Comment on WHO guideline on the health of trans and gender diverse people
February, 2, 2024

The Center for Family and Human Rights (C-Fam) is an organization in consultative status with ECOSOC. C-Fam believes the WHO should not go through with the project of a guideline for "trans and gender diverse care." The project should be discarded in order to concentrate on the mission of the WHO to improve health care around the world. Trans and gender diverse care, sometimes called "gender-affirming care", is an experimental and lucrative medical industry that is being scrutinized in many counties for abuses of medical ethics through misrepresentations and failure to provide informed consent, targeting children, and the infliction of lifelong debilitating conditions on individuals counseled to undergo such medical protocols.

The effect of promulgating guidelines on "gender-affirming care" would be to legitimize an experimental and lucrative medical industry model as if it were therapeutic. The World Health Organization must not promote a medically unsound and exploitative medical business model as if it were a therapeutic model. Moreover, if the WHO were to approve "gender-affirming care" as a therapeutic model or concept it could not be limited to adults. The mere notion that there is a treatment to correct the biological sexual identity of an individual would give false hope to children and would give a green light to the multi-billion dollar transgender medical industry to target children and groom them for eventual medical interventions as adults.

1. **"Gender-Affirming Care" is not a therapeutic concept, it is an experimental and lucrative medical industry model that preys on vulnerable children and adults.**

   "Gender-affirming care" has emerged only in recent years as an experimental set of protocols to obstruct and suppress the natural, and healthy, hormonal processes of individuals who experience gender dysphoria. The medical protocols are sold to distressed individuals and their families under the false pretense that biological males can become females, or near-females, and that biological females can become males or near-males. Sometimes transgender industry professionals tell parents that their children will commit suicide unless the parents accept the medical protocols they are selling. There is no scientific basis for making representations of this kind to someone experiencing emotional and psychic discomfort with their anatomical sexual reality or their families in distress.

   Sexual identity is a biological reality at the cellular level and cannot be changed medically through hormone treatment or alterations to the outward appearance of an individual's sexual organs. Maleness and femaleness are determined by the

chromosomal composition in each individual's DNA. There is no way to change sexual or "gender" identity. Moreover, as Mayer and McHugh's review of the scientific basis of gender theory concludes, the "hypothesis that gender identity is an innate, fixed property of human beings that is independent of biological sex — that a person might be 'a man trapped in a woman's body' or 'a woman trapped in a man's body' — is not supported by scientific evidence."[1]

Once gender-affirming care protocols are initiated on an individual, the individual becomes ensnared in a costly, physically and mentally taxing, life-long regimen of drugs and medical interventions with debilitating and life-threatening side-effects, including mutilation of sexual organs and other parts of the body, loss of sexual function, loss of fertility, hormonal disfunction, chemical castration, depression, suicide ideation, irreversible bone density loss, hypertension, cardiovascular disease, among many other established side-effects.[2] Moreover, there is no conclusive evidence that the overall physical and mental health of individuals who undergo "gender-affirming care" benefits from such interventions. In fact, there is evidence that individuals who undergo so-called "transitions" are just as distressed after their treatment as before. At best their distress levels are briefly ameliorated for a short period. In the long run, however, and that their increased risk of suicide increases almost twentyfold.[3] Moreover, there is a growing cohort of people who have regretted their gender transitions and live with lifelong consequences of the chemical or surgical interventions that they underwent, in some cases as minors.

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[1] Lawrence S. Mayer and Paul R. McHugh, "Introduction," Sexuality and Gender: Findings from the Biological, Psychological, and Social Sciences, The New Atlantis, Number 50, Fall 2016, pp. 10-12.

[2] See for example, Yelehe M, Klein M, El Aridi L, Maurier A, Gillet P, Feigerlova E. Adverse effects of gender-affirming hormonal therapy in transgender persons: Assessing reports in the French pharmacovigilance database. Fundam Clin Pharmacol. 2022 Dec;36(6):1115-1124 ("transgender persons taking gender-affirming HT may have an increased risk for depression, cardiovascular disease, dyslipidemia, and decreased bone mineral density; therefore, antiretrovirals and or direct-acting antivirals with minimal side effects are recommended"), doi: 10.1111/fcp.12806. Epub 2022 Jun 6. PMID: 35653182; PMCID: PMC9796635; See also Kerckhof ME, Kreukels BPC, Nieder TO, Becker-Hébly I, van de Grift TC, Staphorsius AS, Köhler A, Heylens G, Elaut E. Prevalence of Sexual Dysfunctions in Transgender Persons: Results from the ENIGI Follow-Up Study. J Sex Med. 2019 Dec;16(12):2018-2029 ("Sexual dysfunctions among trans men and women were very common among the various treatment groups"), doi: 10.1016/j.jsxm.2019.09.003. Epub 2019 Oct 24. Erratum in: J Sex Med. 2020 Apr;17(4):830. PMID: 31668732; See also HARVARD HEALTH BLOG, "Sexual health and gender-affirming care", January 7, 2021 ("testosterone therapy may cause vaginal atrophy, which has the potential to lead to sexual pain or discomfort. For transfeminine individuals, therapies designed to reduce testosterone may lower sex drive, and may also decrease or eliminate spontaneous erections"), available at: https://www.health.harvard.edu/blog/sexual-health-and-gender-affirming-care-2021010721688.

