



Trans Legal Mapping Report

Recognition before the law

**November 2017
2nd Edition**

**Zhan Chiam
Sandra Duffy
Matilda González Gil**

www.ilga.org



Trans Legal Mapping Report

Recognition before the law

**November 2017
2nd Edition**

**Zhan Chiam
Sandra Duffy
Matilda González Gil**

www.ilga.org

Copyright page

This 2nd edition of the *Trans Legal Mapping Report* was researched and written by Zhan Chiam, Sandra Duffy and Matilda González Gil, and published by ILGA. It is copyright-free provided you cite both the authors and the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA).

Suggested citation:

International Lesbian, Gay, Bisexual, Trans and Intersex Association: Chiam, Z., Duffy, S. and González Gil, M., *Trans Legal Mapping Report 2017: Recognition before the law* (Geneva: ILGA, November 2017).

This report is available to download in Word or PDF formats.

Trans Legal Mapping Report is published simultaneously in English and Spanish.

Download the report at www.ilga.org or contact info@ilga.org.

Coordination: Zhan Chiam.

Design, typesetting and Spanish translation: Lucas Ramón Mendos.

Table of Contents

| | |
|--|-----------|
| Foreword Trans Secretariat: Mikee Inton and Brenda Alegre | 1 |
| Author's Preface Zhan Chiam | 3 |
| International Law and Legal Gender Recognition (+ Interview with Broden Giambrone) Zhan Chiam | 7 |
| Name and sex/gender marker change in the Inter-American System of Human Rights Matilda González Gil | 13 |
| Africa Introduction by Ricky Nathanson | 17 |
| Angola | 19 |
| Botswana | 19 |
| Kenya | 20 |
| Lesotho | 21 |
| Malawi | 21 |
| Mozambique | 21 |
| Namibia | 22 |
| South Africa | 22 |
| Swaziland | 23 |
| Tanzania | 23 |
| Uganda | 23 |
| Zambia | 24 |
| Zimbabwe | 24 |
| Asia Introduction by Zhan Chiam | 25 |
| Bangladesh | 27 |
| Bhutan | 27 |
| Hong Kong | 27 |
| India | 28 |
| Indonesia | 30 |
| Iran | 31 |
| Japan | 31 |
| Kyrgyzstan | 32 |
| Malaysia (+ Interview: Thilaga) | 33 |
| Maldives | 36 |
| Mongolia | 36 |
| Myanmar | 36 |
| Negara Brunei Darussalam | 37 |
| Nepal | 37 |
| Pakistan | 38 |
| People's Republic of China | 38 |
| Philippines | 39 |
| Republic of Korea (South Korea) | 39 |
| Singapore | 40 |
| Sri Lanka | 41 |
| Thailand | 42 |
| Vietnam (+ Interview: Chu Thanh Ha) | 42 |
| Europe Introduction by Sandra Duffy | 45 |
| Albania | 47 |
| Andorra | 47 |
| Armenia | 47 |
| Austria | 48 |
| Azerbaijan | 48 |
| Belarus | 49 |
| Belgium | 50 |
| Bosnia and Herzegovina | 51 |
| Bulgaria | 52 |
| Croatia | 53 |
| Cyprus | 54 |
| Czech Republic | 54 |
| Denmark | 55 |
| Estonia | 56 |
| Finland | 57 |
| FYR Macedonia | 57 |
| France | 58 |
| Georgia | 59 |
| Germany | 59 |
| Greece | 60 |
| Hungary (+ Interview: Kriztina K. Orbán) | 61 |
| Iceland | 63 |
| Ireland | 64 |
| Italy | 65 |
| Kosovo | 65 |
| Latvia | 65 |
| Liechtenstein | 66 |
| Lithuania | 67 |
| Luxemburg | 67 |
| Malta | 68 |
| Moldova | 69 |
| Monaco | 69 |

| | |
|--|----|
| Montenegro | 70 |
| Netherlands | 71 |
| Norway | 71 |
| Poland | 72 |
| Portugal | 73 |
| Romania | 73 |
| Russia (+ <i>Interview: Diana Iashenkova</i>) | 74 |
| Slovakia | 77 |
| Slovenia | 78 |

| | |
|----------------------|----|
| Spain | 78 |
| San Marino | 80 |
| Serbia | 80 |
| Sweden | 81 |
| Switzerland | 81 |
| Turkey | 82 |
| Ukraine | 83 |
| United Kingdom | 83 |

Latin America & The Caribbean | Introduction by Matilda González Gil **85**

| | |
|--|----|
| Argentina (+ <i>Interview: Blas Radi</i>) | 88 |
| Bolivia | 91 |
| Brazil | 91 |
| Chile | 92 |
| Colombia | 93 |
| Costa Rica | 94 |
| Cuba | 94 |
| Dominican Republic | 95 |
| Ecuador | 95 |
| El Salvador | 96 |
| Guatemala | 96 |
| Haiti | 97 |
| Honduras | 97 |
| Jamaica | 97 |
| Mexico (+ <i>Interview: Ari Vera</i>) | 97 |

| | |
|---|-----|
| Nicaragua | 100 |
| Panama | 100 |
| Paraguay | 100 |
| Peru | 101 |
| Saint Lucia | 101 |
| Uruguay | 102 |
| Venezuela | 102 |
| <i>Kingdom of the Netherlands</i> | 103 |
| <i>Puerto Rico</i> | 103 |
| <i>Overseas Departments and Territories of France</i> | 104 |
| <i>Overseas Territories of the United Kingdom</i> | 104 |
| <i>United States Virgin Islands</i> | 104 |

North America | Introduction by Florence Ashley and Sasha Buchert **105**

| | |
|--------------|-----|
| Canada | 107 |
|--------------|-----|

| | |
|--------------------------------|-----|
| United States of America | 109 |
|--------------------------------|-----|

Oceania **113**

| | |
|------------------------------|-----|
| Australia | 113 |
| New Zealand / Aotearoa | 113 |

| | |
|-------------|-----|
| Samoa | 115 |
|-------------|-----|

Foreword

By Mikee Inton and Brenda Alegre

The ILGA World Trans Secretariat is very happy to announce the 2017 edition of the Trans Legal Mapping Report, one of the primary projects of ILGA's Gender Identity and Gender Expression Programme.

Like ILGA's annual State Sponsored Homophobia Report, which looks at laws and legislation around the world that seek to criminalise, recognise or protect same-sex behaviour, the Trans Legal Mapping Report draws attention to how laws in different countries recognise the rights of trans people to change their identity markers on official documents.

Additional features in this second edition include an international law section and collated interviews from activists which speak to the varying situations of trans rights around the world. We would say that there is nothing that matches the power of narratives that are anchored in the lived realities of trans people. We are diverse and rich in experience, just like the myriad of identities under the umbrella of "transgender".

The recent victories in Botswana, Vietnam, Mexico and the European Court of Human Rights should serve as reminders that, for as long as we keep vigilant, the next editions of this report will see an increase in the provisions for equality of trans and non-binary people worldwide.

Once more, to the tireless Gender Identity and Gender Expression Programme and the research team, congratulations.

The Society of Transsexual Women of the Philippines (STRAP), ILGA Trans Secretariat.

Author's Preface

By Zhan Chiam

We are pleased to present the second edition of the *Trans Legal Mapping Report*—a compilation of laws, administrative procedures and processes setting out the ability and limits of trans and gender-diverse people around the world to change their sex/gender marker and names on official identity documents. Together known as “legal gender recognition”, this area of rights is like a Pandora’s box, and the research continues to reveal more questions than answers, bringing forth areas of uncertainty, and a need in many countries and regions to delve even deeper into the complexities.

In basic terms, the report sets out whether a process is established in primary legislation, through a court application, in an administrative rule, in policy, or simply not defined. The different processes for sex/gender marker change and name change, and the links between the two, if any, are also set out. Name change processes are especially relevant for countries where the sex/gender marker change process is absent or, if present, is onerous, medicalised, pathologised and, therefore, restrictive. As this report reveals, in some countries, name change processes are equally onerous.

Because this is primarily intended as an advocacy tool for trans human rights defenders, we have included commentary and context from local activists and organisations to explain how the laws, rules or policies are applied in practice and to show how trans communities navigate these procedures. It is quite apparent to us that in almost no country are the procedures clear-cut, and to this end we have included in this edition interviews with trans defenders working locally, speaking to a diverse spread of legal situations and solutions. The divide between Global South and North does not exist here; every region covered has barriers to overcome, and the interviews reveal much more work to be done.

We have also included a new chapter on international and regional law and instruments, to help trans activists to access progressive recommendations, opinions and reports by international bodies and experts to assist in their work.

The upcoming World Health Assembly in May 2018 where the 11th revision of the *International Statistical Classification of Diseases and Related Health Problems* (ICD-11) is due to be approved and adopted also marks an important juncture for legal gender recognition. Our communities continue to be closely enmeshed with the medical profession, and often not in healthy or balanced ways, as laws and government policies continue to rely on medical models over a self-determination model in defining what trans is. How gender identity is defined and classified in ICD-11 will affect how trans people everywhere can access legal gender recognition.

Most countries which allow gender marker change do so with medical requirements that violate a trans or gender-diverse person’s bodily integrity by requiring sterilisation and extensive, multiple surgeries. Sterilisation requirements breach the right to freedom from torture and cruel, inhuman or degrading treatment.¹ Many countries require multiple psychiatric evaluations, relying on various revisions of the ICD or the American Psychiatric Association’s *Diagnostic and Statistical Manual of Mental Disorders* (DSM). Some also require the person to undergo a “real life test”. Most states ask for the person to be unmarried or, if married, to divorce their spouse. Another common requirement is that of not having dependent children. Both requirements breach the rights of a person to privacy, and to found a family.² Almost all countries, even those without prohibitive medical requirements, require the person to be above a specific legal age.

¹ See *International Law and Legal Gender Recognition* chapter, p. 7.

² See *International Law and Legal Gender Recognition* chapter, p. 7; See *Introduction to Europe*, p. 45 for discussion of the European Court of Human Rights case of *A.P. v France*.

Despite these challenges, we have seen positive movement in 2017, with **Mexico** allowing legal recognition to a 6-year old minor through an administrative process and without a psychiatric diagnosis. **Vietnam's** National Assembly voted in favour of a new Civil Code which paves the way for trans people to be legally recognised, but the medical requirements for that recognition are unknown until guidelines for the law are drafted.

In **Botswana**, a successful High Court challenge to a refusal of the national registration authority to change a trans person's national identity card could now pave the way for other Botswanans to access legal gender recognition. Meanwhile in California in the **United States**, from 2018, trans persons will be able to self-attest their gender and receive birth certificates and state-issued identity documents in male, female or non-binary (X) markers. At the same time, prison inmates there are now able to access legal name change without the consent of correction officials. In **Ecuador**, the Constitutional Court recommended that the National Assembly allows trans persons to change the "sex" marker in identity cards to avoid distinction between trans people who are given a "gender" marker and non-trans people who have a "sex" marker.

Continuing advancements in **Nepal**, the Supreme Court ruled this year that trans people should be allowed to change their name as part of a legal gender recognition process.

The **European Court of Human Rights** found that non-consensual sterilisation or other serious medical procedures on adults with the capacity to consent or refuse violates the principles of bodily autonomy and self-determination, and that requiring a person to do so for legal gender recognition forces them to choose between coercive sterilisation and non-recognition of their personhood. However, the Court did not go so far as to find that States did not have the right to require some form of medical diagnosis for legal gender recognition—a deference to the many European states that still rely on medical models to classify and certify their trans citizens. **Norway** now allows minors between 6 to 16 years of age to apply for gender recognition with a parent or guardian, while **Luxembourg** currently has a Bill under consideration which would extend to minors over the age of 5.

As examples of how trans defenders are working closely with their governments to improve the situation for trans people, officials from **Hong Kong**, Vietnam, **Thailand** and the **Philippines** have shown receptiveness to learning about legal gender recognition in other countries and what that could mean for their jurisdictions. Similarly, in **New Zealand**, the new government has recently been presented with Select Committee recommendations on synchronizing the birth certificate process, which requires an application to the Family Court, with the more progressive passport process, which follows a self-attestation model and which allows for a third gender option.

Alongside all this progress, we are reminded that trans organisations and activists in every region of the world continue to work under restrictive, repressive, sometimes dangerous and often seriously under-resourced conditions. Most of our work remains voluntary and part-time.³ Given these constraints and the competing priorities and issues that trans organizations cover, the achievements and advancements listed above are even more remarkable.

For too long now, information about legal gender recognition has been exchanged within trans communities by word of mouth and other informal channels. At the same time, trans people have resorted to becoming medical experts, researchers, litigators, and policy drafters in order to challenge the legal and medical systems we live under. We hope that this report helps demystify and shares the information and processes, and that the Gender Identity and Gender Expression Programme continues to play its part in circulating research, analyses and strategies at the global level.

³ Howe, E, Frazer, S, Dumont, M. and Zomorodi, G. (2017), *The State of Trans Organizing (2nd Edition): Understanding the Needs and Priorities of a Growing but Under-Resourced Movement*, New York: American Jewish World Service, Astraea Lesbian Foundation for Justice and Global Action for Trans Equality, at <https://transactivists.org/2017/10/31/the-state-of-trans-organizing-report-2017/> (Executive Summaries available in Simplified Chinese, English, French, Russian and Spanish)

A practical note on using this report

This report distinguishes between “sex/gender marker change” and “name change” processes, laws and policies. Although the authors recognise that trans and gender-diverse people often do seek name change as part of their social transition or self-affirmation process, the distinction is made because the processes are often entirely separate, sometimes involving different pieces of legislation or policies. It is in the interests of precision that this distinction is in place throughout the report.

When referring to legislation, court decisions or policies, we have kept faithful to the language of those documents, as we feel it is important to refer to them accurately, as well as to provide insight into the thinking behind their formulation. Most obviously, when a reference is made to “sex” or “gender” in the legislation or policy, it remains as “sex” or “gender” in this report. A judge or policy document may use language that clearly reflects reliance on pathologising definitions, without explicitly revealing their source, which could be by design or omission. In these instances, having the information in the original wording is an entry point for advocates who seek to effect change by first arguing against pathologisation. The reader will see that name or gender marker change processes are often described as having “prohibitive” requirements—by that we mean that any or all of the above-described conditions exist which are contrary to a self-determination approach to gender recognition, identity and expression.

Where information is available, we also include Bills which are being considered before Parliaments, pending Court cases, committee recommendations being considered by governments, and consultations on gender recognition, progressive or otherwise. Our aim in this regard is to point towards movement in this area, and it is up to those interested to monitor their development over the next 12 months.

As with 2016, this report would not be possible without the input of local trans activists who reviewed data, gave advice on the situation in their countries and clarified translations. West and Central Asia, North Africa, West Africa, and many Pacific nations continue to be under-represented in this report. The reasons are varied, and include but are not limited to safety issues, uneven levels of trans organizing and the perceived lack of relevance of legal gender recognition to local needs and concerns.

We emphasise that trans-led and trans-endorsed research in this area is paramount to the validity of this work to our communities, and that any analytical research in this area should always consult trans communities, activists and researchers for their expertise on the subject.

We are grateful for the “Legal and Social Mapping” research conducted by Transgender Europe’s *Transrespect v Transphobia Worldwide* project, the Open Society Foundations’ *License to Be Yourself: Law and Advocacy for Legal Gender Recognition of Trans People*, the Southern African Trans Forum and the South Africa Litigation Centre’s *Laws and Policies Affecting Transgender Persons in Southern Africa* and the United Nations Development Programme—Asia Pacific Transgender Network’s *Legal Gender Recognition: A Multi-country Legal and Policy Review in Asia*. All these resources should be read together, for a unified approach to legal gender recognition research and advocacy.

Finally, any mistakes or omissions are solely the fault of the authors, and we urge readers to inform us of where such errors occur so that they can be corrected.

Acknowledgements

The authors are grateful for the contributions of activists and researchers who helped to check facts and translate data for all the chapters, without whom this report would not have been possible. We are also grateful to *Colombia Diversa* who researched the Latin America and Caribbean and North America chapters for the 2016 edition, and which we continued to rely on for this edition. We are especially grateful for the trans activists who wrote introductions to chapters—Ricky Nathanson, Sasha Buchert and Florence Ashley—and all who participated in the interviews.

Zhan would additionally like to thank the tireless work of Sandra Duffy and Matilda González Gil, and for their sound judgment and dedication to the project; Lucas Ramón Mendos continued to be much more than a translator and typesetter, and lent his expert editorial eye to this report; Jack Byrne and Cianán B. Russell were available day and night to clarify questions, and review and update information; and Helen Nolan, who steadily provided ideas, feedback and support until the end of the project.

About the Authors

Zhan Chiam is Senior Programme Officer, Gender Identity and Gender Expression, at ILGA World in Geneva, Switzerland. He holds a Bachelor of Arts (Sydney) and a Juris Doctor (UTS) and is admitted as a solicitor. He has worked in different countries in legal and policy positions for government, NGOs and in private practice.

Sandra Duffy is a PhD candidate at the Irish Centre for Human Rights, NUI Galway. Her doctoral research concentrates on gender recognition laws in the international human rights context, and is supported by the *Irish Research Council*. She has presented and taught internationally in this area. Sandra is also joint holder of the 2016 NUI EJ Phelan Fellowship in International Law.

Matilda González Gil is a lawyer from Universidad de Los Andes, Colombia. She has an LL.M. from the American University. She has worked as a legal fellow at the IACHR (Inter-American Commission of Human Rights) in the LGBTI Rapporteurship, and for *Colombia Diversa*, an NGO that works for the rights of LGBT persons in Colombia. She is an opinion column writer for *Revista Cromos* and *Vice Colombia*.
Twitter: @matigonzailezil

International Law and Legal Gender Recognition

By Zhan Chiam⁴

National laws are not only reformed by national advocacy, but can be changed and influenced by international mechanisms. The United Nations (UN) human rights mechanisms and agencies can both be sources of international law and greatly influence human rights standards, thus changing and influencing national rights advances and also national laws and practices. They can speak to general situations and thus be applied globally, or be country-specific. When it comes to legal gender recognition, the body of country-specific recommendations as well as commentary by UN experts and agencies has been growing steadily. In this chapter, we will highlight a few of those for advocates to consider. We hope advocates will see that the issue has been picked up by different experts and agencies, and so encourage them to look for opportunities and support in a range of places - some of them unexpected - to advance their advocacy goals. Four UN human rights mechanisms have discussed legal gender recognition in the most detail: the Special Procedures, UN agencies, Treaty Bodies and the Universal Periodic Review. We also include an interview with a national trans organisation, Transgender Equality Network Ireland, about their engagement with one Treaty Body as an example of how that mechanism can be utilised.⁵

Special Procedures

The Special Procedures are individuals or groups of experts mandated by the UN Human Rights Council (HRC) to address a thematic issue or country-specific situation. Known as “Special Rapporteurs” or “Independent Experts” (such as the Independent Expert on the protection against violence and discrimination on the basis of sexual orientation or gender identity) or as “Working Groups” (such as the Working Group on discrimination against women).

Generally speaking, the Special Procedures examine, monitor, advise and publicly inform on respect for human rights, as relevant to their mandate. Their work involves preparing thematic reports, collating best practices, responding to individual complaints, conducting country visits and making recommendations to national authorities. Unlike the Treaty Bodies (see below), Special Procedures with thematic mandates have global scope, can examine situations in any country, and it is not necessary for individuals to have exhausted domestic remedies in order to access them. This makes them a relatively accessible, flexible and responsive mechanism. Even though their recommendations are not binding on States, they often reflect or help to create international law and standards/norms.

In a significant turning point in how violence and discrimination against trans persons was analysed by the Special Procedures, in 2013, the Special Rapporteur on Torture called upon States to outlaw forced or coercive sterilisation in all circumstances and particularly criticised sterilisation as a prerequisite for trans people to access legal recognition.⁶ Since that report, different mandates, especially the mandates on health, discrimination against women, violence against women, and torture, have

⁴ With thanks to Sandra Duffy and Helen Nolan for their contributions to this chapter.

⁵ Helen Nolan, *Advocating on Gender Identity and Gender Expression*, ILGA, Geneva: 2016, pp.13-14, at: <http://ilga.org/what-we-do/united-nations/treaty-bodies/external-resources-on-un-human-rights-treaty-system/>.

⁶ A/HRC/22/53 at para. 78.

continued to address the human rights issues faced by trans persons across a range of situations within their mandate.

For example, the Special Rapporteur on the right to health in his report after his country visit to Malaysia in 2015, connected the explicit criminalisation of “cross-dressing” and the fatwa prohibiting trans Muslims from sex reassignment surgeries, with the reluctance of the government to allow gender marker change to many cases, for Muslims and non-Muslims, and negative societal attitudes leading to serious human rights violations including significant barriers in access to health care. The Special Rapporteur recommended that the State “legalise the gender identity of transgender people”.⁷

More recently, in 2017, the Special Rapporteur on extreme poverty in his report after his country visit to China, said that the requirement under Chinese law to have sex reassignment surgery - which is expensive and not covered by health insurance plans, and requires a diagnosis of mental illness - was a “huge and unwarranted barrier” which, amongst other things, prevented trans persons from changing their gender marker on documents.⁸

Also in 2017, the Independent Expert on violence and discrimination based on sexual orientation and gender identity said that the practice in many countries of not being able to have one’s self-identified gender recognised by the State, even with gender reassignment surgery, leads to violence and discrimination.⁹ The Independent Expert underlined a “need to move towards legal recognition of self-defined gender identity without coerced methods”.¹⁰

Finally, in 2017 a number of UN experts and the Inter-American Commission on Human Rights, the African Commission on People’s and Human Rights and the Council of Europe released a statement calling on States to facilitate quick, transparent and accessible legal gender recognition and without abusive conditions, including for young trans people.¹¹

United Nations agencies

The different agencies of the UN, for example the World Health Organization (WHO) or the UN Refugee Agency (UNHCR), are responsible for different thematic issues, and often are good, authoritative sources of international norms and standards to cite. They often work in many countries around the world, and they offer expertise in their respective fields. Although their commentary is not binding on States, they can have great influence and their on-the-ground partnerships with governments cannot be underestimated. The agencies also often have research resources and are able to offer in-depth study in many different areas related to their work. On particularly important issues, they have also been known to issue public statements and press releases to indicate their commitment to particular topics. In recent years, UN agencies have been turning their attention to gender identity issues, which can be especially useful for advocates who wish to engage with them more extensively on this front.

The Office of the High Commissioner for Human Rights (OHCHR) is a rich source of resources on gender identity. It has consistently included analysis of legal gender recognition requirements and offered best practices and guidance to States in their publications. These documents outline the core legal obligations of States and then delve into how they are relevant to different areas relating to sexual orientation, gender identity and sex characteristics.¹² In addition, the High Commissioner for Human Rights themselves report to the Human Rights Council and have stressed that in order to fulfil

⁷ A/HRC/29/33/Add.1 at paras. 84 and 111.

