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New York, May 3, 2021

H.E. Pedro Sánchez Pérez-Castejón  
President of the Government of Spain  
Madrid – Spain

Your Excellency,

I write to you on behalf of Human Rights Watch to urge your government to support transgender and non-binary people's access to legal gender recognition based on self-determination, as set out within the *Legislative Proposal for the Real and Effective Equality of Trans People (122/000133)*.

Human Rights Watch is an independent international human rights organization working to defend human rights of people worldwide. Our researchers investigate human rights abuses in some 100 countries around the world, including human rights abuses based on gender identity and sexual orientation.

The right to recognition as a person before the law is guaranteed in numerous human rights treaties and is a fundamental aspect of affirming the dignity and worth of each person. Currently, for trans people in Spain to secure legal recognition of the gender with which they identify, they must provide evidence of a gender dysphoria diagnosis and two years of medical treatment to “adjust” their physical characteristics to those “corresponding” to gender marker they seek.<sup>1</sup> Non-binary people must accept legal recognition under a gender category with which they do not identify.

Human Rights Watch has documented how a lack of documents that match one's gender identity can infringe on human rights. These include the right to privacy, the right to freedom of expression, and rights related to employment, education, health, security, access to justice, and the ability to move freely.<sup>2</sup> The World Professional Association for Transgender Health, an interdisciplinary professional association comprised of over 700 members worldwide, has found that medical and other barriers to gender recognition for

<sup>1</sup> Ley 3/2007, de 15 de marzo, reguladora de la rectificación registral de la mención relativa al sexo de las personas, [https://www.mjusticia.gob.es/es/Ciudadano/TramitesGestiones/Documents/1292338904639-Ley\\_3\\_2007\\_de\\_15\\_de\\_marzo\\_reguladora\\_de\\_la\\_rectificacion\\_registral\\_de\\_la\\_mencion\\_relativa\\_al\\_sexo.PDF](https://www.mjusticia.gob.es/es/Ciudadano/TramitesGestiones/Documents/1292338904639-Ley_3_2007_de_15_de_marzo_reguladora_de_la_rectificacion_registral_de_la_mencion_relativa_al_sexo.PDF). In addition to these burdensome requirements, the procedure is only available to adult Spanish citizens.

<sup>2</sup> Human Rights Watch, “Don't Punish Me for Who I Am”: Systemic Discrimination Against Transgender Women in Lebanon, September 2019, <https://www.hrw.org/report/2019/09/03/dont-punish-me-who-i-am/systemic-discrimination-against-transgender-women-lebanon#1379>; Human Rights Watch, “A Really High Hurdle”: Japan's Abusive Transgender Legal Recognition Process, March 2019, <https://www.hrw.org/report/2019/03/19/really-high-hurdle/japans-abusive-transgender-legal-recognition-process>; Human Rights Watch, “I Want to Live With My Head Held High”: Abuses in Bangladesh's Legal Recognition of Hijras, December 2016, <https://www.hrw.org/report/2016/12/23/i-want-live-my-head-held-high/abuses-bangladeshs-legal-recognition-hijras>.

transgender individuals, including diagnostic requirements, “may harm physical and mental health.”<sup>3</sup>

Legislative Proposal 122/000133 contains numerous provisions that would rectify these harms, including Article 12 which eliminates the requirement for medical or psychological evidence to modify one’s legal gender identity; Article 13, which provides for non-binary or blank gender markers, acknowledging the rights and dignity of people who do not identify with a rigid gender binary; and Article 9, which upholds children’s self-determination by allowing children and adolescents access to legal gender recognition.

These provisions of Legislative Proposal 122/000133 are in line with international best practices. Principle 3 of the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity affirms that each person’s self-defined gender identity “is integral to their personality and is one of the most basic aspects of self-determination, dignity, and freedom.”<sup>4</sup> The International Covenant on Civil and Political Rights (ICCPR) provides for equal civil and political rights for all (article 3), the right to recognition for everyone before the law (article 16), and the right to privacy (article 17). Governments are obligated under the ICCPR to ensure equality before the law and the equal protection of the law of all persons without discrimination on any ground, including sex (article 26). The UN Human Rights Committee has recommended that governments guarantee the rights of transgender persons, including the right to legal recognition of their gender, and that states should repeal abusive and disproportionate requirements for legal recognition of gender identity.<sup>5</sup>

The European Court of Human Rights ruled in *Goodwin v. United Kingdom* (2002) that the “conflict between social reality and law” that arises when the government does not recognize a person’s gender identity constitutes “serious interference with private life.”<sup>6</sup> The Committee of Ministers of the Council of Europe called on member states in 2010 to take “appropriate measures to guarantee the full legal recognition of a person’s gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent, and accessible way.”

In the Americas, the Inter-American Court of Human Rights in a 2017 advisory opinion held that to comply with the American Convention on Human Rights, gender recognition procedures must be “prompt and, insofar as possible, cost-free” and “based solely on the free and informed consent of the applicant” without medical or psychological requirements.<sup>7</sup>

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<sup>3</sup> World Professional Association for Transgender Health, “WPATH Identity Recognition Statement,” November 15, 2017, <https://www.wpath.org/media/cms/Documents/Web%20Transfer/Policies/WPATH%20Identity%20Recognition%20Statement%2011.15.17.pdf>.

<sup>4</sup> International Commission of Jurists (ICJ), Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity, March 2007, <https://www.refworld.org/docid/48244e602.html>.