[3] Ibid. note 1.

2. **The Guideline Development Group should be dismantled because the members are all profiting financially or professionally from the transgender medical industry**

   The guideline group members announced by WHO are all, in one way or another, participants in the transgender medical industry and stand to benefit either financially or professionally from the publication of the WHO guidelines. Not a single member of the group is on record advocating caution against transgender medical protocols. This is surprising given how polarizing the issue of trans medical protocols are. This lack of impartiality and objectivity casts the entire process of the guideline under a shadow of impropriety. For this reason, the guideline development group should be dismantled.

   It is highly suspect that these guidelines are being developed even as countries who were once pioneers of transgender medical protocols are now scrutinizing this medical industry. The WHO should not weigh in such an experimental and as yet unsettled issues and should let the legislatures and professional associations of countries discuss theme fully. Any eventual guidelines will be used to influence these internal debates. If the WHO is perceived as taking political sides it will undermine its credibility and standing in the medical community and among the peoples of the world more widely.

3. **There is no basis in international law to say that individuals have right to social and legal recognition of their preferred sexual identity irrespective of their biological sexual identity**

   Individuals who experience gender dysphoria should be treated with compassion and their human rights must be respected like those of any other person. This does not mean that they have a right to social and legal recognition of their preferred sexual identity irrespective of their biological sexual identity, as some UN human rights special procedures and treaty bodies have misleadingly claimed in recent reports.

   International human rights law does not recognize the concept of “gender.” No single UN human rights treaties ever mentions the term “gender.” Nor is there any indication in the negotiating history and other preparatory materials of human rights treaties that the notion of “gender” as a legal concept separate from biological sexual identity was ever contemplated in relation to human rights.

   Binding human rights instruments only ever mention the term “sex” when addressing the rights and relations of men and women. International recognizes “sex” as a protected category, forbidding discrimination on the basis of sex (UDHR, Article 2; ICCPR, Articles 2,4,24, and 26; ICESCR, Article 2) and recognizing the equal rights of men

and women in the context of marriage (UDHR, Article 16; ICCPR, Article 23; ICESCR, Article 10). Even the Convention on the Elimination of All Forms of Discrimination Against Women, a human rights treaty wholly dedicated to achieving the equality of men and women, does not mention the concept of "gender" anywhere in the text or negotiating history.

The only mention of gender in international law is in the context of the Rome Statute of the International Criminal Court. There, the concept of gender is strictly defined in reference to biological sexual identity. The Rome Statute of the International Criminal Court famously defined "gender" exclusively as a biological and binary concept in Article, 7, paragraph 3:

> For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

This definition of gender is contained in the section of the Rome Statute that defines each of the crimes against humanity and their constituent elements. It was hard-fought over many months of difficult and tense negotiations. States expressly excluded "any meaning different from the above" before the treaty could be adopted, because theories of gender as a social construct were already circulating at high levels of academia and policy-making.

The strict understanding of sexual difference between men and women as an objective and legally relevant fact in both humanitarian law and international criminal law is also reflected in the national laws of the vast majority of countries. Almost all countries understand sex as a social reality based in biological sexual identity, and with legal implications, they do not consider "gender" a mere social construct. Only seven countries allow gender change based on self-identification alone, according to Amnesty International, which supports this controversial position.[4] And only a minority of countries legally recognize "gender identity" as a concept distinct from biological sexual identity at all.[5]

[4] Amnesty International. LGBTI Rights overview. Available at https://www.amnesty.org/en/what-we-do/discrimination/lgbt-rights/ It is also notable that most of the 40 or so countries where individuals are allowed to legally assume a transgender identity require a psychiatric determination of gender dysphoria and/or a surgical operation to mutate the sexual physiognomy of an individual. Some even require individuals to divorce their spouses and do not allow individuals with children to change their gender.

[5] Equaldex, LGBT Equality Index. Available at https://www.equaldex.com/

In light of this, any claims and representations by UN human rights special procedures and treaty bodies that individuals have a right to social and legal recognition of their preferred sexual identity irrespective of their biological sexual identity are false and should be dismissed as *ultra vires.* UN human rights special procedures and treaty bodies cannot create new human rights. Their views are neither authoritative nor binding. They only derive force if UN member states give their recommendations and observations any validity. It is clear from the Universal Periodic Review that issues of gender identity are not a widespread priority – fewer than two hundred recommendations have been made in favor of legal recognition of gender change since the UPR began in 2008, while tens of thousands of recommendations have been made overall. Fewer than half of those recommendations were marked as "supported," which is significantly lower than the approximately 73% of overall recommendations supported by countries under review. Furthermore, this is a regionally-concentrated priority: more than 80% of these recommendations come from members of the Western Europe and Others geopolitical group, and over a quarter of these recommendations come from one country (Iceland) alone.

In summary, issues of gender identity are highly contested both within the medical and political spheres, at a national and international level, and there is clear evidence that a minority group of activists are dominating the discourse within human rights spaces. These activists and activist groups have already exerted their influence in the update to the WHO diagnostic manual (ICD-11), even as multiple countries have adopted a more cautious position on "gender-affirming" care, especially for minors. For the WHO to move too rapidly and concede to the demands of activists will not only damage its own credibility but potentially threaten the health and well-being of vulnerable people around the world.