⁸ A/HRC/35/26/Add.2 at para. 41.

⁹ A/HRC/35/36 at para. 57.

¹⁰ *Ibid.*

¹¹ “Embrace diversity and protect trans and gender diverse children and adolescents, urge UN and regional human rights experts, 16 May 2017, at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21622>

¹² Office of the High Commissioner of Human Rights, *Living Free and Equal*, New York and Geneva: 2016, at <http://www.ohchr.org/EN/Issues/-Discrimination/Pages/LivingFreeEqual.aspx>.

international human rights obligations, States must respect the physical and psychological identity of trans persons by legally recognising self-identified gender without additional requirements that may further violate human rights.¹³

Looking to other UN agencies, twelve of them, including UNAIDS, UNCHR, UN Women and the WHO, released a joint statement in 2015 on the rights of LGBTI people, which specifically called for legal recognition of gender identity without abusive requirements.¹⁴

Agency-specific reports, guidelines and staff trainings are also good indicators of commitment to gender identity issues in the programmatic work of agencies. The United Nations Development Agency has developed a nine-country in-depth report in Asia on legal gender recognition, which has been cited in this report.¹⁵ In 2015, UNHCR and the International Organization for Migration (IOM) produced an extensive training package on LGBTI persons to be rolled out in their country operations,¹⁶ following LGBT guidelines that state that best practice legal gender recognition processes safeguard the safety of trans persons and how to be cognizant of this in refugee status determinations.¹⁷

Treaty Bodies

Treaty Bodies are Committees of experts appointed to review State compliance with binding international treaties (also known as “conventions” or “covenants”). Once a State chooses to ratify one of these instruments, the State is obliged under international law to uphold and implement the provisions of the treaty. Importantly, the State’s domestic legislation must not be in contradiction with the treaty. The States are reviewed periodically and are bound by those recommendations by the Treaty Body.

According to what issues are covered by a particular treaty, each Committee will have a different emphasis in engaging with issues around gender identity; however, the most prevalent themes seen across the Committees’ work are violence, discrimination, healthcare, and law reform.

Treaty Bodies have made reference to legal gender recognition in their recommendations to specific countries, including Ireland, Ukraine, Republic of Korea, the Netherlands and Hong Kong, that these States should respect the physical and psychological identity of transgender persons by legally recognising self-identified gender without additional requirements that may further violate human rights.¹⁸ The Committee on the Elimination of Discrimination against Women (CEDAW), for example, criticised Switzerland for “[t]he persistence of gender reassignment treatment targeting transgender persons including involuntary medical treatment, such as hormonal or surgical sterilisation.”¹⁹ As did the Human Rights Committee to Kazakhstan in 2016²⁰ and Slovakia in 2016,²¹ and CEDAW to France²² in 2016.

¹³ Report of the UN High Commissioner for Human Rights on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23), 2015, para. 79(i).

¹⁴ Joint UN statement on Ending violence and discrimination against lesbian, gay, bisexual, transgender and intersex people (2015), at: <http://www.ohchr.org/EN/Issues/Discrimination/Pages/JointLGBTIstatement.aspx>.

¹⁵ United Nations Development Programme and Asia Pacific Transgender Network, *Legal Gender Recognition: A Multi-Country Legal and Policy Review in Asia*, 2017 (forthcoming).

¹⁶ <http://www.unhcrexchange.org/old/topics/15810/contents?PHPSESSID>.

¹⁷ United Nations High Commissioner for Refugees, *Guidelines on International Protection No.9* (2012), p.12 (HCR/GIP/12/09).

¹⁸ Human Rights Committee, Concluding Observations on Ireland (CCPR/C/IRL/CO/3), 2008, para. 8, (CCPR/C/IRL/CO/4), 2014, para. 7; on Ukraine (CCPR/C/UKR/CO/7), 2013, para. 10; on the Republic of Korea (CCPR/C/KOR/CO/4), 2015, paras. 14-15; CEDAW Concluding Observations on the Netherlands (CEDAW/C/NLD/CO/5), 2010, paras. 46-47; CAT, Concluding Observations on Hong Kong, China (CAT/C/CHN-HKG/CO/5), 2016, para. 29(a).

¹⁹ CEDAW/C/CHE/CO/4-5.

²⁰ CCPR/C/KAZ/CO/2.

²¹ CCPR/C/SVK/CO/4.

²² CEDAW/C/FRA/CO/7-8.

Treaty Bodies also sometimes comment on the unavailability of legal gender recognition procedures in States under review. In 2017, the Human Rights Committee cited concern that in Serbia, “the legal consequences of adjusting or changing one’s sex are not currently regulated by any legal framework and there is no right to a preferred gender in the absence of surgical intervention”.²³ CEDAW directed the same concern to Slovakia in 2015²⁴ and CESCR to Lithuania in 2014.²⁵

2017 also saw the Human Rights Committee publish its first opinion—individual case—regarding the right to legal gender recognition: *G v Australia*. The case concerned a transgender woman who, on applying for an updated birth certificate, was informed that she would have to separate from her female spouse. The applicant argued that to force the couple to divorce would breach their rights to privacy and family life, as well as her individual right to be free from discrimination. The Committee held that Australia’s policy of forced divorce did indeed violate those rights under the Convention. In its review of Australia in the same year, the Committee said that the State should:

Take measures necessary to remove surgery and marital status requirements for sex change on births, deaths and marriage certificates, taking into account the Committee’s views in communication No. 2172/2012, *G v. Australia*.²⁶

Treaty Bodies have also been able to reflect on the relationship between legal gender recognition and the enjoyment of other human rights. For example, when reviewing Costa Rica in 2016, the Committee on Economic, Social and Cultural Rights stated its concern that “the absence of legal recognition of their gender identity is a barrier to transgender persons having effective access to work, education and health services.” It then recommended that Costa Rica “take the necessary legislative and administrative measures to... ensure that transgender persons have effective access to economic, social and cultural rights”—effectively recommending full legal gender recognition.²⁷

Universal Periodic Review

The Universal Periodic Review (UPR) is a mechanism of the UN Human Rights Council, whereby all UN Member States are peer-reviewed on the entire spectrum of human rights issues every 5 years. The review process culminates in an Outcome Report which details the recommendations the State should implement before their next UPR review. States can either accept or take note of recommendations. The UPR process is very accessible to activists and States can be pressured into implementing recommendations. This is an area for advocates to explore because recommendations both build and are part of the general body of international law. In addition, it is particularly encouraging when recommendations are accepted, pointing to an opening of dialogue with one’s own government. When it comes to trans issues generally and legal gender recognition specifically, recommendations are slowly growing and it can contribute to change on the ground.

For example, in 2016, Belgium accepted one recommendation to amend legislation to allow for a change of “civil identity” without surgeries, and another recommendation to abolish medical requirements for legal gender recognition. In May 2017, a law was adopted but not yet in force which will allow for a self-declaration model without medical requirements. Nine legal gender recognition-specific recommendations have been made so far in the UPR, with three accepted by the States under review. All recommendations can be used by advocates to pressure States on the issue.

²³ CCPR/C/SRB/CO/3.

²⁴ CEDAW/C/SVK/CO/5-6.

²⁵ E/C.12/LTU/CO/2.

²⁶ CCPR/C/AUS/CO/6 at para. 28.

²⁷ E/C.12/CRI/CO/5.

Conclusion

The human rights issues of trans people are relatively new to UN mechanisms and agencies, and have come under the LGBT or LGBTI umbrella until very recently. However, thanks to long-term engagement by trans defenders, and growing understanding and receptiveness by UN experts, agencies and State representatives, we have seen an increase in meaningful recommendations and resources to use in our advocacy. The UN system should never be your only advocacy tool, but is one way to both assert pressure as well as open avenues for dialogue with your government.

CASE STUDY

Engaging with the Human Rights Committee

In 2016 Zhan Chiam and Helen Nolan interviewed **Broden Giambrone**, previous Executive Director of the Transgender Equality Network Ireland (TENI).²⁸

ZHAN CHIAM (ZC) and HELEN NOLAN (HN):
What made you decide to engage with the Human Rights Committee (HRCee)?

BRODEN GIAMBRONE (BG): In terms of the decision to work with the HRCee [which monitors State compliance with the International Covenant on Civil and Political Rights (ICCPR)], there were two major goals. Firstly, it's helpful in national advocacy to have a broad range of arguments to pull from. Ultimately, what is the most likely to sway national legislatures is the "hearts and minds" stories (e.g. getting people to share their personal narrative). However, if you are trying to make an advocacy and legal argument (particularly in terms of human rights), it is really helpful to have UN level jurisprudence reinforcing what you are telling the government. This is particularly true when you have a specific recommendation for your country. In 2008, it was important to get a recommendation because, on the back of cases at the European Court of Human Rights (ECtHR), having the HRCee endorsement meant we could argue that the Government's failure to introduce legislation was a breach of global (not just Europe-based) human rights.

Secondly, the ICCPR speaks generally about civil and political rights that are universally understood (and often nationally recognised). It is very helpful, when talking about sex discrimination and general equality, to be able to point to the ICCPR and say that the UN-level institution which acts as guardian of that Covenant has held that Ireland's failure to introduce gender recognition breaches these universal guarantees.

ZC/HN: How did working with the HRCee fit into your national advocacy strategy?

BG: UN advocacy played a complimentary role. The major focus was trying to convince the Government that legal gender recognition was (a) something they "should" do, and (b) something they were required to do under the Convention. The UN level advocacy was very helpful (1) in keeping up the pressure on the Government and (2) supporting more general arguments about human rights law. In terms of the removing a divorce requirement from the draft gender recognition law in Ireland, it was helpful because the 2014 Concluding Observations contradicted an ECtHR decision that failed to reject such pre-conditions, and suggested that forced divorce is not human rights compliant.

ZC/HN: How did you prepare the shadow report?

BG: TENI sought assistance from a legal expert (Peter Dunne) who supports our work and is well-versed in the language of human rights. Peter did the first draft which was then reviewed by TENI staff. Peter then completed a longer draft which was submitted to the Committee, and which we then submitted to the Oireachtas (Irish Parliament) and also used for the government's public consultation on a proposed gender recognition law in 2013. We didn't have any specific assistance from another group, but Peter had been writing such reports with *OutRight Action International* for the previous year, so we had a good idea of the process. We focused a lot on what the Committee had previously said, and tried to bring our narrative within that context.

²⁸ This interview was first published in the "Advocating on Gender Identity and Gender Expression" report, researched and written by Helen Nolan, former UN Programme Officer at ILGA, with input from Zhan Chiam, Gender Identity and Gender Expression Programme Officer, in June 2016. The report is available at: <http://ilga.org/wp-content/uploads/2016/02/TB-Guide-CESCR-270716.pdf>.

ZC/HN: How did you engage with the Committee?

BG: We did not have the resources to attend and did not engage with the Committee. However, TENI was part of a coalition of 12 organisations that submitted a detailed shadow report on human rights issues in Ireland in advance of the session in 2014. Representatives of the coalition attended the session and raised the issue of legal gender recognition in the formal briefing.

ZC/HN: Were you satisfied with the recommendations?

BG: The HRCee recommendations were very helpful. Not only did they hammer the government for failing to bring in recognition, but they were also the first UN body to really question the legitimacy of forced divorce, which was a concluding observation that we didn't expect but that was helpful.

ZC/HN: How have the HRCee's recommendations helped you achieve your advocacy goals?

BG: In general, the UN observations have only limited impact for the national advocacy work. But I

think that the recommendations from 2008 and 2014 were very helpful. They were clear, direct and easy to measure. And, they were useful in terms of buttressing our human rights arguments with the government. However, it will be interesting to see how useful the recommendations can be in other areas where trans people are specifically concerned. It has been more difficult with other committees to get them to separate out sexual orientation and gender identity, and to meaningfully address the (non-recognition related) concerns of the trans community.

ZC/HN: Do you have recommendations for other trans defenders?

BG: Consider how the UN advocacy work can fit into your overall advocacy strategy. Determine whether UN condemnation will help or hinder your cause. Determine which of the Treaty Bodies will most effectively address your work. Choose two/three core issues to emphasise. Include personal narratives in your report. Seek funding to attend the session. Do your best to publicise recommendations when released.

Name and sex/gender marker change in the Inter-American System of Human Rights

By Matilda González Gil

What is the Inter-American System of Human Rights?

The Inter-American System of Human Rights is constituted by member States of the Organization of American States (OAS), which has two independent—but also complimentary—functions: The Inter-American-Commission of Human Rights (IACHR) and the Inter-American Court of Human Rights (I/A Court).²⁹ Any person, group of persons, or organization, on its own or in representation of another,³⁰ may submit petitions or complaints for human rights violations encompassed in the American Convention of Human Rights or other Inter-American instruments³¹ and the IACHR examines if the State bears international responsibility³² and make recommendations.³³ If the State does not comply with the recommendations, the IACHR can publish the case or refer it to the Court if it considers it appropriate.³⁴ The IACHR can also make recommendations to States in country, regional or thematic reports, press releases, among others. The I/A Court has a more limited mandate because is a judicial organ and may only decide cases brought by States Parties or the Commission and only against member States of the OAS that have accepted the Court's contentious jurisdiction.³⁵

Inter-American definitions of sex and gender identity

The Commission noted the concept of sex as a social construct and that “sex assignment is not an innate biological fact; rather, persons are socially assigned a sex at birth based on the perception others have of their genitals”.³⁶ Under this concept, the classification of persons into sexes is a social decision and therefore a result of an ideological reading of the human bodies,³⁷ more than a scientific truth.³⁸

The Commission cites the definition of the Yogyakarta Principles³⁹ that define gender identity as “each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other

²⁹ Colectivo de Abogados José Alvear Restrepo, *¿Qué es el Sistema Interamericano de protección a los derechos humanos?*, May 11, 2009.

³⁰ IACHR, *Petition and Case System: Informational Brochure*, 2010.

³¹ Colectivo de Abogados José Alvear Restrepo, *¿Qué es el Sistema Interamericano de protección a los derechos humanos?*, May 11, 2009.

³² Colectivo de Abogados José Alvear Restrepo, *¿Qué es el Sistema Interamericano de protección a los derechos humanos?*, May 11, 2009.

³³ Colectivo de Abogados José Alvear Restrepo, *¿Qué es el Sistema Interamericano de protección a los derechos humanos?*, May 11, 2009.

³⁴ IACHR, *Petition and Case System: Informational Brochure*, 2010.

³⁵ International Justice Resource Center, *Inter-American Human Rights System*, no date.

³⁶ IACHR, *Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, November 12, 2015.

³⁷ IACHR, *Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, November 12, 2015.

³⁸ IACHR, *Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, November 12, 2015.

³⁹ “In 2006, in response to well-documented patterns of abuse, a distinguished group of international human rights experts met in Yogyakarta, Indonesia to outline a set of international principles relating to sexual orientation and gender identity. The result was the Yogyakarta Principles: a universal guide to human rights which affirm binding international legal standards with which all States must comply. They promise a different future where all people born free and equal in dignity and rights can fulfil that precious birthright”. YogyakartaPrinciples.org, *The Yogyakarta Principles*, 2016

expressions of gender, including dress, speech and mannerisms”.⁴⁰ For the Commission, body transformations are relevant in the discussion of the rights of trans persons but they do not determine the gender identity of a person: “Gender identity is not determined by body transformations, surgical interventions or medical treatment. However, these could be considered necessary in the construction of the gender identity by some trans persons”.⁴¹

IACHR’s standards for name and sex/gender marker change in identity documents

Under Article 1(1) of the American Convention on Human Rights,⁴² which establishes the duty to guarantee human rights, States have an essential responsibility to prevent the violation of human rights of persons subject to their jurisdiction.⁴³ For the Inter-American System this obligation includes the adoption of “all legal, political, administrative measures, and those regarding cultural changes, which ensures that a potential violation of human rights will be effectively addressed as a punishable offence”.⁴⁴ For the Inter-American standards strategies aimed at preventing violence “should be comprehensive, should be aimed at addressing known risk factors for the violence, and should strengthen institutions that can provide an effective response”.⁴⁵

States are obliged to have legislative measures to prevent violence and enact “legislation protecting and recognizing the rights of LGBTI persons”⁴⁶ because the lack of legal recognition of sexual orientation, gender identity, and bodily diversity renders social discrimination and violence based on prejudice “invisible in the eyes of the law, erasing the enhanced risk of violence faced by LGBTI persons”.⁴⁷ The Commission noted “that this obligation includes the adoption of gender identity laws”.⁴⁸ The Commission has cited studies that indicate that there is a relationship between the prevalence of violence and discrimination against trans persons and Gender Identity Laws, specifically in Argentina.⁴⁹

Gender Identity Laws

In Recommendation 26 of the Report of Violence Against LGBTI Persons, the IACHR advised States to: “Enact gender identity laws that recognize the rights of trans persons to change the name and gender marker on birth certificates and identity documents, without the need to present medical or psychological/psychiatric evaluations or certificates”.⁵⁰

For the Commission the best practice in the region is the Gender Identity Law in Argentina because it “does not require any type of medical intervention or procedure, judicial proceeding, or psychiatric or

⁴⁰ *Yogyakarta Principles. Principles on the application of international human rights law in relation to sexual orientation and gender identity*, 2006, p. 6, fn. 2. Cited by IACHR, *Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, November 12, 2015.

⁴¹ Cited by IACHR, *Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, November 12, 2015.

⁴² Article 1. Obligation to Respect Rights: 1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

⁴³ IACHR, *Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, November 12, 2015.

⁴⁴ IACHR, *Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, November 12, 2015.

⁴⁵ IACHR, *Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, November 12, 2015.

⁴⁶ IACHR, *Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, November 12, 2015.

⁴⁷ IACHR, *Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, November 12, 2015.

⁴⁸ IACHR, *Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, November 12, 2015.

⁴⁹ “One study indicates that the prevalence of violence and discrimination against trans persons in Argentina has diminished since the passing of the gender identity law in 2012. However, the IACHR continues to receive information on killings and other acts of violence against trans women in different provinces in Argentina... In Argentina, an official study conducted in 2012 showed that 83% of surveyed trans women had been victims of serious acts of violence and discrimination perpetrated by police officers. Another study prepared by civil society organizations two years following the passing of the in Argentina has diminished since the passing of the gender identity law in 2012. However, the IACHR continues to receive information on killings and other acts of violence against trans women in different provinces in Argentina.” IACHR, *Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, November 12, 2015.

⁵⁰ IACHR, *Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, November 12, 2015.

medical certification, in order for persons to have their gender recognized”.⁵¹ The Commission also acknowledged that Uruguay was the first country in the region to pass a gender identity law and that there is a bill pending in Congress in Chile.⁵² In July 2015, the Commission congratulated Colombia and Mexico and Colombia for the decrees that allowed “for the sex component or gender marker on identity documents to be changed through simple administrative procedures”.⁵³ Nevertheless, it urged both to enact gender identity laws.

In its 2016 preliminary report on Poverty, Extreme Poverty, and Human Rights in the Americas, the Commission established that “in order to fully include trans persons into different spheres of life and reduce the levels of poverty that afflict them, the IACHR considers it necessary to redouble efforts and move beyond the formal adoption of laws that recognize gender identity, and to engage in the design and implementation of public policies that complement the laws, take into account the needs and different realities encountered by trans persons, and are designed to narrow the gaps of inequalities they face, which in some cases, go beyond the scope of a gender identity law”.⁵⁴

On November 20th 2015, the International Transgender Day of Remembrance, the IACHR urged States to increase the life expectancy of trans persons in the Americas, which is 35 years old. In March 2017, the IACHR again urged States to ensure full inclusion of trans people and combat the factors that exacerbate discrimination and exclusion.⁵⁵ The Commission recommended Member States of the Organization of American States (OAS) to adopt urgent measures to “mainstream a gender identity approach into public policies that seek to break the cycles of poverty, exclusion, violence, and criminalization that affect trans people in the Americas. This includes, among other things, measures to recognize gender identity in a simple, expedited way that does not pathologize the person”.⁵⁶

Pending decisions at the Inter-American System regarding name and sex/gender change

There are two pending decisions in the Inter-American System regarding name and sex/gender change in the region.

The first is the case of Tamara Adrián, a trans woman, over Venezuela’s legal system “failure to provide a suitable and effective remedy for changing an individual’s gender identity in the registry documentation system”.⁵⁷ Adrián considers that Venezuela has violated her human rights because the State does not allow her identity documents to match her gender identity. She also argues that there “an unjustified delay of more than 10 years in resolving the protective measure she submitted”. The petition was admitted in December of 2016 by the Commission and it will continue the analysis for the State’s responsibility. However as explained in this report, Venezuela’s Tribunal admitted in June 2017 to recognising the right to change a person’s identity and sex, following medical, psychiatric and psychological examinations.

⁵¹ IACHR, *Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, November 12, 2015.

⁵² IACHR, *Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, November 12, 2015.

⁵³ IACHR, *Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, November 12, 2015.

⁵⁴ IACHR, *Preliminary Report on Poverty, Extreme Poverty, and Human Rights in the Americas*, 2016.

⁵⁵ IACHR, “On Trans Day of Visibility, IACHR Urges States to Ensure Full Inclusion of Trans People and Combat the Factors that Exacerbate Discrimination and Exclusion”, March 31, 2017.

⁵⁶ IACHR, “On Trans Day of Visibility, IACHR Urges States to Ensure Full Inclusion of Trans People and Combat the Factors that Exacerbate Discrimination and Exclusion”, March 31, 2017.

⁵⁷ IACHR, Report No. 66/16, Petition 824-12, Report on Admissibility Tamara Mariana Adrián Hernández, Venezuela, December 6, 2016.

On May 2016, Costa Rica addressed the I/A Court to submit a request for an Advisory Opinion⁵⁸ regarding the “recognition of a change in a person’s name based on his or her gender identity”,⁵⁹ “persons who wish to change their name based on their gender identity⁶⁰ and “recognition of patrimonial rights derived from a relationship between persons of the same sex.⁶¹ The Court has received observations from other States, the IACHR, national and international organisms, associations, human rights organizations, academic institutions and civil society individuals.⁶² In May 2017, a public hearing took place to listen to more observations.⁶³

Conclusion

It can be seen that the Inter-American system, and in particular the Commission, is far advanced in terms of its understanding and approach to gender identity and legal gender recognition. This has had an impact on the Americas, advancing rights in this area in a number of countries and allowing for judicial applications on legal gender recognition, connecting it to a number of other human rights pertinent to the region.

⁵⁸ Article 64 of the American Convention on Human Rights: 1. The member states of the Organization may consult the Court regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the American states. Within their spheres of competence, the organs listed in Chapter X of the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires, may in like manner consult the Court. 2. The Court, at the request of a member state of the Organization, may provide that state with opinions regarding the compatibility of any of its domestic laws with the aforesaid international instruments.