<sup>5</sup> Human Rights Committee, *Concluding observations on the fourth periodic report of Ireland*, CCPR/C/IRL/CO/4, August 19, 2014, <https://undocs.org/CCPR/C/IRL/CO/4>, p. 3; Human Rights Committee, *Concluding observations on the seventh periodic report of Ukraine*, CCPR/C/UKR/CO/7, August 22, 2013, <https://undocs.org/CCPR/C/UKR/CO/7>, p. 4.

<sup>6</sup> European Court of Human Rights, *Christine Goodwin v. United Kingdom*, Judgement of July 11, 2002, Reports of Judgments and Decisions 2002-VI, available at <http://hudoc.echr.coe.int/eng?i=001-60596>, para. 77.

<sup>7</sup> Inter-American Court of Human Rights, *Advisory Opinion OC-24/17*, November 24, 2017, [https://www.corteidh.or.cr/docs/opiniones/seriea\\_24\\_eng.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_24_eng.pdf).

A growing number of countries around the world have removed burdensome requirements to legal gender recognition, including medical or psychological evaluation, sterilization, and divorce. Countries like Argentina,<sup>8</sup> Belgium,<sup>9</sup> Denmark,<sup>10</sup> Ireland,<sup>11</sup> Luxembourg,<sup>12</sup> Malta,<sup>13</sup> Norway,<sup>14</sup> Portugal,<sup>15</sup> and Uruguay<sup>16</sup> are at the forefront of individual autonomy over gender identity, providing for simple administrative processes based on self-declaration. Costa Rica and the Netherlands have taken steps toward the removal of gender markers on identity documents altogether.<sup>17</sup>

In line with international human rights standards, Human Rights Watch recommends that Spain adopt a transparent, accessible administrative process for legal gender recognition based on self-identification, and that it provide for gender categories that expand upon a female-male binary, as envisaged under Legislative Proposal 122/000133. Spain has an opportunity to validate the lived experiences of transgender and nonbinary residents and to ensure that their rights are not limited by being compelled to carry identification cards that do not correspond with their identities. It should seize that opportunity.

Sincerely,



Graeme Reid  
Director, Lesbian, Gay, Bisexual, and Transgender Rights Program  
Human Rights Watch

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<sup>8</sup> *Identidad de Género Ley 26.743 Establécese el derecho a la identidad de género de las personas*, <http://tgeu.org/argentina-gender-identity-law/>.

<sup>9</sup> Gender Recognition Act Belgium, 25 June 2017, [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&cn=2017062503&table\\_name=loi](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2017062503&table_name=loi).

<sup>10</sup> Amendment Act L182 Denmark, 2014, [https://tgeu.org/sites/default/files/Denmark\\_Civil\\_Registry\\_Law.pdf](https://tgeu.org/sites/default/files/Denmark_Civil_Registry_Law.pdf).

<sup>11</sup> Gender Recognition Act, July 2015, <http://www.irishstatutebook.ie/eli/2015/act/25/enacted/en/html>.

<sup>12</sup> Loi relative à la modification de la mention du sexe et du ou des prénoms à l'état civil et portant modification du Code civil, 10 August 2018, [http://legilux.public.lu/eli/etat/leg/loi/2018/08/10/a797/jo#:~:text=99%2D3.&text=\(1\)-,Le%20tuteur%20de%20la%20personne%20majeure%20en%20tutelle%20peut%20introduire,le%20tribunal%20d'arrondissement%20comp%C3%A9tent.&text=3%C2%B0-d'avoir%20obtenu%20le%20changement%20de%20son%20pr%C3%A9nom%20afin%20qu'il%20corresponde%20au%20sexe%20revendiqu%C3%A9](http://legilux.public.lu/eli/etat/leg/loi/2018/08/10/a797/jo#:~:text=99%2D3.&text=(1)-,Le%20tuteur%20de%20la%20personne%20majeure%20en%20tutelle%20peut%20introduire,le%20tribunal%20d'arrondissement%20comp%C3%A9tent.&text=3%C2%B0-d'avoir%20obtenu%20le%20changement%20de%20son%20pr%C3%A9nom%20afin%20qu'il%20corresponde%20au%20sexe%20revendiqu%C3%A9).

<sup>13</sup> ACT No. XI of 2015, [https://tgeu.org/wp-content/uploads/2015/04/Malta\\_GIGESC\\_trans\\_law\\_2015.pdf](https://tgeu.org/wp-content/uploads/2015/04/Malta_GIGESC_trans_law_2015.pdf).

<sup>14</sup> Innst. 315 L (2015–2016), jf. Prop. 74 L (2015–2016), <https://tgeu.org/wp-content/uploads/2016/07/Prop74LEng.pdf>.

<sup>15</sup> Decreto N.º 203/XIII, <https://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalleDiplomaAprovado.aspx?BID=20780>.

<sup>16</sup> Ley N° 19.684 de 26/10/2018, <https://www.impo.com.uy/personastrans/>.

<sup>17</sup> Sala Constitucional, Resolución N° 11201 – 2019, June 21, 2019, <https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-923007>; Neela Ghoshal and Kyle Knight, *Netherlands Sees No Role for Gender Marker on ID Documents: Move Raises Questions of When Gender Markers Are Necessary*, July 8, 2020, <https://www.hrw.org/news/2020/07/08/netherlands-sees-no-role-gender-marker-id-documents>.