the trans identities.

On the other side, regarding the Brazilian and Canadian representations, it could be said that their consolidated and apparently inclusive legal frameworks are still based on the acknowledgment of a "disease that needs to be cured": the gender dysphoria.

Contrary to the Costa Rican perspective, people with this condition are not able to choose transsexuality as a sin path but they suffer it as it is an illness. This perspective presents the gender dysphoria as a disease that implies discrimination and because of this reason; it demands the health assistance from public administration.

However, despite all the rhetoric about civil rights and the acknowledgment of rights, its discontinued and poorly articulated proposal among the judicial organs, demands that trans individuals still be considered as mentally ill patients in order to claim for their rights and to have access to the healthcare care system and/or the recognition of their preferred legal name.³⁹⁻⁴⁰

Another point that caught our attention is that when analyzing the policies, we found a slight concept of a trans person that was considered as a universal individual, implying that all of them have same needs. Nevertheless, we consider, that this paradigm, should be completely the opposite and must contemplate the differences and variety that the human identity implies.

Once this is settled, we would be facing a political scenario that escapes from generalizing the notion that every trans person wants to modify their body and we would be recognizing the diversity of postures within the trans spectrum and respecting their desires and expectations.

Following this analytical approach, we would be respecting and including the trans population in society, letting them represent and signify their gender, sex, body and sexuality according to their own understandings.

We would be walking on a different and more open path, in which the concept of identity could guide us in an undefined although very creative and inspiring way. Considering the undeniable importance of this political assistance proposal, it is very important to highlight that the religious point of view, as long as the exigency of a psychiatric diagnostic as the only requirement to get access to health care system and/or name/gender marker changes, needs to be problematized.

Since, it was previously demonstrated that transsexuality fixes a non-subjective position, consequently we determine that it is important to separate the trans experience from the need of translating it as a pathology and unyielding structure.

5. Final Considerations

Trans identified individuals help us understand that identity is a subjective process. As it is subjective it is plural. Also as it is heterogeneous, its limits are not defined, and all this volatility should be considered within the legal framework that regulates their rights.

The human rights with regards access to the health and judicial systems, in relation to the change of name and gender marker in national documents remain based on an invisible or psychiatric model. Therefore, in the examined countries we can conclude that the advancing steps show relatively limited progress, perhaps, because the gender perspective is still absent from the social debate.

The recognition of human rights should be coherent yet fluid in terms of social changes. Laws should include aspects of fundamental comprehensive and attentive care, forbid gender identity based violence, favor not only access to the health-care system but also to the education system and work-force.

The implementation of these changes would stimulate progress and a better quality of life for the sexual and gender minorities. Ending violence against transgender persons should be a public health priority because of the direct and indirect negative effect it has on its victims and on the health care system that treats them.

Moreover, we believe that the changes that must be made in the name and gender markers in official documents, have to be reduced to a context of null bureaucracy and where the process can be restricted to the identified gender, eliminating the continuous psychiatric and pathological perspective of the trans identities.

Likewise, we urge that each federal or state institution, assess the legitimate and pragmatic utility of having a visible gender marker on documents. Finally, the already made achievements can be interpreted as a starting point for future claims, not only to remove the psychiatric and pathological effect, but to solidify the trans rights within its current incipiently political frameworks.

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