⁵⁹ “The protection provided by Articles 11(2), 18 and 24 in relation to Article 1 of the Convention” Costa Rica, *Petition for Advisory opinion for the Inter-American Court of Human Rights*, May 18, 2016.

⁶⁰ “Compatibility of the practice consisting in applying article 54 of the Civil Code of the Republic of Costa Rica, Law No. 63 of September 28, 1887,...with Articles 11(2), 18 and 24 in relation to Article 1 of the Convention” Costa Rica, *Petition for Advisory opinion for the Inter-American Court of Human Rights*, May 18, 2016.

⁶¹ “Protection provided by Articles 11(2) and 24 in relation to Article 1 of the Convention” Costa Rica, *Petition for Advisory opinion for the Inter-American Court of Human Rights*, May 18, 2016.

⁶² Inter-American Court of Human Rights, *Observations on the Request for Advisory Opinion*, 2017.

⁶³ Inter-American Court of Human Rights, *Public Hearing for Advisory Opinion OC-24*, May, 2017.

Africa

By Ricky Nathanson⁶⁴

Africa is the world's second-largest and second-most-populous continent (the first being Asia). At about 30.3 million km² including adjacent islands, it covers 6% of Earth's total surface area and 20.4% of its total land area. With 1.2 billion people as of 2016, it accounts for about 16% of the world's population.

The African Charter on Human and People's Rights sets out the fundamental human rights to which countries in Africa have ascribed:

Article 2: "Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status."

Article 3(1): "Every individual shall be equal before the law."

Article 3(2): "Every individual shall be entitled to equal protection of the law."

This means that no person should be denied the exercise of their fundamental human rights because of discrimination.

However, it is part of the course - socially and legally - in Africa to demoralize, discriminate against, ridicule, vilify and abuse trans diverse and gender non-conforming persons. Access to education, health, employment, freedom of worship, privacy, life, dignity, personal liberty, human dignity and personal security are seriously compromised across the board.

This is carried out by foundational institutions such as schools, the workplace, governments and healthcare facilities. Instead of providing services in a non-discriminatory manner, transgender people are subject to ill-treatment, disrespect, abuse, violence and the denial of human dignity.

For many transgender persons, having a gender identity that is not reflected in their official documents often leads to exposure to such humiliation and violence. It also effectively denies them their legal rights and citizenship. This problem is highlighted when transgender persons are required to explain intimate details of their lives and identity to strangers in order to access routine services, such as banking transactions, or denied access to employment, because they lack the proper identification.

Society puts the blame on this marginal population for bringing this upon themselves, instead of admitting that the moral failure actually lies within a society unable to unconditionally accept different gender identities and expressions.

Transgender persons are entitled to the protection of their dignity, and national Constitutions and international instruments apply to us equally. The Constitutions of the majority of African countries contain Bills of Rights, which in the main, mirror the Universal Declaration of Human Rights. Additionally, The African Commission on Human and Peoples' Rights (the African Commission), meeting at its 55th Ordinary Session in Luanda, Angola, from 28 April to 12 May 2014, adopted

⁶⁴ Ricky Nathanson is the founder of Trans* Research, Education, Advocacy & Training [TREAT], Zimbabwe, and Secretary of the Southern Africa Trans Forum.

Resolution 275 - Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity.

Legal recognition of a person's gender in Africa

For the purposes of mapping legal gender recognition on this continent, information was scarce save for Southern Africa, due mainly to (1) language barriers between the researchers of the Southern Africa Trans Forum and the communities in Western⁶⁵ & Central⁶⁶ Africa, and (2) religious fundamentalism in North Africa⁶⁷.

In East Africa⁶⁸ in Kenya in 2014, a court allowed a trans woman to remove the gender marker on her Certificate of Secondary Education, stating that:

Human dignity is that intangible element that makes a human being complete. It goes to the heart of human identity. Every human has a value. Human dignity can be violated through humiliation, degradation or dehumanisation. Each individual has inherent dignity, which our Constitution protects. Human dignity is the cornerstone of the other human rights enshrined in the Constitution.⁶⁹

The ruling above is a perfect example of Kenya upholding Resolution 275 of the African Commission.

With the exception of South Africa and Namibia, other Southern African countries⁷⁰ do not have specific provisions in their laws that allow transgender people to change the gender marker or sex description in their official documents. This does not, however, mean that the door is closed to effect these changes.

⁶⁵ West Africa is the westernmost sub region of Africa. It has been defined as including 17 countries: Benin, Burkina Faso, Cape Verde, Gambia, Ghana, Guinea, Guinea-Bissau, Ivory Coast, Liberia, Mali, Mauritania, Niger, Nigeria, Saint Helena, Senegal, Sierra Leone and Togo.

⁶⁶ Central Africa is the core region of the African continent which includes Burundi, the Central African Republic, Chad, the Democratic Republic of the Congo, Rwanda, Cameroon, the Republic of the Congo, Equatorial Guinea, Gabon, and São Tomé and Príncipe.

⁶⁷ North Africa is a collective term for a group of Mediterranean countries situated in the northern-most region of the African continent, covering Morocco, Algeria, Tunisia, Libya and Egypt.

⁶⁸ Due to colonial territories of the British East Africa Protectorate and German East Africa, the term East Africa is often (especially in English) used to specifically refer to the area now comprising of Kenya, Tanzania and Uganda.

⁶⁹ *Republic v Kenya National Examinations Council & another Ex-Parte Audrey Mbugua Ithibu* [2014] eKLR.

⁷⁰ Southern Africa is the southernmost region of the continent, variably defined by geography or geopolitics, and includes several countries: Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Zambia, and Zimbabwe.



Angola

| | | |
|--|--|--|
| | Name change | Nominally possible. As explained below for gender marker change. |
| | Gender marker change | Nominally possible , with unclear requirements. |
| | <i>Legislation</i> | <i>Código do Registo Civil 2015</i> , Section 87 (not trans specific). |
| | <i>Documents amended</i> | National Identity Card, passport. |
| | <i>Conditions for gender marker change</i> | Although s. 78 of the Code does not allow alterations of details entered in the registration of records of the Civil Registrar, s.87 permits changes, including change of name where there is a change of facts which alter the legal identity or status of the person. A change of sex marker may also be possible. ⁷¹ |



Botswana

| | | |
|--|--|--|
| | Name change | Possible. |
| | <i>Legislation</i> | <i>Births and Death Registration Act 48 of 1968</i> , Section 13(3)(a). |
| | <i>Quote/details</i> | <i>Section 13(3)(a). ...the Registrar must be satisfied that the person has a settled wish and intention to be and to continue to be generally known by the new forename or forenames either in substitution for or in addition to the forename or forenames under which his birth was registered.</i> |
| | Gender marker change | Potentially possible , with prohibitive requirements. |
| | <i>Legislation</i> | <i>National Registration Act 26 of 1986</i> , s.16 (not trans specific) |
| | <i>Quote/details</i> | In September 2017, before the High Court of Botswana, a transgender man successfully challenged the refusal of the Registrar of National Registration to change the gender marker on his national identity card. He relied on the National Registration Act which allows the Registrar to change any particulars of a registered person and to issue that person with a new identity card if there has been a material change to their circumstances. ⁷² The case is likely to set a precedent for other transgender persons who also wish to change the gender marker on their identity documents. |
| | <i>Conditions for gender marker change</i> | <i>Section 16. Material change.</i> <i>(1) Where the registrar is of the opinion that any change in the particulars relating to a registered person materially affects his registration, he shall record the change and notify the Registrar of National Registration of the circumstances and recommend that the person concerned should be issued with a new identity card. [...]</i> <i>(3) The particulars relating to the new identity card and its holder shall be recorded in the national register and the register of the area in which that person is registered.</i> |

⁷¹ Southern Africa Litigation Centre, "Laws and Policies Affecting Transgender Persons in Southern Africa, July 2016", pp.18-19.

⁷² <https://southernafricalitigationcentre.org/2017/09/29/press-release-botswana-high-court-rules-in-landmark-gender-identity-case/>

The High Court in the case above found that the refusal of the Registrar to change a transgender man's gender marker on his national identity card was unreasonable and violated his rights to dignity, privacy, freedom of expression, equal protection of the law, freedom from discrimination and freedom from inhumane and degrading treatment. The court ordered a change of gender marker from "female" to "male". The applicant submitted various supporting evidence, including psychological and medical evidence in support of his claim.⁷³



Kenya

| | Name change | Possible. |
|--|-------------------------------------|--|
| | Legislation | <i>Registration of Documents (Change of Name) Regulations, 1967.</i> |
| | Quote/details | <p>By using Form 1 in the Schedule of the Regulations (a deed poll), a person may change their name in Kenya. Once all legal requirements have been concluded, the applicant registers the deed poll at the Principal Registry in Nairobi or the Coast Registry.</p> <p>The Registrar shall, after registration, cause the deed poll to be advertised in the Kenya Gazette. This acts as a notification to the general public of the change of name. A fee of Sh 500 is payable for the deed poll presented for registration.⁷⁴</p> <p>Although theoretically all identity documents can be changed after this, in practice it may be different (see gender marker change below).</p> |
| | Gender marker change | Possible, with unclear requirements. |
| | Legislation | <i>Court application.</i> |
| | Documents amended | Kenya Certificate of Secondary Education (KCSE), possibly National Identity Card, birth certificate and passport. |
| | Conditions for gender marker change | <p>In the 2014 case of <i>Republic v Kenya National Examinations Council & another Ex-Parte Audrey Mbugua Ithibu</i> [2014] eKLR, a trans woman successfully applied to the High Court of Kenya to change her name to a female-specific name and remove her male gender marker on her secondary school certificate.</p> <p>In coming to its decision, the court referred to evidence it received of the applicant's "Gender Identity Disorder" and the medical treatment she was receiving for it, the Indian case of <i>NALSA v Union of India</i> (2014), including its discussion of human dignity and how it intertwines with the development of a nation, and finally a Kenyan individual's Constitutional and inherent right to human dignity.</p> <p>In terms of the certificate itself, the court observed that there was no law that required the certificates to bear gender markers, examinations in Kenya were not administered and marks were not awarded based on gender, and removing the marker did not dilute the quality of the certificate.</p> |

⁷³ *Ibid.*

⁷⁴ https://www.the-star.co.ke/news/2013/01/02/changing-of-names_c721212.



Lesotho

| | | |
|--|-----------------------------|---|
| | Name change | Possible. |
| | <i>Legislation</i> | <i>Registration of Births and Deaths Act, s.7(2).</i> |
| | Gender marker change | Not possible. |



Malawi

| | | |
|--|--|---|
| | Name change | Nominally possible. <i>As explained below for gender marker change.</i> |
| | Gender marker change | Nominally possible, with unclear requirements. |
| | <i>Legislation</i> | <i>National Registration Act 13 of 2010 (not trans specific).</i> |
| | <i>Conditions for gender marker change</i> | <p>Section 20(1) provides that where a change in particulars of a registered person materially affect his registration, the district registrar shall record the change and notify the Director of the circumstances and recommend that the person be issued with a new identity card.</p> <p>Section 21(1) provides that every registered person may, when he is satisfied that his appearance has changed so as to make it likely that his identity may be questioned, apply to the district registrar for the issue of a new card with a more recent photograph.⁷⁵</p> |



Mozambique

| | | |
|--|--|---|
| | Name change | Nominally possible. <i>As explained below for gender marker change.</i> |
| | Gender marker change | Nominally possible, with unclear requirements. |
| | <i>Legislation</i> | <i>Código do Registo Civil 2004 (not trans specific).</i> |
| | <i>Documents amended</i> | Identity card. |
| | <i>Conditions for gender marker change</i> | <p>Section 85(1) gives the Civil Registrar general authority to make changes when there is a change of facts which alter the legal identity or status of the person registered.</p> <p>Trans people could use this section to change the sex description on their identity document.⁷⁶</p> |

⁷⁵ *Ibid*, p. 27.

⁷⁶ *Ibid*, p. 31.



Namibia

| | | |
|--|-------------------------------------|---|
| | Name change | Possible. As explained below for gender marker change. |
| | Legislation | Identification Act 2 of 1996. |
| | Gender marker change | Possible , with prohibitive requirements. |
| | Legislation | Births, Marriages and Deaths Registration Act 81 of 1963; Identification Act 2 of 1996 (not trans specific). |
| | Conditions for gender marker change | <p>Births, Marriages and Deaths Registration Act 81 of 1963, s.7B:</p> <div style="border: 1px solid #ccc; padding: 5px; margin: 5px 0;"> <p><i>The Secretary may on the recommendation of the Secretary of Health, alter in the birth register of any person who has undergone a change of sex, the description of the sex of such person and may for this purpose call for such medical reports and institute such investigations as he may deem necessary.</i></p> </div> <p>The Act does not define “change of sex”. Applications in terms of s.7B are done on a case-by-case basis– as long as a person can provide medical reports of their “change of sex”.</p> <p>Once the application is granted, a trans person can apply for a new identity document and passport. Namibia does not provide gender affirming healthcare in the public health system, making the Act largely inaccessible.</p> <p>A transgender person who has not had a “change of sex” could use s.12(1)(a) of the <i>Identification Act 2 of 1996</i>. It states that “if an identity document does not reflect correctly the particulars of the person to whom it was issued, or contains a photograph which is no longer a recognizable image of that person”, the person shall hand over the identity document to the Minister. Section 12(3) states that the Minister shall cancel it and replace it with an improved identity document. The majority of trans people who have made applications to update their photographs have not been successful.</p> |



South Africa

| | | |
|--|-------------------------------------|---|
| | Name change | Possible , with unclear requirements. See gender marker process below. |
| | Quote/details | Applicants report being unable to process simultaneous gender marker and name change requests before the DHA. |
| | Gender marker change | Possible , with unclear and prohibitive requirements. |
| | Legislation | Alteration of Sex Status and Sex Descriptor Act, No.49 of 2003 (trans (and intersex) specific). |
| | Documents amended | Identity card, birth register. |
| | Conditions for gender marker change | <div style="border: 1px solid #ccc; padding: 5px; margin: 5px 0;"> <p><i>(2) Any person whose sexual characteristics have been altered by surgical or medical treatment or by evolvment through natural development resulting in gender reassignment, or any person who is intersexed may apply to the Director-General of the National Department of Home Affairs for the alteration of the sex description on his or her birth register.</i></p> </div> |

There are no directives from the National Department of Home Affairs (DHA) on how to interpret the Act, and in practice this causes arbitrary obstacles such as requiring proof of gender reassignment surgery, long waiting periods for applications to be processed (averaging 1-7 years), what forms to use and what documents and applicant must bring.



Swaziland

| | | |
|--|--|---|
| | Name change | Possible. |
| | <i>Legislation</i> | <i>Births, Marriages and Deaths Registration Act 5 of 1983, s. 8(1)</i> |
| | Gender marker change | Nominally possible , with unclear requirements. |
| | <i>Legislation</i> | <i>Births, Marriages and Deaths Registration Act 5 of 1983 (not trans specific).</i> |
| | <i>Documents amended</i> | Birth certificate. |
| | <i>Conditions for gender marker change</i> | Section 8(3) provides that for persons over 21 years of age and if, after registration of birth, there is a change in “any other particular of a person” not provided for in that section, the person may apply for alteration of the birth register. The sub-section also provides that: <div style="border: 1px solid #ccc; padding: 5px; margin-top: 10px;"> <p><i>...on production of documentary proof (in case of change of sex of the child a medical certificate from the medical practitioner shall be produced) and... the said particular of the person to be altered in the original birth information form filed in his office, but without erasing the original entry.⁷⁷</i></p> </div> <p>It appears that gender marker change may be more explicitly (and easily) obtainable for children, rather than adults in Mozambique.</p> |



Tanzania

| | | |
|--|-----------------------------|----------------------|
| | Name change | Not possible. |
| | Gender marker change | Not possible. |



Uganda

| | | |
|--|-----------------------------|----------------------|
| | Name change | Not possible. |
| | Gender marker change | Not possible. |

⁷⁷ *Ibid*, p. 44.



Zambia

| | | |
|--|--|---|
| | Name change | Possible. |
| | <i>Legislation</i> | <i>National Registration Regulations 254 of 1965, reg. 9.</i> |
| | <i>Quote/details</i> | The person applies for a new National Registration Card with a statutory declaration or the change of name, and is issued a new card. A separate register of all persons who have so changed their names is kept by the Chief Registrar. |
| | Gender marker change | Possible , with prohibitive requirements. |
| | <i>Legislation</i> | <i>National Registration Act 19 of 1964 (not trans specific).</i> |
| | <i>Documents amended</i> | National Registration Card. |
| | <i>Conditions for gender marker change</i> | <p><i>National Registration Act 19 of 1964, Section 9(2):</i></p> <div style="border: 1px solid #ccc; padding: 5px; margin-top: 5px;"> <p><i>Section 9(2): In any case where a national registration card issued to a registered person ceases in any material particular to accurately represent his identity, such person shall, without undue delay, produce his national registration card and give such particulars as shall be necessary for the issue of a new national registration card to a registrar who... shall issue to such person a new national registration card.⁷⁸</i></p> </div> |



Zimbabwe

| | | |
|--|-----------------------------|--|
| | Name change | Possible. |
| | <i>Legislation</i> | <i>Births and Deaths Registration Act 11 of 1986, s. 18(2).</i> |
| | <i>Quote/details</i> | The person applies for a new National Registration Card with a statutory declaration or the change of name, and is issued a new card. A separate register of all persons who have so changed their names is kept by the Chief Registrar. |
| | Gender marker change | Not possible. |

⁷⁸ *Ibid*, p. 46.

Asia

By Zhan Chiam

The landscape for legal gender recognition in 2017 in parts of Asia is shifting in subtle but not insignificant ways. Less by virtue of international or UN-level efforts, the steps taken by some Asian governments to consider ways to improve the lived situation for trans persons is the result of national advocacy by civil society, exchange of experiences and good practices between governments, and the will of the individual governments themselves.

For example, at the time of going to print, governments, civil society and other experts just concluded a roundtable meeting to review legal gender recognition in the context of **Hong Kong, Vietnam, Thailand** and **the Philippines**. This followed the introduction in January 2017 of an article in the Civil Code of **Vietnam** that will eventually allow trans people to change their gender markers. Meanwhile in **Kyrgyzstan**, a 2017 manual on standards of care for trans people and approved by the health ministry recommends legal gender recognition without surgical requirements—a result of a long and sustained campaign led by a national LGBT organization.

If there can be said to be one pattern in Asia, it is the prevalence of courts in adjudicating legal gender recognition applications, whether there are laws or clear requirements in place or not. However, from here, the examples diversify—courts in some Asian countries consider applications at the name and gender marker change stage of the process, while in other countries, the courts decide whether a person is suitable for gender affirming surgeries or not. In a region with a mixture of legal systems and with a significant number of countries with plural legal systems, assessing legal gender recognition in Asia is especially complicated.

For the other East and Southeast Asian countries aside from Vietnam, there have been no legislative changes since 2016. However, in November 2017, **Singapore** saw a regressive change in policy, with introduction of a new requirement of “complete change of genitalia” from male to female or from female to male. This came about with no notification to the community and, at the time of going to print, it is still unclear how the policy was developed.

As the interview with Malaysian civil society (p. 34) and the United Nations Development Programme-Asia Pacific Transgender Network report shows, in **Malaysia** legal gender recognition is won by arguing cases effectively at the High Courts with the aim of moving away from the outdated set of criteria from *Corbett v Corbett*.⁷⁹ However, this is time consuming, expensive and only affects the applicants/plaintiffs in question. Moreover, as can be seen, the national body responsible for issuing identity documents in Malaysia shows a willingness to challenge in court their decisions not to issue identity documents with changed gender markers, pointing to a more systemic problem. One feature in Malaysia is the issuance of religious edicts by the national “Fatwa Council”, which have significant impact on the workings of government bodies and on public opinion, in this case not solely on trans persons but on “LGBT” writ large.

Across the Causeway in **Singapore**, the government similarly points to conservative “social attitudes”, and the need to balance all sectors of society when faced with LGBT issues, without any data or hard evidence about what the society actually thinks.⁸⁰ In **Indonesia**, trans people also face complicated court cases with judges having no clear criteria on what evidence is persuasive for both name and gender marker change applications. **Myanmar** does not allow any official name or gender marker

⁷⁹ See Malaysia entry at p. 33.

⁸⁰ As example: <http://m.todayonline.com/singapore/spore-not-ready-same-sex-marriage-pm-lee>; <http://www.atimes.com/article/gay-pride-state-shame-singapore/>.

change, and is one of the few countries where people do not have given or family names. Also, a person's national identity card remains the same throughout their lifetime. Although possible in **South Korea**, gender recognition is extremely restrictive and prescriptive. Civil society there believes that change needs to be brought about together with any advancements in **Japan**, on which South Korea has based its process.

The situation in Asia, and especially South Asia, shows that judicial victories alone do not guarantee legal gender recognition. Since the 2014 landmark case in **India** of *NALSA v Union of India*, the situation has not improved for trans communities, with retrogressive legislation being considered by both houses of Parliament and which is being replicated in current Bills under review in **Pakistan**. **Nepal**, however, has seen steady progress since the 2007 case of *Pant v Nepal* and a 2017 Supreme Court decision now paves the way for trans persons to access name change along with gender marker change, though this is in most cases limited to a third gender 'O' option.

In West Asia, **Iran** is the only country for which we can provide information thanks to a thorough report by *OutRight Action International*. This region continues to be a gap because of the difficulty in communicating with trans activists safely.

In many respects, Asia is at a crossroads with legal gender recognition. The diversity in legal systems, religions, cultures, languages and economic levels makes this especially challenging because a one-size-fits-all approach will not succeed. It is especially important at this juncture for trans activists in the region to work across borders and strategize together, finding ways to use this momentum of research, information exchange and positive government will to advance the issue in their own countries.



Bangladesh

| | | |
|--|--|---|
| | Name change | Possible. |
| | <i>Quote/details</i> | Name change is applied for by affidavit witnessed by a magistrate, which must be published in two newspapers. It is then possible to change the national ID. ⁸¹ |
| | Gender marker change | Not possible. |
| | <i>Third gender option</i> | Recognition of third gender or hijra status was announced by Prime Minister Sheikh Hasina and the government on January 26, 2014 (“The Government of Bangladesh has recognized the Hijra community of Bangladesh as a Hijra sex”). ⁸² However, no procedures for gender marker change have been put forward. |
| | <i>Conditions for gender marker change</i> | An ‘other’ gender marker is available on passport forms, but supporting documentation of a birth certificate or a national ID card is required when issuing a passport. At present, neither of those documents can carry an ‘other’ marker, meaning that uncertainty exists over the success of potential passport applications. ⁸³ |



Bhutan

| | | |
|--|-----------------------------|--|
| | Name change | Possible. |
| | <i>Quote/details</i> | Form to be submitted to the Department of Civil Registration and Census, along with educational/professional certificates as required by Department rules. ⁸⁴ |
| | Gender marker change | Not possible. |



Hong Kong

(Special Administrative Region of the People’s Republic of China)

| | | |
|--|-----------------------------|---|
| | Name change | Possible. By deed poll. |
| | Gender marker change | Possible, with prohibitive requirements. |
| | <i>Authority</i> | Administrative process. |

⁸¹ See: http://www.nidw.gov.bd/index.php?option=com_content&view=article&id=148&Itemid=1215&lang=en.

⁸² Human Rights Watch, “I want to live with my head held high”: Abuse in Bangladesh’s Legal Recognition of Hijras, December 2016, https://www.hrw.org/sites/default/files/report_pdf/bangladesh1216_web.pdf.

⁸³ United Nations Development Programme and Asia Pacific Transgender Network, *Legal Gender Recognition: A Multi-Country Legal and Policy Review in Asia*, 2017 (forthcoming).

⁸⁴ See: https://www.citizenservices.gov.bt/dob_correction.

| | | |
|---|---|--|
|  | <p><i>Quote/details</i></p> | <p>Note: <i>As at the time of this publication, Hong Kong is undergoing a review of its legal gender recognition process.</i></p> <p>The Inter-departmental Working Group on Gender Recognition however maintains a stricter view that the sex entry on the HKIC is an issue of identification rather than legal status. It says:</p> <p><i>There is currently no legislation in Hong Kong which provides for the recognition of the reassigned, acquired or preferred gender of a person for all legal purposes. Government departments and private bodies are not required by law to accept the sex entry on a person's HKIC as that person's legal gender. Neither is there any mechanism to have the sex entry on a person's birth certificate amended to reflect his or her reassigned, acquired or preferred gender.⁸⁵</i></p> <p>However civil society⁸⁶ has commented that the birth certificate is not used in most situations. For practical purposes, the HKIC is widely used in Hong Kong as an identification document, and holders are required under law to carry it at all times.</p> |
|  | <p><i>Documents amended</i></p> | <p>Hong Kong Identity Card (HKIC), passport.</p> |
|  | <p><i>Conditions for gender marker change</i></p> | <p>The Identity Card holder who applies to effect a change to his/her gender is required to produce a medical certificate which indicates that they have “completed sexual reassignment surgery (SRS)” according to the Immigration Department's administrative guidelines for considering applications to change the sex entries on HKICs⁸⁷:</p> <p><i>Generally speaking, persons who have received different forms of treatments by professional psychiatrists and clinical psychologists, including psychotherapy, hormonal treatment and real-life experience of the chosen gender role for a period of time may be recommended for sex re-assignment surgery (SRS).</i></p> <p>The guidelines further require submission of documents proving completion of SRS, which show removal of the uterus and ovaries or penis and testes, and construction of a penis or some form of a penis, or construction of a vagina. For those who have had SRS performed outside of Hong Kong, medical proof from that doctor should be provided, or a Hong Kong registered doctor should give an assessment of the SRS performed. Since 2016, the Immigration Department has added these additional qualifying criteria:</p> <ul style="list-style-type: none"> ▪ That other forms of medical proof may also be accepted when the relevant information is contained; and ▪ consideration will be given having regard to the particular circumstances of the case. |



India

| | | |
|---|-----------------------------|--|
|  | <p>Name change</p> | <p>Possible.</p> |
|  | <p><i>Quote/details</i></p> | <p>Name change is possible via an affidavit witnessed by a magistrate, notary public, or commissioner for oaths. Following this, it is necessary to publish the change of name in a local newspaper. Finally, the details should be sent to the Department of Publications in New Delhi.</p> |

⁸⁵ Inter-departmental Working Group on Gender Recognition (June 2017), *Consultation Paper: Part 1, Gender Recognition Executive Summary*, at [6], see <http://www.iwggr.gov.hk/eng/pdf/eSummary.pdf>.

⁸⁶ Joanne Leung, Chairperson, Transgender Resource Center.

⁸⁷ http://www.immd.gov.hk/eng/faq/faq_hkic.html.

| | | |
|--|--|---|
| | Gender marker change | Possible , currently unclear requirements. |
| | <i>Quote/details</i> | <p>The Supreme Court judgment of <i>NALSA v Union of India</i> (2014) recognises the right of transgender persons to “decide their self-identified gender” as male, female, or third-gender, and directs “Centre and State governments” to recognise them as such.</p> <p>It has been possible for persons assigned male at birth to obtain identity cards in one’s changed name and third gender identity in Tamil Nadu State for several years, via their Transgender Welfare Board. However, it is not always sufficient for official identification purposes, such as applying for a passport or opening a bank account.⁸⁸ These cards carry both the male and female names.</p> |
| | <i>Documents amended</i> | <p><i>Third gender options:</i> voter ID, ration card, voter ID and other identity documents.⁸⁹</p> <p><i>Binary gender options:</i> Aadhar card, voter ID, PAN card, passport (see below for more details)</p> |
| | <i>Conditions for gender marker change</i> | <p>The Passport Office of India allows for reissue of a passport with a change in gender marker. A “sworn affidavit regarding change of sex” and “certification from the hospital where he/she underwent sex change operation successfully” are required.⁹⁰</p> <p>The Indian Supreme Court accepted self-identification as the principle that would govern gender recognition, with no additional eligibility requirements, such as gender affirming surgeries or hormone therapy. However, there are eligibility criteria, implementation delays and inconsistencies across documents and agencies, which limit the guarantee to self-identification set out in the NALSA judgement.</p> <p>A third gender option can be chosen on Aadhar cards, ration cards and voter IDs, with no additional eligibility criteria. This option is not available on PAN cards or birth certificates.</p> <p>Technically, Aadhar cards, voter IDs, and PAN cards can be corrected and changed from female to male, or vice versa. However, it is unclear what documentation is sufficient. Transgender people have described difficulties amending a first document, or if an Aadhar card had already been issued in a person’s sex assigned at birth. A trans man has outlined how his request to change his gender marker to male was refused because it would not match existing sex details held by the Income Tax Department.⁹¹</p> <p>In India, all applications to amend sex details on a passport (to male, female, or transgender) require proof of gender affirming surgeries. In addition, in order to amend gender markers on other documents, frequently a transgender person will be required to submit a public notification through the Gazette of India. The Gazette has a pro forma for publication of such a notice, that was released after the NALSA judgment. It requires the applicant to declare they have had gender affirming surgeries and the name of the supervisory doctor for those procedures.</p> <p>The Transgender Persons (Protection of Rights) Bill was introduced to Parliament in August 2016.⁹² This bill has been strongly criticized by civil society, not least because it does not follow the self-determination principle set out in <i>NALSA</i>, and for numerous other reasons.⁹³</p> |

⁸⁸ Venkatesan Chakrapani and Arvind Narrain, “Legal Recognition of Gender Identity of Transgender People in India: Current Situation and Potential Options”, 2012; Venkatesan Chakrapani, “The Case of the Tamil Nadu Transgender Welfare Board: Insights for Developing Practical Models of Social Protection Programmes for Transgender People in India”, 2012.

⁸⁹ UNDP-APTN report 2017 (forthcoming).

⁹⁰ <http://www.passportindia.gov.in/AppOnlineProject/pdf/ApplicationformInstructionBooklet-V3.0.pdf> at pp.10 and 12.

⁹¹ UNDP-APTN report 2017 (forthcoming).

⁹² <http://www.prsindia.org/uploads/media/Transgender/Transgender%20Persons%20Bill,%202016.pdf>.

⁹³ See discussions: <http://orinam.net/resources-for/law-and-enforcement/trans-persons-protection-rights-bill-2016/>; <http://sampoornawg-wixsite.com/sampoorna/single-post/2017/01/18/Transgender-Persons-Protection-of-Rights-2016-Bill--Responses-From-Sampoorna-WG-and-other-Trans-Intersex-Communities>.

On 19 November 2017, it was announced that the Union Ministry of Social Justice and Empowerment rejected the Standing Committee’s report on the bill and decided to table its original 2015 version of the Transgender Persons (Protection of Rights) Bill, in the next session of Parliament (Winter session).⁹⁴ The 2015 bill contains many problematic aspects, including conflating trans with intersex, does not address discrimination in employment, education, healthcare or caste, and does not protect trans persons from s. 377 of the Penal Code (criminalisation of sexual activities against the order of nature).⁹⁵



Indonesia

| | | |
|--|--|--|
| | Name change | Possible , though difficult to access. |
| | <i>Quote/details</i> | By court order, which allows one to change core documents such as identity card, health card, driver’s license, etc. The birth certificate will have the new name recorded, with the birth name still visible. School certificates cannot be changed—the court order has to be used together with the certificates to prove identity when certificates are required. |
| | Gender marker change | Possible , with prohibitive requirements and difficult to access. |
| | <i>Authority</i> | Court order. A positive court order is followed by civil registration. See <i>Indonesian Act No. 23 year 2006 on Population Administration</i> , Article 56(1) and <i>Indonesian Presidential Decree no.25 year 2008 on Requirements and Procedures for Registration of Population and Civil Registration</i> , article 97(2). |
| | <i>Documents amended</i> | Identity Card and subsequent documents; birth certificate sometimes possible. |
| | <i>Conditions for gender marker change</i> | Indonesia does not have specific gender recognition laws, but a district court may allow a “change of sex” under population administration provisions for registering “other important events”. That court decision can be submitted as evidence to change sex details on an identification card and birth certificate. → |
| | | There are no clear legal requirements for when a judge should or should not recognise a ‘change of sex’. In practice, the court may ask family members to give evidence. If the court grants the request, this positive decision is submitted, along with the transgender person’s national ID card and their Family Card, ⁹⁶ in their application to amend their sex details. ⁹⁷ |
| | | According to the UNDP-APT report: |
| | | <p><i>There are no laws, regulations or binding court decisions that can confirm whether or not transgender people have to undertake gender affirming medical steps in order to change their gender markers. Expert witness or testimony is not legally required as part of the petition to the court. However, in practice it is common that judges summon or ask for expert testimony, because it is recognized as ‘legal evidence’ in the Indonesian legal system. This is also based on the persuasive, but not binding, precedent in the 1973 Vivian Rubianti case where a transgender woman was able to obtain a change to her gender marker after gender affirming surgeries.</i></p> |

⁹⁴ <http://indianexpress.com/article/india/transgender-rights-house-panel-proposed-govt-rejects-4944199/>.

⁹⁵ <https://feminisminindia.com/section/society/>.

⁹⁶ This document is typically held by a senior family member who may refuse to provide it for this purpose.

⁹⁷ UNDP-APT report 2017 (forthcoming).



Iran

| | | |
|--|--|---|
| | Name change | Possible , with prohibitive requirements. <i>See gender marker change process.</i> |
| | Gender marker change | Possible , with prohibitive requirements. |
| | <i>Quote/details</i> | Following a fatwa issued by Ayatollah Khomeini in the 80s, s.18 of Art. 4 of <i>The Family Law</i> now states that decisions regarding “sex reassignment” are within the purview of the Family Court. ⁹⁸ The judiciary’s Legal Department issued an advisory opinion clarifying the legal process in <i>Opinion number 4/8/92-1444/92/7</i> . |
| | <i>Conditions for gender marker change</i> | <p>Only trans people who undergo sex reassignment surgery (SRS) can access legal gender recognition. The person has to apply to a Family Court to be approved for SRS, and the referred to the Legal Medical Organization where an examination is performed and a medical opinion issued. They then return to the court where a permit for SRS is issued.</p> <p>After completing SRS, the person returns to the court with such proof and a petition to the National Organization for Civil Registration to amend their national ID to reflect their new name and gender. If approved, the court then issues an order for the NOCR to update and reissue the person’s official records.⁹⁹</p> |



Japan

| | | |
|--|--|--|
| | Name change | Possible . |
| | <i>Legislation</i> | <i>Family Registry Act, Article 107-2.</i> |
| | <i>Quote/details</i> | <div style="border: 1px solid #ccc; padding: 5px;"> <p><i>Article 107-2.</i></p> <p><i>A person who wishes to change his/her given name on justifiable grounds shall submit a notification to that effect, with the permission of the family court.</i></p> </div> <p>Trans persons can apply with (1) Gender Identity Disorder diagnosis (medical certificate is required) or (2) proof that one has lived with and used the name one identifies with for a certain amount of period in one’s daily life. For persons 14 years or younger, a guardian should apply on their behalf.</p> |
| | Gender marker change | Possible , with prohibitive requirements. |
| | <i>Legislation</i> | <i>Act on Special Cases in Handling Gender for People with Gender Identity Disorder (“Gender Identity Disorder Act”), Law No.111 of 2003 (trans specific).</i> |
| | <i>Documents amended</i> | Family Register. |
| | <i>Conditions for gender marker change</i> | The applicant must: 1. Be diagnosed with Gender Identity Disorder by two physicians; 2. Be over 20 years old; 3. Be unmarried; 4. Have no minor children; 5. Be sterilised; 6. Have completed genital surgery (Sex Reassignment Surgery). |

⁹⁸ OutRight Action International (2016), *Human Rights Report: Being Transgender in Iran*, p.8

⁹⁹ *Ibid*, pp. 8-10. See p. 9 for flowchart of process.



Kyrgyzstan

| | | |
|--|--|--|
| | Name change | Possible. See gender marker change conditions. |
| | Gender marker change | Possible. |
| | <i>Authority</i> | Legislation (not trans specific), policy. <i>Law on Acts of Civil Status (2005)</i> . ¹⁰⁰ |
| | <i>Quote/details</i> | <p><i>Article 72. Conclusion of a registry body of acts of civil status about adding corrections or changes to the statement of the act of civil status. Conclusion about adding changes or corrections to the statement of the act of civil status is prepared by the registry body in the following cases:</i></p> <p><i>- if a document of authorized format about change of sex issued by a medical organization has been submitted.</i>¹⁰¹</p> <p>Instruction on the rules of registration of acts of civil status approved by the Order of the State Registration Service under the Government of Kyrgyz Republic of 21 July 2011:</p> <p><i>Change and amendments to civil registries are made when it is needed to “change name, patronymic and surname due to change of sex (of hermaphrodites) upon a statement issued by medical institution that performed change of sex” (Article 155).</i>¹⁰²</p> |
| | <i>Documents amended</i> | Birth certificate, identity card, passport, pension insurance documents, military registration card, diploma, driver's license. |
| | <i>Conditions for gender marker change</i> | <p>Before 2017, civil registry offices usually required medical certificates confirming a diagnosis of “transsexualism” and surgery for change of gender marker and name.</p> <p>From 2017, as a result of a multi-year trans advocacy campaign led by LGBT organization, Labrys Kyrgyzstan, and partners, it is now possible to change the legal gender without surgical interventions. The process of legal gender recognition without bodily modification requirements was reinforced by the creation of a Manual on provision of medical and social care for transgender, transsexual and gender nonconforming people¹⁰³ which is the national standard of medical and social care, and which was approved by the Kyrgyz Republic Ministry of Healthcare in Decree № 42 on 18 January 2017.</p> <p>Exceptions are:</p> <ul style="list-style-type: none"> ▪ contraindications for gender marker change based on the exception criteria of the valid version of the ICD ▪ those under 18 years of age, except when official representatives present a notarized agreement) <p>Practically there are already feedbacks from several transgender people who are in process of documents changing on the basis of a certificate with transsexualism diagnosis given by appropriate institute.</p> |

¹⁰⁰ Text of the legislation available in Russian: http://www.srs.kg/index.php?option=com_content&view=article&id=55-12-2005-n-60&catid=5:2010-06-10-09-19-55&Itemid=47 (accessed 16 October 2010).

¹⁰¹ <http://cbd.minjust.gov.kg/act/view/ru-ru/1655?cl=ru-ru>.

¹⁰² Due to a lack of differentiation between gender identity and sex characteristics, rules are understood and applied interchangeably between the two.

¹⁰³ <http://www.labrys.kg/ru/library/full/27.html>.



Malaysia

| | | |
|--|--|--|
| | Name change | Nominally possible. |
| | <i>Quote/details</i> | <ol style="list-style-type: none"> 1. Application to the National Registration Department to change one's Identity Card. However, outcomes are variable depending on the recognizability of the gender of name, which also includes race/ethnic recognizability. 2. Court application. |
| | Gender marker change | Nominally possible , with prohibitive requirements. |
| | <i>Authority</i> | Court application—Civil Courts. |
| | <i>Documents amended</i> | Identity Card—name, gender marker, and last digit of identity card number. ¹⁰⁴ Birth certificates have sometimes been allowed to be altered. |
| | <i>Conditions for gender marker change</i> | <p>In Malaysia, there have been different court decisions about legal gender recognition applications, with inconsistent results. In addition, <i>fatwas</i> (religious edicts or opinions) on transgender persons issued by the Fatwa Council¹⁰⁵ carry weight in public opinion and government policies, influencing the outcomes of these cases.</p> <p>The most progressive case on the matter was <i>JG v Pengarah Jabatan Pendaftaran Negara</i> (High Court of Kuala Lumpur) “<i>JG</i>”. The court followed the Australian case of <i>Re Kevin</i> and rejected the <i>Corbett</i> view of sex as immutably fixed at birth.¹⁰⁶ In the absence of legislative guidance, the court held that medical experts should determine gender, and with both physical and psychological aspects examined by doctors, the court found that the applicant was female and allowed to change the last number on her Identity Card (marking her as female).</p> <p>However, the reasoning in <i>Re JG</i> is not always found instructive in other courts hearing legal gender recognition cases. In 2013 in <i>Kristie Chan v. Ketua Pengarah Jabatan Pendaftaran Negara (2013) 4 CLJ 627</i>, the Court of Appeal rejected a gender recognition application by a transgender woman who had undergone gender affirming surgeries overseas. The court did so on the ground that there was no medical evidence from Malaysian experts on whether gender affirming surgery “changes a person’s gender”.¹⁰⁷</p> <p>In 2016, another High Court level case allowed a transgender man legal gender recognition after evidence of surgeries, finding the court’s standard of proof in <i>Re Kristie Chan</i>, which insisted on chromosomal requirements, to be “impossible” and “unjust”. →</p> |

¹⁰⁴ Last number of Identity Card shows gender - odd numbers for male, even numbers for female.

¹⁰⁵ Full name: Muzakarah of the Fatwa Committee, of the National Council for Islamic Affairs. A national body issuing Islamic edicts which are religious opinions and in and of themselves do not have legal effect unless gazetted.

¹⁰⁶ In the United Kingdom decision of *Corbett v Corbett* [1970] 2 All ER 33, the court construed a medical test for gender which had far reaching consequences beyond the UK for decades afterwards. The *Corbett* test was applied in many jurisdictions, which was that a person’s sex is determined by their gonads, genitalia and chromosomes at birth, and therefore a person’s sex is fixed from birth. In *Re Kevin (validity of marriage of transsexual)* [2001] FamCA 1074, an Australian court considered and departed from *Corbett* and found these to be the primary (though not conclusive) factors to be taken into account when determining a person’s gender for the purpose of marriage: their biological and physical characteristics, their life experiences, their self-perception, the gender they function in society, any hormonal, surgical or other medical treatment. Importantly the court also said at [328]:

Because the words “man and “woman” have their ordinary contemporary meaning, there is no formulaic solution to determining the sex of an individual for the purpose of the law of marriage. That is, it cannot be said as a matter of law that the question in a particular case will be determined by applying a single criterion, or limited list of criteria. Thus it is wrong to say that a person’s sex depends on any single factor, such as chromosomes or genital sex; or some limited range of factors, such as the state of the person’s gonads, chromosomes or genitals (whether at birth or at some other time). Similarly, it would be wrong in law to say that the question can be resolved by reference solely to the person’s psychological state, or by identifying the person’s “brain sex”.

¹⁰⁷ *Kristie Chan v. Ketua Pengarah Jabatan Pendaftaran Negara (2013) 4 CLJ 627*, at 628. For further discussion, see UNDP and Asia Pacific Transgender Network, *Legal Gender Recognition: A Multi-Country Legal and Policy Review in Asia*, 2017 (forthcoming).

However, in 2017, the Court of Appeal found in favour of the National Registration Department (the government body that issues national identity documents) when it appealed that High Court decision.⁵

MALAYSIA

Religious edicts, common law courts and legal uncertainty in Malaysia

Zhan Chiam interviewed **Thilaga**, Justice for Sisters.

ZHAN CHIAM (ZC): Can you explain the situation of legal gender recognition in Malaysia?

THILAGA (T): Legal gender recognition in Malaysia is interesting, because it is not just about the law but it also intertwines with fatwas, which are Islamic religious edicts or opinions. Some trans people in Malaysia - those who had surgeries or medical intervention - used to have easier access to changing their details. In the 80s, there was some form of trans-specific healthcare in the University Hospital, including gender affirming surgeries.

After surgery(s), trans people would be able to change their name and gender marker in their legal documents. From what we understand, people would go to National Registration Department (NRD), and then get a court order granting the application to make the changes. In court, you would have to provide certain documents, including a doctor's letter saying the person has gone through certain surgeries. In fact, the doctors also used to facilitate the process, because they felt some of discrimination trans women faced was because of the details on their ID cards.⁶

In 1982 and 1983, two fatwas referring to trans people were released by what we call the "Fatwa Council". The 1982 fatwa clarified the position of trans persons in Malaysia and distinguished trans from intersex persons. The 1983 fatwa prohibited sex reassignment surgeries for trans people, but said it was permissible for intersex people.

ZC: Let's talk about the court cases, and what has happened in the cases on legal gender recognition in Malaysia.

T: There have been a number of cases involving trans persons applying to the courts to change their gender markers. We believe that what was said in 2005 in the JG decision (a High Court case) should be followed in other courts. Unfortunately, one common factor amongst most of the courts is the criteria set out in *Corbett*, and they don't tend to budge from that. JG

was different. Also, most of the cases stay at the High Court level—a lot of people don't appeal their cases because the cost is so high. One of the few exceptions was Kristie Chan, who went to the Court of Appeal (our second highest court). We were actually quite confused by the decision.

If you look at a recent 2016 Kuala Lumpur High Court case filed by a trans man to change his name, gender marker the last digit of the serial number in his identification card (IC), the judge said the applicant 'has a precious constitutional

right to life under Article 5 (1) of the Federal Constitution of Malaysia and that the concept of "life" under Article 5 (1) includes the right to live with dignity as a male and he should be legally recognised as a male. The lawyer in this case did a good job of setting out the reasoning in JG. Also, I really want to mention how fatwas interfere with the legal system in Malaysia. There was recently a case about this concept of *anak tak sah taraf* (children conceived out of wedlock).⁷ Children born after a certain date of their parents' marriage have to be registered as "bin/binte Abdullah" (son/daughter of Abdullah), even though the parents are married and

A fatwa is just a religious opinion. But, in Malaysia, fatwas bypass legislative processes, and have force of law. They have huge social and policy impact. Fatwas go through their own process - upon approval of the state executive council and the sultan, a fatwa is published in the state gazette and has force of law.

⁵ *Tan Pooi Yee v. Ketua Pengarah Jabatan Pendaftaran Negara* [2016] 8 CLJ 427 HC, at Para 64; For further discussion, see United Nations Development Programme and Asia Pacific Transgender Network, *Legal Gender Recognition: A Multi-Country Legal and Policy Review in Asia*, 2017 (forthcoming).

⁶ See: <https://www.hrw.org/report/2014/09/24/im-scared-be-woman/human-rights-abuses-against-transgender-people-malaysia>.

⁷ See: <http://www.themalaymailonline.com/malaysia/article/nrd-government-seek-to-challenge-landmark-ruling-on-out-of-wedlock-children>.

want to register the child under the father's name. There is no policy but the NRD says there is a fatwa they have to follow which says this, even though the fatwa is just an opinion. This case really shows how Islamisation is impacting on Malaysia, and shifting the national discourse. The issues faced by trans people is part of this discourse.

ZC: Can we talk a bit more about who fatwas are meant to apply to in Malaysia?

T: A fatwa is just a religious opinion. But, in Malaysia, fatwas bypass legislative processes, and have force of law. Fatwas have huge social and policy impact. Fatwas go through its own process. Upon approval of the state executive council and the Sultan, a fatwa is published in the state gazette and has force of law.⁸

Actually, in Malaysia, it is completely inaccurate when people say that fatwas and Syariah laws only affect Muslims, they have an overarching impact on all persons, including trans persons. For example, when the trans specific healthcare services were shut down following the fatwa, it shut down services for all trans people regardless of religion. This fatwa has also had an impact on change of name, gender marker, and last digit of the serial number on the identity card—for all trans people.

ZC: What do you think is the trend in relation to legal gender recognition?

T: In the recent 2016 High Court case, the NRD actually filed an appeal of the court's decision to grant legal gender recognition. So there is a sense of refusal of the NRD to change people's details.

The other issue is the community's understanding of sex and gender—we need to educate lawyers, judges, and the general public.

My concern with the court cases is the over-medicalising of trans identities. We are seeing a form of regression here—Malaysia already had a practice in the 80s where trans people could change their details. We need to say that this has already happened and we want to expand on and advance this practice, not go backwards.

JFS does public talks and workshops together with lawyers, where we include discussion of legal gender recognition. Our entry point is usually the court cases and then people's lived experiences. When we do that, people immediately accept that identity cards should be changed, and agree with the good practices in other countries. For example, we recently had a series of

symposia in Penang with health care practitioners, there were nurses there as well. During the recommendations part, a lot of the nurses said themselves that ID cards should be changed. I'm quite hopeful that when people see the practicality of the situation, they will get it.

We also always talk about the examples of India, Nepal and Pakistan, because of the cultural and regional similarities, and to debunk the idea that progressive changes only happen in the West. We also usually acknowledge that while laws may have changed on paper, implementation and accessibility are totally different.

Actually, in Malaysia, it is completely inaccurate when people say that fatwas and Syariah laws only affect Muslims. They have an overarching impact on all persons, including trans persons. For example, when the trans specific healthcare services were shut down following the fatwa, it shut down services for all trans people regardless of religion.

ZC: You had earlier said that one fatwa mentioned trans versus intersex access to surgeries. Have you discussed what it means for these two identities to be pitted against each other, in a way, by the Fatwa Council? And I wanted to talk about the situation in Vietnam where intersex and trans are mentioned in the same law.

T: Yes. It's very interesting that Vietnam and Malaysia seem similar in this respect. I think this all stems from a sex-essentialist, biological position. In Malaysia there have been some conversations on intersex from an Islamic medical perspective, acknowledging that intersex people (known as *khunsa*) should not be marginalized. In March 2015, the mufti proposed a specific enactment on gender confirmation for intersex people and to address issues such as marriage, inheritance, death, etc.⁹

ZC: What can be changed in practice: name, gender marker, or both?

T: Changing both name and gender markers are difficult in Malaysia. It depends on the officer and the judge, and how big your case is. In court, people usually request a change of name, gender marker and the last digit of the identity card's serial number. I'm not sure if birth certificate changes have been successful.

ZC: Do you have any final comments?

T: Yes, I want to say that we can measure the harm and impact on people when legal gender recognition, which is a simple administrative process, does not take place. There is every day harassment—at road blocks, applying for bank loans, even buying a SIM card. It is the daily anxiety people face for having to come out all the time. In addition, for Muslim trans women, there is the risk of arbitrary arrests when their gender markers do not match their appearance.

⁸ See: <http://www.thesundaily.my/node/160940>; <http://www.sistersinislam.org.my/news.php?item.1188.10>.

⁹ See: <https://www.bharian.com.my/node/38534>.



Maldives

| | | |
|--|-----------------------------|--|
| | Name change | Nominally possible , but unclear. |
| | <i>Quote/details</i> | Administrative procedure, done by submitting forms along with original birth certificate, identity card, and 'house registry' to Malé Municipality Ge Aabadheeaai behey section. |
| | Gender marker change | Not possible. |



Mongolia

| | | |
|--|--|--|
| | Name change | Possible , unless and until the applicant is serving a parole in lieu of imprisonment. |
| | Gender marker change | Possible , with some prohibitive requirements. |
| | <i>Legislation</i> | <i>Law on Civil Registration</i> , s.20.1 (not trans specific). |
| | <i>Quote/details</i> | <p><i>Section 20.1. If a citizen of Mongolia has changed their sex through medical procedure, and/or is found to be biologically different sex, civil registration unit/officer of the soum/district shall record such change on the basis of the medical certificate, and a new birth certificate and civil identity card shall be issues.¹¹³</i></p> <p>The legislation was amended on 25 June 2009 to allow gender marker change for transgender and intersex individuals who have had a medical diagnosis of transsexuality, and have undergone at least one medical procedure.</p> |
| | <i>Documents amended</i> | Birth certificate, Civil Identity Card (IC), passport, driver's license, social insurance card, medical insurance card. |
| | <i>Conditions for gender marker change</i> | The IC holder who applies to effect a change to his/her gender is required to produce a medical certificate which indicates that the IC holder has undergone one of the following medical procedures: hormone replacement therapy, any gender confirmation surgery, including cosmetic ones, such as breast implants alone without hormone therapy, or genital surgery. |



Myanmar

| | | |
|--|-----------------------------|----------------------|
| | Name change | Not possible. |
| | Gender marker change | Not possible. |

¹¹³ 20.1.Монгол Улсын иргэн эмнэлгийн журмаар хүйсээ солиулсан, эсхүл байгалийн жамаар нэг хүйс нь давамгайлсан бол энэ тухай эмнэлгийн магадлагааг үндэслэн сум, дүүргийн улсын бүртгэлийн асуудал хариуцсан нэгж, ажилтан бүртгэж, төрсний гэрчилгээ, иргэний үнэмлэхийг шинэчлэн олгож болно.



Negara Brunei Darussalam (Brunei)

| | | |
|---|-----------------------------|----------------------|
|  | Name change | Not possible. |
|  | Gender marker change | Not possible. |



Nepal

| | | |
|---|--|---|
|  | Name change | Nominally possible. |
|  | <i>Quote/details</i> | The Nepali Supreme Court ruled in January 2017 / <i>Magh 2073</i> that trans persons should be able to change their name as well as their gender marker (<i>Sunil Babu Pant and others v Government of Nepal</i> , 070-WO-0287, the Supreme Court, Nepal. 2013 filing). ¹¹⁴ |
|  | Gender marker change | Possible (to third gender 'O' markers only). |
|  | <i>Legislation</i> | <p><i>Constitution of Nepal</i>, 2015.</p> <div style="border: 1px solid #ccc; padding: 5px; margin-top: 5px;"> <p><i>Article 12. Any citizen by descent of Nepal may obtain a Citizenship Certificate in their correct gender identity.</i></p> </div> |
|  | <i>Documents amended</i> | Citizenship certificate, passport. |
|  | <i>Conditions for gender marker change</i> | <p>The options for gender marker on a Citizenship Certificate are male, female, and 'other'. Supreme Court decisions and resulting changes to laws and policies enable transgender people to select a third gender option, "Other", based on self-defined gender identity.</p> <p>While there are no provisions explicitly enabling a transgender person to change their gender marker from male to female or vice versa, anecdotal evidence suggests that at least one transgender woman has been able to obtain a female gender marker, and one transgender man has obtained a male gender marker. In both situations, evidence of gender affirming medical interventions was required.</p> <p>The Constitutional provision is only valid for a first Citizenship Certificate, not an amendment to an already-issued Certificate.¹¹⁵ However, the January 2017 decision of <i>Sunil Babu Pant and others v Government of Nepal</i>, ruled that existing citizenship certificates should also be amended.</p> <p>The 2007 case of <i>Pant v Nepal</i> holds that persons should be allowed to request legal status in 'third gender' non-binary categories. Citizenship certificates with third gender/'O' markers can be issued to trans persons.</p> <p>In 2015, Nepal began issuing passports with third gender/'O' markers, after the Supreme Court decision <i>Dilu Dibuja v. the Ministry of Foreign Affairs</i>, ordered that a transgender person be given a passport that matched their citizenship certificate.</p> |

¹¹⁴ United Nations Development Programme and Asia Pacific Transgender Network, *Legal Gender Recognition: A Multi-Country Legal and Policy Review in Asia*, 2017 (forthcoming).

¹¹⁵ USAID/UNICEF/UNDP, *Being LGBT in Asia: Nepal Country Report* (2014) at 32.



Pakistan

| | | |
|--|--|---|
| | Name change | Nominally possible. |
| | <i>Quote/details</i> | <p>It is possible to change your identity card details via http://id.nadra.gov.pk/modify-id/.</p> <p>Name change requires an affidavit witnessed by a notary. It must be published in two newspapers. When the deed of name change is issued, it can be uploaded as supporting documentation in the CNIC modification process.</p> |
| | Gender marker change | Unclear , with prohibitive requirements in isolated cases. |
| | <i>Documents amended</i> | National identity card (CNIC). |
| | <i>Conditions for gender marker change</i> | <p>In 2009, the Supreme Court handed down a decision allowing for 'third gender' as a choice in the national identity card registry (<i>Khaki v Rawalpindi</i> 43/2009). In June 2017, the first passport with an 'X' marker for transgender/third gender was issued by the National Database and Registration Authority.</p> <p>However, it is difficult for many trans persons to obtain a national identity card (CNIC), particularly as parental involvement is required. The Lahore High Court recently ruled that a transgender person could use her guru's name in place of her father's in applying for a CNIC.¹¹⁶ Per the 2017 UNDP report, a requirement for a medical examination before a CNIC was issued was removed following pressure from the trans community.</p> <p>A CNIC can have any one of five gender options: male, female, <i>khwaja sira</i> (<i>mard</i> / male), <i>khwaja sira</i> (<i>aorat</i> / female) and <i>khunsa-e-mushkil</i> (indeterminate). Any of these last three terms might be used by <i>khwaja sira</i> and/or by intersex people and are marked on the CNIC with an 'X'.</p> <p>Currently there is no general facility for recognition of binary trans identities in Pakistan; however, two recent court cases where the petitioner requested and was granted permission to proceed with gender-affirming surgical procedures following a medical diagnosis of 'Gender Identity Disorder' subsequently allowed those petitioners to change their identity documents to their correct, binary-identified gender marker.¹¹⁷</p> |



People's Republic of China

| | | |
|--|-----------------------------|--|
| | Name change | Possible. |
| | <i>Legislation</i> | <i>General Principles of the Civil Law of the People's Republic of China (1986), Article 99.</i> |
| | Gender marker change | Possible , with prohibitive requirements. |
| | <i>Authority</i> | <i>MPSA Ordinance No. 13I (2002).</i> |

¹¹⁶ Source: <https://www.pakistantoday.com.pk/2017/09/27/lhc-allows-transgenders-to-use-gurus-name-in-cnics/>.

¹¹⁷ UNDP-APT report.

| | | |
|--|--|--|
| | <i>Documents amended</i> | 户口 (hù kǒu) or household and family registration. ¹¹⁸ |
| | <i>Conditions for gender marker change</i> | According to the UNDP-APTN report, China's process for gender marker change is as follows: |
| <p><i>The steps to follow to amend one's sex marker on the hù kǒu (household register) are numerous.</i></p> <p><i>Generally, a person needs to show a gender determination certificate, which is from a hospital verifying gender affirming surgeries have taken place.</i></p> <p><i>However, in order to qualify for such surgeries, the person needs to undergo a psychiatric diagnosis, verification of no prior criminal record, proof that the family has been notified, written agreement from their family and work unit, that they are unmarried and over 20 years old. In addition, the psychiatric diagnosis is not given to someone who is not exclusively heterosexual.</i></p> <p><i>After the surgeries and the issuance of the gender determination certificate, the person can apply to amend the sex marker on the hù kǒu, however, at this point they again need approval from their work unit or educational institution.¹¹⁹</i></p> | | |



Philippines

| | | |
|--|-----------------------------|--|
| | Name change | Not possible , with some exceptions. |
| | Gender marker change | Not possible , with some exceptions. |
| | <i>Quote/details</i> | It is not legislated for in the Philippines, however, in some lower provincial courts, some trans people have been able to change their name and/or gender markers. ¹²⁰ |



Republic of Korea (South Korea)

| | | |
|---|----------------------|---|
| | Name change | Possible. |
| | <i>Legislation</i> | <i>Act on the Registration etc. of Family Relationship, s. 12.</i> |
| | <i>Quote/details</i> | Name change is available in South Korea regardless of a person's gender identity or completion of gender recognition process. The Family Court permits the first change of name easily. |
| <p>However, any subsequent application to change one's name is more difficult. Many trans persons change their name before the gender recognition process because of very strict requirements for gender recognition.</p> | | |

¹¹⁸ The Chinese household registration is an old and complicated system by which individuals and families are recorded by the state, and impacts many areas of life including where one is allowed to work and live.

¹¹⁹ United Nations Development Programme and Asia Pacific Transgender Network, *Legal Gender Recognition: A Multi-Country Legal and Policy Review in Asia*, 2017 (forthcoming).

¹²⁰ United Nations Development Programme and Asia Pacific Transgender Network, *Legal Gender Recognition: A Multi-Country Legal and Policy Review in Asia*, 2017 (forthcoming).

| | | |
|---|--|--|
|  | Gender marker change | Possible , with prohibitive requirements. |
|  | <i>Authority</i> | Administrative Rule and court application. <i>Guidelines on the Clerical Processing of Cases of Transgender People's Application for Legal Gender Recognition (2007).</i> |
|  | <i>Documents amended</i> | Family Relation Register. ¹²¹ Following a Family Relation Register change, Identity Cards and passports can be changed. |
|  | <i>Conditions for gender marker change</i> | <ol style="list-style-type: none"> 1. Two psychiatric diagnoses of transsexualism 2. Surgeon's letter confirming gender reassignment surgery and the applicant now has external genitals of the sex opposite to their biological sex, 3. If no surgeon's letter, a letter from another qualified physician after physical examination 4. If surgery performed overseas, a written diagnosis (physical appraisal, report of opinion and findings) from a South Korean plastic surgeon, gynecologist and obstetrician, that applicant has the external genitals of the sex opposite to their biological sex, 5. Applicant is sterile now or in the future, 6. applicant's statement of his or her growth environment and letters of guarantee from two or more references. The statement of growth environment and the letters of guarantee from references shall include: <ol style="list-style-type: none"> i. a specific statement of the applicant's interpersonal relationships including relationships with members of the opposite sex and public life for each period including infancy, childhood, youth, adulthood, etc.; and ii. a statement to the effect that the applicant continuously lived with a gender identity or self-opposite to his or her biological sex for a certain duration from before receiving gender reassignment surgery, received gender reassignment surgery as a manifestation of such a gender identity or self, and leads a public life in great satisfaction with the gender identity or self currently established since gender reassignment surgery. 7. Written consent from parents. |



Singapore

| | | |
|---|----------------------|---|
|  | Name change | Possible. |
|  | <i>Legislation</i> | <i>National Registration Regulations, reg. 10(2)(a).</i> |
|  | <i>Quote/details</i> | <p><i>Replacement identity cards for incorrect particulars.</i></p> <p><i>10. (2) A registration officer, if satisfied that any person who –</i></p> <p><i>(a) reports any change of name under paragraph (1), has in fact changed his name, [...]</i></p> <p><i>may issue him a replacement identity card.</i></p> <p>By application to the ICA with deed poll to change the IC. Birth certificates cannot be altered.</p> |

¹²¹ Used as a birth certificate is used in other countries. Although there is a registration of birth for statistical purposes, this certificate is used for internal administration purposes, not identification.

| | | |
|---|--|--|
|  | Gender marker change | Possible , with prohibitive requirements. |
|  | <i>Legislation</i> | <i>National Registration Regulations, reg.10(2)(b)</i> (not trans specific) and policy. |
|  | <i>Quote/details</i> | <p><i>Replacement identity cards for incorrect particulars.</i></p> <p><i>Article 10(2) A registration officer, if satisfied that any person who – [...] (b) reports that any particulars on his identity card, other than his address, are incorrect, may issue him a replacement identity card.</i></p> |
|  | <i>Documents amended</i> | National Registration Identity Card (IC). *Birth certificates cannot be altered. |
|  | <i>Conditions for gender marker change</i> | <p>The Immigration and Checkpoints Authority (ICA) policy is that: Identity Card holder who applies to effect a change to his/her gender is required to produce a medical certificate/doctor’s memo which indicates that the IC holder has completed a gender reassignment surgery from male to female or vice versa.</p> <p>Once satisfied that a complete change in gender from one to another is in order, the registration officer can proceed to update the changes and process the application for a new IC, at the prevailing replacement rates.</p> <p>As of November 2017, there are new requirements in place that presumably supplement the non-definition of surgery in the policy. The person now has to show proof of “sex reassignment surgery with the result that the patient’s genitalia has <i>completely</i> changed from male/female to female/male genitalia” (emphasis in Medical Examination Report).</p> <p>The medical examination must be carried out by a specialist in plastic surgery, gynaecology or urology registered in Singapore, and the medical specialist may be liable to prosecution or disciplinary action for providing false information.</p> |



Sri Lanka

| | | |
|---|--|---|
|  | Name change | Possible . |
|  | <i>Quote/details</i> | For the same documents and with the same procedures as those for gender marker change. |
|  | Gender marker change | Possible . |
|  | <i>Authority</i> | Policy of the Ministry of Health, Nutrition and Indigenous Medicine. |
|  | <i>Documents amended</i> | Birth certificate (with a note that the birth gender is amended), National Identity Card (without reference to birth gender) and subsequent documents. |
|  | <i>Conditions for gender marker change</i> | <p>The issuance of a Gender Recognition Certificate (GIC), by the Ministry of Health, Nutrition and Indigenous Medicine, allows for a change of sex in the birth certificate.</p> <p>The GIC is issued after the person receives psychiatric diagnosis of transsexualism based on the International Classification of Disease (10th revision), is referred for hormone and surgical treatment, and undergoes treatment in accordance to the <i>World Professional Association of Transgender Health’s Standards of Care</i>.</p> <p>This is only available for those over 18 years of age.</p> |



Thailand

| | | |
|--|-----------------------------|--|
| | Name change | Possible. |
| | <i>Legislation</i> | <i>Person Name Act, B.E. 2505 (1962).</i> |
| | <i>Quote/details</i> | <p>Thai citizens can change their names; however, they only have legal status once the name is registered.</p> <p>Reportedly, registrars often deny requests from trans people based on a principle in their operational manual that requires a person's name to indicate whether the individual's gender is male or female.¹²² Typically, this provision is interpreted as requiring a person's gender to be based on their sex assigned at birth.</p> <p>However, there is no provision for Thai citizens to change their prefix/salutation on official documents, which is based on the sex assigned at birth. The use of a prefix/salutation is legally enforced. Therefore, even if a person can change their name, their prefix/salutation remains unchanged.¹²³</p> |
| | Gender marker change | Not possible. |



Vietnam

| | | |
|--|--|--|
| | Name change | Possible. |
| | <i>Legislation</i> | <i>Civil Code, Article 27(e): Right to change surnames and given names.</i> |
| | <i>Quote/details</i> | <p><i>Article 27(e): Right to change surnames and given names. (e) Where the surname and/or given name of the person are to be changed upon a re-determination of the gender of the person;</i></p> <p>Presumably after legal gender change is available in Vietnam, this Article can be applied to trans persons who meet these requirements.</p> |
| | Gender marker change | In the process of being introduced (likely with prohibitive requirements). |
| | <i>Legislation</i> | <i>Civil Code and Decree No. 88/2008/ND-CP, Article 37.</i> |
| | <i>Documents amended</i> | Birth certificate, Family Register, Identity Card, passport. |
| | <i>Conditions for gender marker change</i> | <p>"Sex reassignment surgery" or "surgery" - not yet defined.</p> <p>Note: Although Article 37 of the Civil Code came into force on 1 January 2017, it is not able to be utilised until guidelines are drafted. The drafting process takes 1-2 years. Therefore, gender marker change is still not legally available in Vietnam as of the date of this publication.¹²⁴</p> |

¹²² The "Person Name Determination Principle", in the operational manual for the Department of Provincial Administration, Ministry of Interior: UNDP-APT report forthcoming.

¹²³ UNDP-APT report forthcoming.

¹²⁴ <http://isee.org.vn/en/Blog/Article/viet-nam-allows-sex-change-and-gender-marker-change>.

VIETNAM

On the brink of change: recognition in law in Vietnam

Zhan Chiam interviewed **Chu Thanh Ha**, Institute for Studies of Society, Economics and Environment (iSEE).

ZHAN CHIAM (ZC): *This is a very exciting time for Vietnam. You have a new article in your Civil Code that allows trans people to access legal gender recognition. Can you tell me more about it?*

CHU THANH HA (CTH): Yes, the new Civil Code with Article 37 has come into force in January 2017, but actually it is still in the process of being drafted. That's because it takes a long time for a law to come into existence in Vietnam, at least 1-2 years. According to the *Law of Promulgation of Legislation and Legal Documents*, there are several steps before a law is actually active. The first step is the law-making proposal; second step is drafting of the law; third step is the review of the draft law; fourth step is the Standing Committee of National Assembly has to read and provide comments on the draft law; fifth step is the process of debating, revision and approval; and finally, the sixth step is to publish the law.

We are now at Stage 1 (proposal) and in the process of proposal development. We have reached the final activity in this stage which is to draft a detailed outline for the law. The drafting team is made up of the Legal Department from the Ministry of Health.

My organisation, iSEE, is working closely with the Ministry of Health on a technical and consultation meeting to consult with the community on the content of the draft law.

We have invited experts from different Ministries related to the law-making process, doctors and other healthcare providers from hospitals in Vietnam and civil society to participate and give feedback and comments. iSEE started advocating for transgender rights in 2013. In 2015 we did many activities, like online campaigns for trans equality rights. We involved many community members and trans activists in Vietnam. I think the biggest achievement so far is to change public perception and raise visibility for trans rights.

ZC: *You recently attended a meeting in Hong Kong about legal gender recognition. Do you want to talk about this?*

CTH: It was a legal gender recognition roundtable discussion with four countries—Thailand, Philippines, Vietnam and Hong Kong—who are

considering legalising the rights of trans people. We had a few representatives from the Vietnam government, not from the leading agencies involved in the drafting process but from the Civic and Economic Department in the Ministry of Justice, who are in charge of advising on the Civil Code (after the law is drafted). It was positive to have government participation, so that they can go back to Vietnam and share their experiences.

At the roundtable the self-determination model of legal gender recognition was presented but this was very new to the governments when it was described. We also discussed how to introduce legal gender recognition in the region, the pros and cons of it in different countries around the world, how it impacts on the lives of trans people, and how international and local trans organisations can support governments and how the community can be involved in the process. There were presentations on Malta, Colombia, Argentina and Australia.

ZC: *Can we talk a bit more about the new law; what is the best outcome you hope for from the drafting team?*

CTH: Article 37 has only been proposed now. The final law still needs to go to the Ministry of Justice for appraisals and then to the National Assembly for comments. We hope that we can introduce a self-determination model, or terminology about the definition of trans people without any medical intervention, in the new law. Right now, it is still possible to introduce definitions of gender identity, gender expression and gender diversity, and also of “transgender” as an umbrella term. We hope to include space for those who can't go through surgery.

ZC: *But Article 37 says that change of sex marker for transgender people is allowed by law, but with surgical requirements?*

CTH: Yes. But during the law-making process we tried to give different examples of how trans people can't go through the lengthy and complicated procedures. A few options were suggested—that the person has to pass a psychological test, or have hormone therapy.

We hope that we can introduce a self-determination model, or terminology about the definition of trans people without any medical intervention in the new law.

ZC: Does the trans community know about the situation in other countries, for example, self-determination models?

CTH: Not everyone in the community. It tends to be split between trans men who may be familiar with different issues and models, and trans women who still face problems with their livelihood and education and find it harder to be involved in the movement. Our community is also fragmented because of location and capacity.

Initially people were happy when the Ministry of Health announcement was made, but after that we realised only a small group can be legalised. Only trans people who wish to or have undergone surgeries can change legally, but groups who are poor cannot change. If the law ends up having medical requirements, it will create a large burden for our community.

If you ask me, having the requirements for psychological assessment or being on hormones may be the best option we have now, rather than waiting another 5 years.

ZC: Have there been any discussion about X marker options?

CTH: We discussed this within the community, but the drafting team is not familiar with this. They are focused on publishing a new law that causes less burden on other relevant laws, so they are focused on male and female options.

ZC: Assuming this law passes, what documents will be able to be changed?

CTH: Your name and gender marker on all personal legal documents—the birth certificate, Family Book, identity card, passport and property documents. There is no permission needed from anyone else, like family members. In our Constitution and Civil Code, discrimination based on gender is not allowed, so there is no impact on property and inheritance laws. The Ministry of Justice has said that this is not just a medical law, but about the rights of trans people.

Europe

By Sandra Duffy

The field of gender recognition law in Europe over the past twelve months has been dominated by the European Court of Human Rights' finding that compulsory sterilisation as a prerequisite for access to gender recognition procedures is contrary to the European Convention on Human Rights. The judgment, which was handed down in April 2017, rendered the laws of twenty Council of Europe member states incompatible with their Convention obligations, and has sparked a series of law reform processes across the continent.

The case in question was that of *AP, Garçon, and Nicot v. France*, taken by three women who alleged that the legal gender change process in their country was a violation of their rights to privacy, non-discrimination, and freedom from cruel, inhuman, and degrading treatment. It is worth noting that, by the time of the Court's decision, France had already changed its laws to remove irreversible sterilisation from the requirements for legal gender recognition. However, the Court felt that the issue is of sufficient importance and of relevance across the continent to merit a decision notwithstanding this. The Court saw the issue before it as being twofold: does respect for the applicants' private life require that the State undertake a positive obligation to allow them legally change their gender without needing to fulfil the impugned conditions, and does a margin of appreciation apply regarding a State's discretion to require irreversible medical interventions?

The Court would take into account its own jurisprudence, reports and recommendations from third parties including ILGA Europe, internal French legal policy, and an overview of the general status of gender recognition law across Europe in its considerations. It would finally determine that non-consensual sterilisation or other serious medical treatments on adults with the capacity to consent or refuse is a violation of the principles of bodily autonomy and self-determination. Requiring applicants for gender marker change to undergo such treatments meant forcing persons to choose between coercive sterilisation and non-recognition of their personhood. This disproportionate and unjust interference therefore breached Articles 3 (freedom from cruel, inhuman, and degrading treatment) and 8 (respect for private life) of the European Convention on Human Rights. However, the Court upheld the right of a State to require a medical diagnosis before granting access to gender marker change. A "quasi-unanimity" of European states require some level of medical certification, which the Court also sees as a less profound interference with private life than irreversible medical treatments.

AP v. France, then, is not a solution to the pathologisation of gender variance in European law, but it is a significant step in this direction. Furthermore, a number of European countries have, since *AP*, moved proposals for legislative reform reflecting a new ethos of self-determination for gender marker change. In Portugal, Belgium, Spain, Luxembourg, and elsewhere, laws and proposals for law which would see legal gender recognition available on the self-declaration of the trans person are moving through the legislature. These laws go some way to assuring the rights to dignity and autonomy of all persons within their jurisdictions.

Elsewhere in Europe, prohibitive restrictions on access to gender marker change are still in operation. In Hungary, a nebulous administrative process may soon be replaced by legislative encoding of application procedures; however, while legislation is being drafted, applications for gender marker change have been suspended. In Moldova, only a handful of successful applications for gender marker change have been recorded, while in Poland, an application must be heard as a civil suit before a court. The difficulties confronting trans persons in some European countries look even more stark in this year's report, offset by the progress reported on elsewhere.

Minors and non-binary persons remain underserved in European gender recognition law. While some jurisdictions, notably Norway since 2016, and the Bill currently under parliamentary consideration in Luxembourg, extend the right to apply for gender marker change to children, others either do not open the process to minors, or maintain a distinction between adults and minors in procedures. A notable example is the law recently passed in Greece removes medical requirements from the application process for adults, but retains an element of pathologisation - approval from a psychomedical Commission - for minors aged 15 and over. Children younger than 15 do not have access to gender marker change in any circumstances.

The majority of European countries, even those which operate a procedure based on self-declaration, also offer only binary options for gender markers. The exceptions are Denmark and Malta, where an individual can request the amendment of their passport to an 'X' marker, while a Bill which has passed the *Seanad* (Senate/Upper House of Parliament) in Ireland would extend recognition rights to both non-binary persons and to minors under 16 years of age. An advisory written by the Ministry of Family Affairs in Germany has also recently recommended that the law be updated to include non-binary persons and minors. However, for these two most marginalised constituencies, the process of gaining recognition continues to be a slow expansion of rights in already progressive legal systems.

As this report goes to press in October 2017, the landscape of European trans law is undergoing a process of transition in itself. The impacts of the ECHR's decision in *AP v. France* will continue to be felt - and as the 'quasi-unanimity' of countries requiring medical certification for legal gender marker change continues to erode, the potential presents itself for some of the cases currently pending before the Court to trigger further emancipatory jurisprudence going forward.



Albania

| | | |
|--|-----------------------------|--|
| | Name change | Unclear. <i>Cannot find legislation to this effect.</i> |
| | Gender marker change | Not possible. |



Andorra

| | | |
|--|-----------------------------|--|
| | Name change | Possible. Available generally by deed poll. |
| | Gender marker change | Not possible. |



Armenia

| | | |
|--|--|---|
| | Name change | Possible. |
| | <i>Legislation</i> | <i>Ley del Estado Civil, 2004, article 58.</i> |
| | <i>Quote/details</i> | <p><i>Article 58. Change of name.</i></p> <p><i>(1) A person who has attained the age of sixteen years is entitled to the established procedure to change his name, including the name and surname.</i></p> |
| | Gender marker change | Possible, with unclear requirements. |
| | <i>Legislation</i> | <i>Law on Civil Status, article 70.</i> |
| | <i>Quote/details</i> | <p><i>Article 70. Corrections or changes in civil status documents shall be made by the responsible registrar in the following cases: [...]</i></p> <p><i>(c) where a licenced medical organization as established by the legislation of the Republic of Armenia has issued a document on the prescribed form of gender reassignment.</i></p> |
| | <i>Conditions for gender marker change</i> | None to be found. |

Austria

| | | |
|---|--|---|
|  | Name change | Possible. |
|  | <i>Legislation</i> | <i>Name Change Law 1988,¹²⁵ as amended 2013.</i> |
|  | <i>Quote/details</i> | Article 2.1.11 allows for a change of family name “ <i>aus sonstigen Gründen</i> /for any other reason”. Article 2.2.3 provides for the ability to change a forename which does not match the gender of the applicant. |
|  | Gender marker change | Possible. |
|  | <i>Legislation</i> | <i>Civil Status Law 2013,¹²⁶ Article 41.</i> |
|  | <i>Quote/details</i> | <div style="border: 1px solid #ccc; padding: 5px; margin-bottom: 5px;"> <p>(1) <i>The Civil Status Registry has the ability to alter an entry, when it has become incorrect after is it made.</i>¹²⁷</p> </div> <p>No specific reference is made to gender recognition.</p> |
|  | <i>Conditions for gender marker change</i> | <p>None in legislation. Case law mentions a conviction that one belongs to the opposite sex, and that it be probable that that conviction will last. The applicant should also have undergone “<i>geschlechtskorrigierender Maßnahmen/undertakings to ‘correct’ gender</i>”. These factors will satisfy the requirement of inaccuracy under the <i>Civil Status Law 2013</i>.</p> <p>The Supreme Administrative Court ruled in 2009 that a “<i>feeling of belonging [which] is in all likelihood irreversible and has been expressed in external terms by the person closely aligning their appearance to the external appearance of the opposite gender</i>” is sufficient to validate gender marker change. This would seem to rule sterilisation/irreversible genital surgery unnecessary for legal gender recognition processes. (<i>Verwaltungsgerichtshof, 2008/17/0054, appeal of MP</i>).</p> |

Azerbaijan

| | | |
|---|----------------------|---|
|  | Name change | Possible. |
|  | <i>Legislation</i> | <i>Civil Code, Article 26 point 4.</i> |
|  | <i>Quote/details</i> | <div style="border: 1px solid #ccc; padding: 5px;"> <p><i>Article 26(4). A natural person has a right to change their name in an order established by the law. The change of name of the natural person is not grounds for termination of, or change in, their rights or responsibilities which were acquired under their previous name.</i></p> <p><i>The natural person is required to notify their debtors and creditors about change of name, and bears the risk of consequences based on these individuals lacking information about the name change. The natural person who has changed their name has a right to demand changes in documents issued in their previous name at their own cost.</i></p> <p><i>Article 26(5).— The names acquired by a citizen by birth, and by change of name, are to be registered in the manner established for registering acts of civil status.</i></p> </div> |

¹²⁵ Original name: *Namensänderungsgesetz*.

¹²⁶ Original name: *Personenstandsgesetz*.

¹²⁷ Original text: *Die Personenstandsbehörde hat eine Eintragung zu ändern, wenn sie nach der Eintragung unrichtig geworden ist.*

Azerbaijan operates a national identity card system, the “Law on Identification Card of the Citizen of the Republic of Azerbaijan”¹²⁸ (14 June 1994). The card can be modified if necessary.¹²⁹

Article 4. Issuance of identity card.

The identity card is based on the application of each citizen of the Republic of Azerbaijan or his legal representative. It requires a birth certificate; a photo of a citizen who has reached the age of 16; a document on payment of state duty; and, if necessary, on the documents certifying the citizenship of the Republic of Azerbaijan, to be received by the relevant state authorities of his / her place of residence, at the latest 10 days after the request of the representative.

The card can be replaced/amended: at the age of 25, 35, 50; or with a change in the citizen's surname, name, patronymic, place of residence, marital status, military service, or personal identification card; or if the identity card is useless or missing; or if one of the circumstances listed in the registration card should change. It should be requested within one month after the occurrence.



Gender marker change

Not possible.



Belarus



Name change

Possible.



Legislation

Civil Code of Belarus, Article 18.



Quote/details

Article 18.2. A citizen shall have the right to change his name in accordance with the procedure established by legislation. The change of name by a citizen shall not be grounds for the termination or change of his rights and duties acquired under the previous name. [...]

A citizen who has changed name shall have the right to demand the making, at his expense, of respective changes in documents formalized in his previous name.



Gender marker change

Possible, with prohibitive requirements.



Legislation

*On some issues of gender change and correction, December 9, 2010 No. 163.*¹³⁰



Conditions for gender marker change

Applications are considered by the “Interdepartmental Commission for medical, psychological and social rehabilitation of persons with Gender Identity Disorder of the Ministry of Health of the Republic of Belarus.” The Commission hears applications and votes on whether to grant the change.

The applicant must undergo “a comprehensive medical and psychological examination, necessary to exclude other sexual, mental and somatic disorders”. This includes psychiatric, psychological, endocrinological, gynaecological/urological, and genetic testing. The applicant must be medically monitored for a year before they can access a Commission hearing.

¹²⁸ Original name: *Azərbaycan Respublikası vətəndaşının şəxsiyyət vəsiqəsi haqqında.*

¹²⁹ Source: Rainbow Europe 2017.

¹³⁰ Original name: *О некоторых вопросах изменения и коррекции половой принадлежности.*



Belgium

| | | |
|--|--|--|
| | Name change | Possible , within the gender marker change process. |
| | <i>Legislation</i> | <i>Loi relatif à la transexualité</i> , chapter V, Article 9. |
| | <i>Quote/details</i> | Chapter V, Art. 9 of the <i>10 Mai 2007 Loi relatif à la transexualité</i> , amends the <i>Loi du 15 mai 1987 relative aux noms et prénoms</i> to allow for a change of name at the same time as the change of gender. |
| | Gender marker change | Possible , with prohibitive requirements. |
| | <i>Legislation</i> | <i>10 Mai 2007 Loi relatif à la transexualité</i> , Chapitre 2, Article 2. |
| | <i>Quote/details</i> | Amends the Belgian civil code to allow for gender marker change. |
| <div style="border: 1px solid #ccc; padding: 5px; margin: 5px 0;"> <p><i>Art. 2. The following conditions to be entered into the Code Civil: every Belgian or non-national registered resident who has the intimate, constant, and irreversible conviction that they belong to the sex opposite to which is indicated in their birth certificate, and who has taken every measure possible and justified from a medical perspective, may declare such to the État Civil officer (registrar). A non-emancipated minor can make this declaration along with their mother, father, or legal counsel.</i></p> </div> | | |
| | <i>Conditions for gender marker change</i> | In the legislation, Chapter 2, Art 2(2)(2). Reports from a psychiatrist and a surgeon to be provided, confirming that the applicant has such conviction; that they have undergone “réassignation sexuelle” to such point as is medically possible and justified; that they cannot conceive children as their previous sex. |
| <p><i>2017: new legislation adopted into law but not yet in force. 24 mai 2017 Projet de Loi réformant des régimes relatifs aux personnes transgenres en ce qui concerne la mention d’une modification de l’enregistrement du sexe dans les actes de l’état civil et ses effets.</i>¹³¹</p> | | |
| <p>Gender change, Article 3: Any Belgian adult, emancipated minor, or foreigner registered resident in Belgium, whose birth certificate does not match their gender identity can make this known to the Civil Registrar. The applicant will give a signed declaration of their standing conviction that their gender identity does not match their birth certificate, and that they wish to enact the administrative and legal changes to their birth certificate.</p> | | |
| <p>There is a three-month period where the public prosecutor can refuse the application for public order reasons. After 3 months, but before 6 months, the applicant gives the registrar another signed statement saying:</p> | | |
| <ul style="list-style-type: none"> ▪ They still believe that their gender identity does not correspond to what is on their birth certificate. ▪ They are aware of the administrative and legal consequences of changing their birth certificate. ▪ They are aware of the irrevocable nature of change to the birth certificate. ▪ Provided there is not a refusal from the public prosecutor, the registrar can inscribe the change in the civil registry. | | |
| <p>A non-emancipated minor aged 16+ can make an application to have their registered sex changed provided they supply a statement from a child psychiatrist stating that they have the necessary capacity to have the “lasting conviction” that their gender identity does not correspond to their registered birth certificate. The minor must be assisted by their parents or guardian. If these persons will not assist the minor, the court can appoint a legal representative. →</p> | | |

¹³¹ Source: <http://www.lachambre.be/FLWB/PDF/54/2403/54K2403008.pdf>.

Name change, Article 11: Any person whose gender identity does not correspond to the sex on their birth certificate can request a name change for this reason. The chosen first name must conform to [their gender identity]. Only one change can be requested for this reason.

A minor can ask to change their name for gender reasons starting at age 12, with the consent of a parent/guardian/court-appointed advocate. The minor can also ask to have their forename changed a second time on these grounds, provided it does not alter the registration of their sex.



Bosnia and Herzegovina

| | | |
|---|-----------------------------|---|
|  | Name change | Possible and mentions gender marker change process. |
|  | <i>Legislation</i> | <i>Law on Personal Name (FBiH Official Gazette No. 7/12).</i> ¹³² |
|  | <i>Quote/details</i> | <p><i>Article 9. Every person has the right to change the name, or the name or last name only, except in cases that is otherwise provided by this law.</i></p> <p><i>A person may change the personal name or the name or surname only after the change of the family or personal status (adoption, recognition and establishment of paternity or maternity, marriage, dissolution of marriage - divorce or annulment of marriage, death of a spouse or a declaration of a deceased spouse, changes gender) or at their own request.</i></p> |
|  | Gender marker change | Possible , with prohibitive requirements. |
|  | <i>Legislation</i> | Article 12 of the <i>Law on Registry Books</i> ¹³³ provides for “change of sex” among data which can be entered in the Register of Births. ¹³⁴ |
|  | <i>Quote/details</i> | <p>Legal change of name is possible without undergoing gender reassignment procedure.</p> <p>Name change is administered through the Ministry of Interior as well as municipal offices based on the current address of residence. Name change is practiced also in relation to surnames due to marriage and divorce. Practice in regards to transgender individuals and a change of name is not known as it has never been reported. It may be possible that such changes are not allowed, due to social insensitivity.</p> <p>72. As for gender reassignment, only after the whole process has been completed, is it possible to apply for change of gender marker in all official documents including, primarily, the identification number (JMB). The identification number consists of 13 digits.</p> <p>The first seven specify the date of birth, the following two specify a region (10-19 is for Bosnia and Herzegovina, 17 being for Sarajevo, for example), the following three stand for person’s sex and registered number in the Birth Registry (000-499 for males and 500-999 for females), and the last number is the control number.</p> <p>Upon change of sex, the JMB is changed. In order for a personal JMB to change, the relevant medical documentation needs to be submitted by a doctor or medical team. Medical documentation can also mean a document specifying that gender reassignment and full transition have been completed and achieved. →</p> |

¹³² Original name: *Zakon o ličnom imenu FBiH (Službene novine FBiH broj 7/12).*

¹³³ Original name: *Zakon o Matičnim Knjigama Republike Srpske.*

¹³⁴ Source: http://www.coe.int/t/Commissioner/Source/LGBT/BosniaHerzegovinaLegal_E.pdf.

The same procedure is used when a gender marker has been written wrongfully by mistake. These procedures are of an administrative nature and do not involve court proceedings.

Transgender persons who do not want to undergo gender reassignment procedure should still be able to change their name, but not their documents nor their identification number.



Bulgaria

| | | |
|--|-----------------------------|--|
| | Name change | Possible. |
| | <i>Legislation</i> | <i>Civil Registration Act, Article 19.</i> |
| | <i>Quote/details</i> | <p><i>Article 19(1). A change in the first, middle or last name of a person is accepted by the court based on the written request of the principal, where the name causes ridicule or disgrace, or is publicly unacceptable, and where important circumstances require.</i></p> <p>Gender must be therefore included in “important circumstances” by the court decision. For a trans person, legal change of forename is dependent on the court deciding in favour of their application for gender marker change. However, it is not possible to change surname, and as Bulgarian surnames have gendered suffixes, this may be seen as insufficient.</p> |
| | Gender marker change | Possible , with unclear requirements. |
| | <i>Legislation</i> | <i>Law on Bulgarian Personal Documents (SG. 82 of 2009).¹³⁵</i> |
| | <i>Quote/details</i> | <p><i>Art. 9. (amend. - SG. 82 of 2009) (1) Where there is a change in the names, personal identification number, gender, nationality, or substantial and permanent changes in facial image of a person, they are obliged to submit an application for a new Bulgarian identity documents within 30 days.</i></p> <p><i>Rules and Regulations for Issuing Bulgarian Personal Documents.</i></p> <p><i>Art. 20. When changing an identity card, the application shall be accompanied by:</i></p> <ul style="list-style-type: none"> <i>3. upon change of the names - official document certifying the change, as well as a certificate from the respective municipal administration on the permanent address of the person for the change made in his personal registration card in the cases when the change is not reflected in the National Population Database;</i> <i>5. in case of substantial and lasting changes of the image - official document from the relevant competent authorities;</i> <i>6. in case of gender change - an official document from the respective competent authorities;</i> <p><i>Art. 22. (6) When changing a passport, the following shall be attached to the application:</i></p> <ul style="list-style-type: none"> <i>3. upon change of the names - official document certifying the change, as well as a certificate from the respective municipal administration on the permanent address of the person for the change made in his personal registration card in the cases when the change is not reflected in the National Population Database;</i> <i>5. in case of gender change - an official document from the respective competent authorities.</i> |

¹³⁵ Original name: *Zakon za Balgarskite lichni dokumenti.*

| | | |
|--|--|---|
| | Conditions for gender marker change | <p>Gender marker change is sought via the courts. The court will seek expert opinions as to the application, from medical professionals including a sexologist, a psychologist, and a psychiatrist. A January 2017 decision of the Supreme Court of Cassation states that: "...individuals cannot be obliged to undergo a surgical intervention to modify their body without their consent as a prerequisite for changing legal sex/gender marker and the court accepts without protest the appeal against the decision and the presented court practice", however, the Court underlines that "On the other hand, the claimant who alleges transsexuality needs to prove before the court their serious and unwavering intent to biologically affirm the role they perform psychically and socially. Therefore, it is required that at least a hormone replacement therapy for sex transitioning has been initiated /such has been ascertained in the majority of the court decisions granting a change of sex, as put forth in support of the appeal."</p> <p>The court process is lengthy and applicants may find this prohibitive.¹³⁶</p> |
|--|--|---|



Croatia

| | | |
|--|--|--|
| | Name change | Possible. |
| | Legislation | <i>Urbroj/Regulation 71-05-03/1-12-2, Law on Personal Name.</i> ¹³⁷ |
| | Quote/details | Article 6. Every person has the right to change their personal name. |
| | Gender marker change | Possible , with unclear requirements because of inconsistency. |
| | Legislation | <i>Urbroj/Regulation: 534-10-1-2-1/2-14-10. Ordinance on collection of medical documents and establishing conditions for change of gender and life in another gender identity.</i> ¹³⁸ |
| | Conditions for gender marker change | <p>Article 2.2: No person shall be forced to undergo medical procedures, including "gender reassignment surgery", sterilization, or hormonal therapy, as a condition for recognition of change of sex or living in a different gender identity.</p> <p>Article 3: (1) The applicant for the issuance of the decision on registration of change of sex in the register of births, shall attach to the application the Opinion of the National Health Council on the change of sex or about life in a different gender identity (hereinafter: Opinion of the National Health Council).</p> <p>(2) The Opinion of the National Health Council is a document based on which the competent state administration office in the county issues a decision on registration of sex change in births.</p> <p>(3) An application for the opinion of the National Health Council is printed on the form contained in Annex I to this Ordinance and forms an integral part.</p> <p>Article 4: (1) By application of Article 3, paragraph 3 of this Ordinance, the applicant is required to attach medical documentation and opinions, which are prescribed by this Ordinance.</p> <p>(2) If the applicant is an adult, is required by the request to submit the following medical records:</p> <p>- Opinion / finding from a medical doctor specialized in psychiatry, →</p> |

¹³⁶ Source: Lukas Berredo, TGEU.

¹³⁷ Original name: *Urbroj/Regulation: 71-05-03/1-12-2. Proglashaenju Zakona o Osobnom Imenu.*

¹³⁸ Original name: *Pravilnik o Načinu Prikupljanja Medicinske Dokumentacije te Utvrdicanju Uvjeta i Pretpostavki za Promjenu Spola Ili o Životu u Drugom Rodnom Identitetu.*

- Opinion / finding from a medical doctor specialized in endocrinology and diabetology,

- Opinion from a clinical psychologist; and a report from the competent social welfare center on the person's personal and family circumstances.

(3) If the applicant is a child, the parents or guardian of the child is required to submit the following medical records:

- Opinion / finding from a medical doctor specialized in child and adolescent psychiatry,

- Opinion / finding from a medical doctor specialized in pediatric endocrinology,

- Opinion / finding from a medical doctor specialized in pediatrics,

- Opinion from a clinical psychologist with experience in the field of child psychology, and the report of the competent social welfare center on the child's personal and family circumstances.¹³⁹



Cyprus

| | | |
|--|--|--|
| | Name change | Possible. |
| | <i>Legislation</i> | <i>Civil Registry Law, No. 141(I) of 2002, as explained below.</i> |
| | Gender marker change | Not possible. |
| | <i>Legislation</i> | <i>Civil Registry Law, No 141(I) of 2002.</i> |
| | <i>Quote/details</i> | <p>Article 40(1). For the purposes of this section, "amendment" includes the correction of errors, addition, a new name or change of name, or the change of name and sex simultaneously, and annulment of any registration.</p> <p>(4) The amendments shall be certified by any means decided by the Registrar, as prescribed by Regulations. The date of authentication shall be entered in the Registry.</p> |
| | <i>Conditions for gender marker change</i> | Conflicting information exists with regard to gender marker change in Cyprus. The Civil Registry Law theoretically permits it. 2016 reports from Amnesty International and the US State Department cite in-country activists as saying that there is no law on legal gender change. Meanwhile, the European Commission Against Racism and Intolerance (ECRI) published a 2016 report on Cyprus which states that gender marker change is possible; however, this seems to be based on outdated information. ¹⁴⁰ |



Czech Republic

| | | |
|--|--------------------|--|
| | Name change | Possible. |
| | <i>Legislation</i> | <i>Act on registers, names and surnames and amending certain related laws, No. 301/2000.</i> |

¹³⁹ Source: http://narodne-novine.nn.hr/clanci/sluzbeni/2014_11_132_2487.html.

¹⁴⁰ Sources: Amnesty International, *Report 2015/16 - Cyprus*; United States Department of State, *2016 Country Reports on Human Rights Practices - Cyprus*; ECRI, *Report on Cyprus (fifth monitoring cycle)* CRI (2016)18.

| | | |
|---|--|--|
|  | Quote/details | <p>(1) The name or names, or surnames or multiple surnames that natural person is obliged to use, you can change an individual solely on the basis of its application or request of their legal representatives</p> <p>(5) The registry office, on the application of the person and confirmation from the healthcare provider, can change the name or surname to:</p> <p>(a) A neutral name, where they are initiating treatment for a sex change, or</p> <p>(b) A different name, or name and surname, if therapy for sex reassignment has been completed.</p> <p>Requests to change name and surname after sex change will be registered in accordance with the Czech rules of grammar in the form according to the new gender.</p> |
|  | Gender marker change | Possible , with prohibitive requirements. |
|  | Legislation | Civil Code, Act 89/2012, Section 29. |
|  | Quote/details | <p>Section 29. (1) A change of gender involves surgery affecting reproductive function and genitals. The date of the change of gender is taken as the date shown in the certificate issued by the healthcare provider.</p> <p>(2) Changing gender does not affect the personal status of the person, nor personal or financial circumstances. Marriage or civil partnership will be ended. Children and property will be treated as they would in a couple's divorce in this situation.</p> <p>Also: Act on registration of population and birth certificate numbers and on amendments to certain Acts (Register of Population Act), No. 133 of 2000.</p> <p>Section 17. Changing the Personal Identification Number.</p> <p>2. Changing the personal identification number occurs when:</p> <p>d) there has been a change of sex.</p> |
|  | Conditions for gender marker change | As above. |

Denmark

| | | |
|---|-----------------------------|---|
|  | Name change | Possible. |
|  | Legislation | Navnelov 524/2005, Article 13.2/13.3. |
|  | Quote/details | <p>§ 13. As the name may be a name that is entered in the list mentioned in § 14 paragraph. 1, or as authorized by § 14 paragraph.</p> <p>PCS. 2. A name may not denote the opposite sex compared to the one that will bear the name.</p> <p>PCS. 3. The Minister of Social Affairs and the Interior shall make further rules regarding persons who are transgender or are to be treated as such, who are not subject to the rule in paragraph 2.</p> |
|  | Gender marker change | Possible. |
|  | Legislation | Lov 752/2014. Motion to Amend the Act on the (Danish) Civil Registration System ¹⁴¹ (Granting a new social security number to people who experience themselves as belonging to the opposite gender). |

¹⁴¹ Original name: Lov 752/2014 Lov om ændring af lov om Det Centrale Personregister.



Conditions for gender marker change

No medical/psychological requirements; it is an administrative procedure.

Article 1. The Act on the Civil Registration System cf. the consolidation Act no.5 of 9 January 2013... is amended as follows: [...]

After a written application, The Economy and Domestic Ministry will allocate a new social security number to persons who experience themselves as belonging to the opposite gender.

Allocation of a new social security number is condition by submission of a written declaration stating that the application is based on a sense of belonging to the opposite gender.

After a reflection period of 6 months from the application date, the applicant has to confirm the application in writing. It is furthermore a condition that the applicant is 18 years old at the time of the submission of the application.

Denmark will also allow applicants to receive a passport with the gender marker 'X' (§ 2).



Estonia



Name change

Possible.



Legislation

Names Act,¹⁴² passed 15.12.2004.



Quote/details

Division One, Article 15.

§ 15. Assigning new personal name due to change of gender of person.

(1) If the gender of a person is changed, a vital statistics office may, on the basis of a written application of the person, the parent of the minor or the guardian of the minor ward, assign a new given name to the person and change the foreign-language surname of the person if gender is reflected in the surname pursuant to the national tradition of the person. [RT I 2010, 1, 1 - entry into force 01.07.2010]

(2) Upon assigning a new given name, the requirements and restrictions provided for in § 7 of this Act shall be complied with.



Gender marker change

Possible, with prohibitive requirements.



Legislation

*General Requirements on Medical Procedures for the Change of Gender (Adopted 07.05.1999 No. 32).*¹⁴³



Conditions for gender marker change

Medical intervention/surgery is required.

Article 1. The following measures are required. The person must make a statement to the Ministry of Social Affairs. A decision is made by a medical expert committee of the Ministry.

Article 2. The Committee's decision requires the following factors:

- Two years of 'transgender identity' previous to making the decision
- A psychiatrist's report
- "Genetic and chromosomal studies"

Article 3. Medical treatment may begin once the applicant has the Ministry of Social Affairs decree. Surgical procedures must wait a year after the decree.

¹⁴² Original name: *Nimeseadus*.

¹⁴³ Original name: *Soovahetuse arstlike toimingute ühtsed nõuded*.



Finland

| | | |
|--|--|---|
| | Name change | Possible. |
| | <i>Legislation</i> | <i>Name Law 9.8.1985/694,¹⁴⁴ Chapter 6, Section 32.</i> |
| | <i>Quote/details</i> | Application to be made to the area magistrate. Finland operates a gendered naming practice. |
| | Gender marker change | Possible , with prohibitive requirements. |
| | <i>Legislation</i> | <i>Act on legal recognition of the gender of transsexuals, No. 563/2002.¹⁴⁵</i> |
| | <i>Conditions for gender marker change</i> | <p><i>Section 1. Preconditions for legal recognition.</i></p> <p><i>A person can be legally recognised to belong to the gender opposite to that according to which he or she is recorded in the population information system referred to in the Population Information Act (507/1993) if he or she:</i></p> <p><i>(1) presents a medical statement stating that he or she permanently feels to belong to the gender opposite to that assigned to him or her and lives in that gender role, and that he or she has been sterilised or is for some other reason infertile;</i></p> <p><i>(2) is of age;</i></p> <p><i>(3) is not married or living in a registered partnership; and</i></p> <p><i>(4) is a Finnish national or has his or her place of residence in Finland.</i></p> <p><i>Section 2. Exemption from the preconditions for legal recognition.</i></p> <p><i>(1) Notwithstanding the provisions of section 1(1)(3) a person who is married or lives in a registered partnership can be legally recognised to belong to the gender opposite to that according to which he or she is recorded in the population information system, if the married spouse or the other partner in the registered partnership has, after the Local Register Office has given him or her an account of the circumstances referred to in subsection 2, personally given the Register Office his or her consent to that.</i></p> <p><i>(2) When belonging to a gender is legally recognised in a case referred to in subsection 1, marriage will be converted, without any separate measures, into a registered partnership and registered partnership into marriage.¹⁴⁶</i></p> |



FYR Macedonia

| | | |
|--|----------------------|--|
| | Name change | Possible , not LGR-related. |
| | <i>Legislation</i> | <i>Law on the Personal Name, 1995.</i> |
| | <i>Quote/details</i> | <p><i>Article 5. The citizen shall have the right to change his/her personal name, i.e. only the name or the surname.</i></p> <p>The current Law on personal names does not specify any provisions related to the sex or gender of the individual (due to the invisibility of trans people in the country). Therefore, it is possible for anyone, including trans people, to change their name and/or surname. →</p> |

¹⁴⁴ Original name: *Nimilaki*.

¹⁴⁵ Original name: *Laki transeksuaalin sukupuolen vahvistamisesta*.

¹⁴⁶ Translation from here: <http://www.finlex.fi/fi/laki/kaannokset/2002/en20020563.pdf>.

| | | |
|---|-----------------------------|--|
| | | When trans people attempt to change their name into a name typically perceived as being of the opposite sex, administrative officers sometimes react with prejudice. However, there have been several positively resolved cases. ¹⁴⁷ |
|  | Gender marker change | Not possible , limited exceptions exist. |
|  | <i>Quote/details</i> | In October 2017, the Coalition for Sexual and Health Rights of Marginalized Communities reported that the Macedonian Administrative Court had granted the “change in the public registry data, i.e. the sex marker and the citizen’s personal identification number” requested by a trans woman. ¹⁴⁸ A case currently pending before the European Court of Human Rights, <i>X v. FYR of Macedonia</i> (29683/16) challenges the lack of codified procedure for legal gender recognition. X was also informed that he would have to undergo surgical interventions before his gender marker could be changed, which he alleges is arbitrary, unwanted, and contrary to his human rights. |

France

| | | |
|---|--|---|
|  | Name change | Possible. |
|  | <i>Legislation</i> | <i>Code Civil, Arts. 60 and 61.</i> |
|  | <i>Quote/details</i> | Any person with a “ <i>interet légitime</i> ” can apply to the Family Courts to have their name changed. It is also possible to go through a notary public process, although this does not have the same effect over all documents as a decree by the courts. It can, however, speak to the applicant’s seriousness about their application. |
|  | Gender marker change | Possible. |
|  | <i>Legislation</i> | <i>Law on 21st Century Justice.</i> ¹⁴⁹ |
|  | <i>Quote/details</i> | Article 56 - inserts new sections into Article 61 of the Code Civil. <p><i>Art 61-5 (to be inserted) Any adult or emancipated minor can make an application to have their gender corrected in the actes de l'état civil (civil registry). They must demonstrate sufficient facts to support their claim: this can include that they appear publicly to belong to the affirmed gender; that they are known in that gender to family, friends, and colleagues; that they have changed their forename to one of the affirmed gender.</i></p> <p><i>Art 61-6 (to be inserted) The application is brought before the TGI. The applicant must declare her free and informed consent to the change of documents and bring any necessary supporting evidence. Not having undergone medical treatment, surgery, or sterilisation cannot be bars to the change. The decision-maker confirms that the applicant satisfies the conditions in 61-5 and orders the modification of the information in the actes de l'état civil.</i></p> <p><i>Art 61-7 A note is to be made of the change of gender and, if necessary, of forename, in the margin of the applicant's birth certificate within 15 days of the judgment, at the request of the Procureur de la République.</i></p> |
|  | Conditions for gender marker change | As detailed above. |

¹⁴⁷ Source: *Trans Respect v. Transphobia*, TGEU.

¹⁴⁸ Source: <http://coalition.org.mk/transrodova-zhena-dobi-sluchaj-pred-upravniot-sud-na-republika-makedonija/?lang=en>.

¹⁴⁹ Original name: *La loi sur la justice au XX1eme siècle*.



Georgia

| | | |
|--|-----------------------------|---|
| | Name change | Possible. |
| | <i>Legislation</i> | <i>Law of Georgia on Civil Status Acts, Article 78.</i> |
| | <i>Quote/details</i> | <p><i>Article 78. It is possible to change a name for reasons including: (G) a sex change - if a person wants a sex change of name and/or surname.</i></p> |
| | Gender marker change | Possible , with unclear requirements. |
| | <i>Quote/details</i> | <p>In Georgia, legal recognition of gender is regulated based on Article 78(g) of the <i>Law of Georgia “on Civil Acts”</i>, which states that changing a sex is one of the grounds for amending a civil act record. Yet, the Law does not define what is implied under changing a sex. In response to the following questions—what does the law imply under changing a sex; which documents must be submitted to amend a person’s civil act record in respect of sex, name and/or surname; and which concrete civil acts could be amended in respect of sex, name and/or surname—the State Services Development Agency provided the following explanation:</p> <p><i>“An amendment referred to in Paragraph “g” of Article 78 of the Law of Georgia “on Civil Acts” can be made based on a medical certificate issued by a medical institution, which confirms change of a sex by a person. The birth, father’s identification and death act records include a column for denoting a sex. Accordingly, if a person submits the document confirming change of a sex, the civil acts registration authority will make a relevant amendment to the above-mentioned civil act records on the person, and in case of changing a name and/or surname—in all registered civil act records available on the person”.</i>¹⁵⁰</p> |



Germany

| | | |
|--|--|---|
| | Name change | Conditions detailed in Section 1(1) of the TSG apply. |
| | Gender marker change | Possible , without prohibitive requirements. |
| | <i>Legislation</i> | <i>Law on the Alteration of Forenames and the Determination of Sex in Especial Cases (Transsexual Law), 1981, as amended.</i> ¹⁵¹ |
| | <i>Quote/details</i> | Since the Federal Constitutional Court decision 1 BvR 3295-07 of 2011, requirements for LGR and name change are the same. |
| | <i>Conditions for gender marker change</i> | <ul style="list-style-type: none"> ▪ The applicant must have the conviction that they are transgender and that their gender identity does not correspond to the sex on their birth certificate. ▪ They must have been living according to that for three years. ▪ They must consider it “highly probable” that this will not change. ▪ They must be German, a stateless person or refugee resident in Germany, or from a country which does not have a law of this nature and holding an unlimited right of residence or a permanent resident permit. <p style="text-align: right;">→</p> |

¹⁵⁰ Source: Women’s Initiatives Supporting Group (WISG), *Discrimination and Hate Crime against LGBT Persons*, Tbilisi, 2015.

¹⁵¹ Original name: *Gesetz über die Änderung der Vornamen und die Feststellung der Geschlechtszugehörigkeit in besonderen Fällen (Transsexuellengesetz - TSG).*

Where the applicant lacks capacity, their legal representative or the 'representative of the public interest' can apply.

The process is a court hearing. The court may grant an application pursuant to Article 1 only after having obtained the opinions of two experts who, on the basis of their training and professional experience, are sufficiently familiar with the "specific problems of transsexualism".

The experts must act independently; in their opinions, they also have to comment on whether, according to the findings of medical science, the applicant's sense of belonging is unlikely to change.

In November 2017, the German Constitutional Court clarified that the German Constitution protects persons who do not identify as male or female or whose sex is not male or female. The Court said that the German civil status law (PStG) violate this right by not offering a third option besides male or female markers and gave the legislator until the end of 2018 to introduce new procedures. It also suggested that removing mandatory gender registration altogether was possible, as was having an option besides male or female, as these were not required under the Constitution.¹⁵²



Greece



Name change

Possible. Petition is heard alongside petition for gender marker change.



Gender marker change

Possible, but with prohibitive requirements.



Quote/details

Greece passed its new Law on *Legal Recognition of Gender Identity* in October 2017. At the time of going to print, a full text was not accessible online.

- The Law removes medicalised requirements, including sterilisation, for persons aged 17 and over.
- There is a requirement that the person be unmarried.
- The procedure is via the courts.
- Petition for name and gender marker change are heard together.
- Gender marker change is available to minors aged 15-17; however, the process for minors retains a medicalised component and a certificate must be obtained from a psychological and medical Commission based in Athens General Hospital. Gender marker change is not available to persons under 15.¹⁵³
- A draft version of the law describes gender recognition as a right (Article 1).
- Requests for LGR require that the applicant have legal capacity and be unmarried.
- Medical treatments are not required (Article 3).
- Procedure is via the courts and LGR is "registered by a court order in accordance with Article 782 of the Code of Civil Procedure" (Article 4).¹⁵⁴

¹⁵² See: <https://tgeu.org/third-gender-marker-options-in-europe-and-beyond/>; <https://tgeu.org/joint-statement-civil-society-welcomes-ground-breaking-german-constitutional-court-demand-for-a-new-regulation-of-sex-registration/>.

¹⁵³ Sources: ILGA Europe and TGEU.

¹⁵⁴ Source: <http://www.opengov.gr/ministryofjustice/?p=8078>.



Hungary

| | | |
|---|--|---|
|  | Name change | Possible. |
|  | <i>Legislation</i> | <i>Act No. I. of 2010 on Registries.</i> |
|  | <i>Quote/details</i> | <p><i>Article 49(1). A central registry authority may grant a change of name to Hungarian citizens on request.</i></p> <p>Constitutional Court decision 58/2001 (XII. 7.) AB affirms that changing one's name is a right guaranteed under Article 54(1) of the Fundamental Law of Hungary and connected with the right to dignity.¹⁵⁵</p> |
|  | Gender marker change | Possible , dependent on court/administrative decision. |
|  | <i>Legislation</i> | There is no legislation governing gender marker change in Hungary. Since 2003 an administrative procedure has existed. |
|  | <i>Conditions for gender marker change</i> | <ul style="list-style-type: none"> ▪ A mental-health diagnosis is required, but no physical interventions are necessary. Following <i>Act No. I. of 2010 on Registries</i> (Article 69/B:4), the applicant must be unmarried; if they are in a marriage or civil partnership at the time of applying, they will need to divorce. ▪ The procedure and decision-makers are unclear. ▪ Diagnoses from a psychiatrist and a supporting expert opinion from a clinical psychologist are required. ▪ The applicant must also be examined by either a gynaecologist (for trans men/transmasculine persons) or urologist (trans women/transfeminine persons) stating that gender reassignment surgery can be performed on the applicant in the future. ▪ Gender marker change is needed to access trans-related healthcare such as hormonal or surgical treatments. ▪ According to Hungarian trans organisation <i>Transvanilla</i>, applications for legal gender recognition were suspended in November 2016 while the Hungarian government drafted legislation to address the legal gaps in procedures. No legislation has been published yet. ▪ A case currently before the European Court of Human Rights, <i>Rana v Hungary</i> (40888/17), taken by an Iranian refugee resident in Hungary, challenges the lack of procedure for legal gender recognition in Hungary for persons born overseas. |

HUNGARY

Uncertain and unclear: navigating the system in Hungary

Zhan Chiam interviewed **Kriztina Kolos Orbán**, Vice President of *Transvanilla*, a Hungarian trans organisation.

ZHAN CHIAM (ZC): *Can you explain the legal gender recognition situation in Hungary and why it seems so complicated now?*

KRIZTINA KOLOS ORBÁN (KKO): On one hand it's complicated, but on the other hand it's quite simple. To give you some context, in 2003 trans people were absolutely

invisible—there was no organization where they were present or advocating for trans rights.

The leftist government at the time introduced a practice which was, at the time, one of the best. They decided that no medical intervention was needed to change one's gender marker on the birth certificate, and a medical diagnosis was needed but with this health care was available. Legal gender

¹⁵⁵ Information supplied by Kriztina Orban/Transvanilla, and Emese Baranyi.

recognition was not a prerequisite to access transition-related healthcare. The government also promised to create legislation and healthcare protocols but nothing happened. The trans community was served properly. Hormone treatment and surgeries were free, and people could change their documents with medical diagnosis after one examination by a urologist or gynaecologist.

There was no legislation but it worked well. The whole process was invisible but those who looked could find it. Also, there were not too many non-binary people and trans diversity in the country.

ZC: *That's quite incredible. How was it possible for the government to come up with such a progressive legal gender recognition process in 2003?*

KKO: We don't know! No one ever came out and claimed to have negotiated this. There was no advocacy by trans people as far as we know. But after a while there were cuts to transition-related healthcare, and we are at a point now where there is only 10% financial support for surgeries, which is ridiculous because healthcare in Hungary is free. On the other hand, for hormones transmen get a 90% reduction and transwomen get a 25% reduction, which we can't complain about because this is the same as for the general population.

Transvanilla was founded in 2011. And any LGBT advocacy didn't include trans issues, because the situation was OK for trans people. But as you can see, the government has been tweaking the requirements from time to time, which is how we ended up in the current situation where legal gender recognition is now a prerequisite for healthcare.

As far as we know, it is one person in the office of the State Secretary responsible for health (which is within the Ministry of Human Resources and Capacities) who gets the gender recognition applications. And then it is unclear what the process is. This has been the situation for the whole time: it has never been legislated, the requirements are not published and there is no information about what happens when the request is rejected.

ZC: *How did the situation change such that legal gender recognition is now a prerequisite for healthcare?*

KKO: People started getting informed by the Ministry that something was not OK with their requests. This is how we usually learn that something has changed with the requirements. They started with minor changes, which were still acceptable because people could still obtain their papers. And because we have nothing written to rely on, and it's one person in the department who deals with these requests, if that one person changes, a lot changes.

And the other issue is the test from the urologist or gynaecologist. It used to be a simple status that the person is "healthy", and they sometimes said informally it is also to check that the person isn't intersex, which is ridiculous. But now, we have been told that this test is needed as a prerequisite for surgery. So now the letter from the urologist/gynaecologist has to say that the gender affirming surgery *can* be performed on the person. Even the doctors don't understand what this means, because it doesn't make medical sense.

And if the person already has had surgeries, the department also asks for the same certification from the urologist/gynaecologist.

And now the department has told surgeons that they can't perform gender affirming surgeries without legal gender recognition. And how do we challenge it, because we argue that the process didn't use to be this way, but they don't answer our questions. Which is how we ended up in this situation. Trans people are panicked, impatient and afraid.

The leftist government at the time introduced a practice which was, at the time, one of the best. They decided that no medical intervention was needed to change one's gender marker on the birth certificate, and a medical diagnosis was needed but with this health care was available.

ZC: *What can be changed—is it both name and gender marker? And what documents can be changed?*

KKO: The first name and gender marker can only be changed at the same time, because we have a law on registration that a person's gender marker and first name have to match. Meaning, for example, someone with a female gender marker has to have a female first name. And these names come from

a list and they are absolutely binary. The list is getting longer and longer, but the names have to be registered in the list. Non-binary options are forbidden by law, and the Ministry says they don't get such requests.

In fact, you are obliged to change all your documents (birth certificates, etc) once you have changed your name. But the law which governs the change of school documents does not apply to universities and other higher education institutions, so the person can change their documents up to the high school level (which is governed by the law on name change).

ZC: *Can you talk about the broader political situation in Hungary and how legal gender recognition relates to it?*

KKO: We have a government that is really *governing* the country, and advocacy is rather difficult because they listen to no one. Minority group interests are not taken into account. It is a very homophobic, xenophobic government and migrants are the main enemy. This is the main issue. According to their discourse, Hungarian people are all the same and being trans is not part of that discourse. But, trans people are lucky because our issues are not publicly discussed. Our strategy is that until we advocate on legal gender recognition, we won't go to the public space with our issues because it will have a backlash on our advocacy. However, we think it is important to advocate in spaces like the Universal Periodic Review at the UN. The government would react differently if we tried to engage the Hungarian public.

However, international human rights instruments can be used because Hungary is still in the European Union and therefore has certain obligations. They are different in the way they communicate in or outside Hungary. And, importantly, the government sometimes does adjust its laws based on international advocacy.

We are playing the role of the experts on legal gender recognition. We also asked the Ombudsman to investigate only the regulatory issues on legal gender recognition. He did a really good report and looked at it against international standards, but the report didn't take a stand on issues such as divorce or age restrictions.

ZC: Do you think it's realistic that Hungary, under this government, can finally create legislation for legal gender recognition?

KKO: Yes, absolutely! Anything can happen in Hungary. But we are not asking for a law because it won't pass in Parliament. Instead we are asking for a Ministerial Decree that is still binding, which we think is possible. We just need to find the right Minister for that.

Together with the Ombudsman's office, we just organised a roundtable discussion on legal gender recognition and depathologisation, and invited government representatives. We also invited the psychiatric advisory body for the Department of Health to take a stand on depathologisation because they made a statement in 2013 statement supporting mental depathologisation. It's very strange. Even the State Secretary wrote to us that his department is thinking along the same lines as the Ombudsman. The psychiatrists at the roundtable confirmed their support for depathologisation.

At the same time, we are exploring legal other remedies, including a case before the European Court of Human Rights with five individuals challenging the lack of process for legal gender recognition now. Overall, we have hope that the government will take care of Hungarian citizens.

ZC: What is the impact on the trans community, including non-binary people, of the uncertainties and unclear requirements for legal gender recognition?

KKO: Trans people are basically invisible in Hungary because of different factors. You can see this just by the fact that we're not "enough" to have our own legislation. The system is really binary, and there is no chance of having gender-neutral names. Non-binary people are not very visible or empowered in the trans community. People feel that there is nothing happening and they want something to happen.

At *Transvanilla*, legal gender recognition and access to healthcare make up 95% of our requests, and then housing, school and labour issues make up the rest. I often hear that trans people want to be "normal", that we will be accepted if we are like others in society.

In Hungary there is no such thing as solidarity in society. Civil society organising is non-existent. People don't want to do advocacy, and then you add to this the huge attacks on civil society. So *Transvanilla* is the only trans-led group in Hungary, with 12 members. We are not expanding because there is the safety issue. I wish others could participate in the international movement like what I've experienced. But this is difficult because there is real burn out amongst trans activists in Hungary, and there are not that many of us doing this work.

People started getting informed by the ministry that something was not "ok" with their requests. This is how we usually learn that something has changed with the requirements. They started with minor changes, which were still acceptable because people could still obtain their papers.

 **Iceland**

| | | |
|---|-----------------------------|--|
|  | Name change | Possible , including in gender marker change process. |
|  | <i>Legislation</i> | <i>Act on the legal status of individuals with gender identity disorder, 57/2012, Article 8.</i> |
|  | <i>Quote/details</i> | <i>Article 8. As soon as Registers Iceland receives notification of an individual's gender marker change under paragraph 4 of Article 6, it shall inform the individual of the obligation to change his or her name. Gender marker change will not be registered in the population register until a valid application for change of name has been received by Registers Iceland, and the applicant's name has been changed in keeping with the Personal Names Act. When the gender marker change and name change are registered in the population register, a new Identity Number may be issued to the applicant by Registers Iceland.</i> |
|  | Gender marker change | Possible , with prohibitive requirements. |
|  | <i>Legislation</i> | <i>Act on the legal status of individuals with gender identity disorder, 57/2012.</i> |
|  | <i>Quote/details</i> | <i>Article 6. A person who has been diagnosed and received recognised treatment from the National University Hospital Gender Identity Disorder Team can apply to the Expert Panel on Gender Identity Disorder for recognition that he or she belongs to the other gender. The application shall be accompanied by a report from the hospital's Team. This shall state inter alia that the applicant has been under the Team's care for at least 18 months, and that he or she has been living in the other gender for at least one year.</i> |

**Conditions for gender marker change**

Recognition is also subject to the requirements that the applicant be of legal age and legally domiciled in Iceland; that he or she have resided continuously and lawfully in Iceland for the preceding two years, and be covered by health insurance under the Health Insurance Act. Should the applicant fulfil the criteria of Paragraphs 1 and 2, the Expert Panel will confirm that he or she belongs to the other gender.

If applicable, the Panel shall also confirm that the applicant is eligible for gender reassignment surgery. The Expert Panel shall notify the applicant of its decision under paragraph 3. The Expert Panel also notifies Registers Iceland (Þjóðskrá) that the gender of the applicant has been legally recognised under this Act. A decision of the Expert Panel under Paragraph 3 cannot be appealed to any higher authority.

**Ireland****Name change**

Possible, within gender marker change process.

**Legislation**

Gender Recognition Act 2015, Part II, Section 10.

**Quote/details**

Article 10. (1) A person who applies for a gender recognition certificate under section 8 shall furnish the following to the Minister: [...]

(b) the forename and surname by which he or she wishes to be known;

Part II, Section 13. Gender recognition certificate

13. (1) A gender recognition certificate shall specify the date on which it issues and the following in relation to the person to whom it issues:

(a) the person's forename and surname referred to in section 10(1)(b);

(b) the person's date of birth;

(c) the person's gender.

**Gender marker change**

Possible.

**Legislation**

Gender Recognition Act 2015 (25/2015).

**Quote/details**

Part III, Section 18. Effect of gender recognition certificate generally.

18. (1) Where a gender recognition certificate is issued to a person the person's gender shall from the date of that issue become for all purposes the preferred gender so that if the preferred gender is the male gender the person's sex becomes that of a man, and if it is the female gender the person's sex becomes that of a woman.

**Conditions for gender marker change**

Applicants must be 18 years old. Applicants between 16 and 18 years of age must provide consent from parents/guardians, along with references from the applicant's primary physician and a psychiatrist unrelated to the applicant's case. (Part II, Section 12, 1-4).

No mandatory hormonal/surgical interventions. Gender is self-declared but only binary choices allowed.

Note: *The Gender Recognition (Amendment) Bill 2017 has passed the Seanad (Upper House of the Irish Parliament). If enacted, it would allow for applications for gender marker change from persons under sixteen, removes the parental consent requirement for sixteen and seventeen-year olds, and opens recognition to non-binary persons.*



Italy

| | | |
|---|--|--|
|  | Name change | Possible , but conditional. |
|  | <i>Legislation</i> | <i>Presidential Decree 396/2000, Article 89.</i> |
|  | <i>Quote/details</i> | Persons can apply for a change of forename if theirs is either absurd or shameful/embarrassing, or if it reveals their natural origin. ¹⁵⁶ It is not clear whether a name which reveals a gender assigned at birth and not matching the gender identity of the adult would fall under those categories. |
|  | Gender marker change | Possible , with uncertain requirements. |
|  | <i>Legislation</i> | <i>Loi 1982, n. 164 (1). Rules regarding the rectification of gender attribution.</i> ¹⁵⁷ |
|  | <i>Quote/details</i> | <i>Article 1(1). Rectification procedure under Art. 454 of the Civil Code also operates on court judgments regarding persons whose sex differs from that on their birth certificate following interventions/modifications of their sex characteristics.</i> |
|  | <i>Conditions for gender marker change</i> | Decided by a court. Article 2 164/1982 states that, when necessary, the judge can order that expert consultation be undertaken to investigate the psycho-sexual state of the applicant. ¹⁵⁸ It is therefore subjective depending on the judge. In 2015 the Corte di Cassation ruled that sterilisation was not necessary for legally changing a gender marker (decision 15138/2015). The Constitutional Court made a similar decision later in 2015 (221/2015). |



Kosovo

| | | |
|---|-----------------------------|---|
|  | Name change | Possible , not LGR-specific. |
|  | <i>Legislation</i> | <i>Law No. 02/L-118 on Personal Name, 2007.</i> |
|  | <i>Quote/details</i> | <i>Article 10. Citizen has the right to correct and change his/her personal name.</i> |
|  | Gender marker change | Not possible. |



Latvia

| | | |
|---|--------------------|--|
|  | Name change | Possible. |
|  | <i>Legislation</i> | <i>Name and nationality record change law,</i> ¹⁵⁹ 66 (4052), 29.04.2009. |

¹⁵⁶ Original text: “perche’ ridicolo o vergognoso o perche’ rivela origine naturale”.

¹⁵⁷ Original name: *Norme in materia di rettificazione di attribuzione di sesso.*

¹⁵⁸ Original text: “Quando è necessario, il giudice istruttore dispone con ordinanza l’acquisizione di consulenza intesa ad accertare le condizioni psico-sessuali dell’interessato.”

¹⁵⁹ Original name: *Vārda, uzvārda un tautības ieraksta maiņas likums.*

| | | |
|---|-------------------------------------|---|
| § | Quote/details | <p>Article 2. Name change causes.</p> <p>(1) A person who is a Latvian citizen, a legal resident of the Latvian republic, or one who has been granted the status of a stateless person may change their name and/or surname if they have reached the age of 15 and present with one of the following reasons: [...]</p> <p>(6) the person changed sex;</p> |
| 👤 | Gender marker change | Possible. |
| 📖 | Legislation | Civil Status Registry Act, ¹⁶⁰ 2012 / 197.1. |
| § | Quote/details | <p>Article 37. Other additions to the birth registry entry.</p> <p>(1) birth registry entry [can be] supplemented, if:</p> <ol style="list-style-type: none"> 1. a person changes name, personal identity number, nationality, ethnicity or gender entry; 2. one of the parents of a person changes the name, personal identity number, nationality, ethnicity or gender entry; <p>(2) The birth register [can be] supplemented on the basis of a court judgment, a custody court decision, administrative action, a medical certificate or other document confirming gender reassignment, or personal application.</p> <p>Elaborated upon in the Provisions on civil status registers 2013/181.17.¹⁶¹</p> <p>Article 134. Based on the application of the person and the opinion of the registry office, registry entries can be supplemented, if:</p> <p>134.11. The record of a person's sex is changed following medical certification by a medical institution or practitioner confirming gender 'reassignment'. The name and surname can be changed in accordance with gender.</p> <p>Article 137. On the basis of administrative actions, the registry entry can be supplemented, in the following cases: [...]</p> <p>137.3. A person who has undergone a partial or complete 'sex change' can change their name(s) and/or surname. The record of the person's sex can be changed following medical certification by a medical institution or practitioner confirming gender 'reassignment'. The name(s) and/or surname(s) can be recorded in accordance with the decision on permission to change them.</p> |
| 📋 | Conditions for gender marker change | Administrative procedures, no medical requirement. |



Liechtenstein

| | | |
|---|-----------------------------|----------------------|
| 👤 | Name change | Unclear. |
| 👤 | Gender marker change | Not possible. |

¹⁶⁰ Original name: *Civilstāvokļa aktu reģistrācijas likums*.

¹⁶¹ Original name: *Noteikumi par civilstāvokļa aktu reģistriem*.



Lithuania

| | | |
|--|--|---|
| | Name change | Possible , with rules about gender-specific names. |
| | <i>Legislation</i> | <i>Order by the Ministry of Justice No. 56-2007.</i> ¹⁶² |
| | <i>Quote/details</i> | <p>The <i>Order by the Ministry of Justice No. 56-2007</i> states that one's legal name can be changed only if it corresponds with "the applicant's sex, does not contradict the good morals and the public order of the Republic of Lithuania" (Articles 10 and 12). In essence this means that legal name change is possible only after gender affirmation surgery. This interpretation has also been confirmed by the jurisprudence of the national courts.¹⁶³</p> <p>Two recent court cases have resulted in a finding that a gender marker can be legally changed without the applicant undergoing mandatory surgical treatment: the <i>MV</i> case, Vilnius District Court, 7th April 2017, and the <i>TK</i> case, Vilnius District Court, 2nd May 2017. In both cases the Court held that a psychiatrist's certification would be sufficient for gender marker change.¹⁶⁴</p> |
| | Gender marker change | Possible , with unclear requirements. Nominally legally possible. |
| | <i>Legislation</i> | <i>Lithuanian Civil Code, Article 2.27.</i> |
| | <i>Quote/details</i> | <p><i>Article 2.27. Right to the Change of the Designation of Sex.</i></p> <ol style="list-style-type: none"> <i>1. An unmarried natural person of full age enjoys the right to the change of designation of sex in cases when it is feasible from the medical point of view. The application to the given effect shall have to be made in writing.</i> <i>2. The conditions and the procedure for the change of designation of sex shall be prescribed by law.</i> |
| | <i>Conditions for gender marker change</i> | None. The legislation foreseen by the Civil Code has never been put in place, leaving no administrative or legal procedure for gender change. |



Luxemburg

| | | |
|--|-----------------------------|---|
| | Name change | Possible , including within the gender marker change process. |
| | <i>Quote/details</i> | Can be applied for at the same time as gender recognition, as an accessory petition to the change in État civil. |
| | Gender marker change | Possible. |
| | <i>Legislation</i> | Petition via the courts under Art. 99.1 of the Civil Code. No guidance is given on how a judge should proceed with the hearing, therefore it can be very arbitrary. |

¹⁶² Original name: *Noteikumi par civil stāvokļa aktu rēģistriem.*

¹⁶³ For further discussion on legal gender recognition in Lithuania, please see NGO communication to the Council of Europe regarding the implementation of the *L v. Lithuania* (27527/03) judgment of the European Court of Human Rights: <http://www.coe.int/en/web/execution-/submissions-lithuania>.

¹⁶⁴ Source: <http://www.lgl.lt/en/?p=17550>.

| | | |
|---|---|---|
|  | <p><i>Quote/details</i></p> | <p>As of September 2017, a new gender recognition Bill¹⁶⁵ has been adopted by the <i>Conseil de Gouvernement</i> in Luxembourg. It has not yet been voted on by the legislature. The Bill would open the gender marker change process to any adult Luxembourg citizen without requirements for medical or surgical interventions, on declaration of “intimate and stable conviction” that their gender does not correlate with the sex on their birth certificate.</p> <p>Minors of five years and older could apply for name and gender change via their parents or legal representative (for a child or twelve or older, they must consent to the change).</p> <p>A non-Luxembourg national could apply under this law provided they have been resident in Luxembourg for a year.</p> <p>A refugee or stateless person would also be permitted to do so. An application to amend one’s name could be submitted at the same time.</p> |
|  | <p><i>Conditions for gender marker change</i></p> | <p>Dependent on the judge hearing the case. Medical requirements may be imposed. As of June 2016, the <i>Tribunal d’arrondissement de Luxembourg</i> has decided that sterilisation is not to be required (<i>Jugement n°173/2016 du 1^{er} juin 2016</i>).</p> |



Malta

| | | |
|---|---|--|
|  | <p>Name change</p> | <p>Possible, including within the gender marker change process.</p> |
|  | <p><i>Quote/details</i></p> | <p>Can be registered at the same time as the change of gender.</p> |
|  | <p>Gender marker change</p> | <p>Possible.</p> |
|  | <p><i>Legislation</i></p> | <p><i>Gender Identity, Gender Expression, and Sex Characteristics Act 2015.</i></p> |
|  | <p><i>Quote/details</i></p> | <p><i>Section 4 (4). (1) It shall be the right of every person who is a Maltese citizen to request the Director to change the recorded gender and, or first name, if the person so wishes to change the first name, in order to reflect that person’s self-determined gender identity.</i></p> |
|  | <p><i>Conditions for gender marker change</i></p> | <p>Self-declaration.</p> <p><i>Section 3(4). The person shall not be required to provide proof of a surgical procedure for total or partial genital reassignment, hormonal therapies or any other psychiatric, psychological or medical treatment to make use of the right to gender identity.</i></p> <p>In the case of a minor, the application must be filed by a parent or guardian. The court will take into account the best interests of the child as per the CRC, and the age and maturity of the minor.</p> <p>In September 2017, Malta allowed citizens to use the gender marker X on their passports and other identification documents. An applicant can self-declare and change their marker following an oath witnessed by a notary.</p> |

¹⁶⁵ Original name: *Projet de 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.*



Moldova

| | | |
|--|-----------------------------|---|
| | Name change | Possible , with unclear requirements. <i>See gender marker change procedure.</i> |
| | Gender marker change | Possible , with unclear requirements. |
| | <i>Legislation</i> | <i>Law No.100-XV, on Civil Status Acts adopted on April 26, 2001, Article 66(2)(c).</i> |
| | <i>Quote/details</i> | <p><i>Article 66. (2) The Civil Status Office shall resolve the request for modification, rectification or completion of the civil status act, where there is no litigation existing between the persons concerned, in cases where: [...]</i></p> <p><i>(c) the applicant for the rectification presents an official act regarding a change of sex.</i></p> <p><i>(3) In the event of litigation between the persons concerned, the matter of modification, rectification or completion of the civil status act will be settled by the court.</i></p> <p>The law states the possibility for “a person to change their surname in identification documents only upon presenting a medical certificate on gender correction—one that proves that the person underwent a surgical intervention on sex reassignment. Nonetheless, legislation provides no mechanisms for obtaining such a medical certificate.¹⁶⁶</p> <p>From the information presented by GenderDoc-M, [LGBT NGO] from 2009 till present, three persons succeed in changing their birth certificates, identity cards and national passports based on the unclear legislation, without having their gender reassigned surgically. This was done upon the people presenting the document certifying the diagnoses of transsexuality.”</p> <p>According to the Law on Civil Status Documents, transsexuals can only get new ID documents after undergoing their surgeries [despite having previously begun hormone treatments]. The director of the Civil Registry Office, Lucia Ciobanu, says the government refuses to issue new ID documents to transsexual people on the basis of the diagnosis certificates issued by doctors... “The problem is that the Ministry of Health does not issue a certificate officially stating that a person has changed their sex,” added Ciobanu.¹⁶⁷</p> |



Monaco

| | | |
|--|-----------------------------|-----------------------------------|
| | Name change | Possible. |
| | <i>Legislation</i> | <i>Civil Code, Article 77-11.</i> |
| | <i>Quote/details</i> | Petition via the courts. |
| | Gender marker change | Not possible. |

¹⁶⁶ Commentary from http://www.coe.int/t/Commissioner/Source/LGBT/MoldovaLegal_E.pdf.

¹⁶⁷ Commentary from <https://www.balkanicaucaso.org/eng/layout/set/print/content/view/print/100418> (2011, but still seems to apply).



Montenegro

| | | |
|--|-------------------------------------|--|
| | Name change | Possible , including specifically along with change of gender. |
| | Legislation | Law on Personal Names, Law No. 47/2008. ¹⁶⁸ |
| | Quote/details | <p>Article 9. A personal name, or only the surname or name, may change after a family or a personal change in status, or by request of a Montenegrin citizen.</p> <p>Article 14. Changing your personal name on demand. Your personal name, or solely first name/surname of an adult person can be altered on request; that of a minor, at the request of his legal representative. The decision on such request shall be decided by a decision of the state administrative body competent for internal affairs (hereinafter: the Ministry).</p> |
| | Gender marker change | Possible. |
| | Legislation | Law No. 01-382/13 of 2008 on Registry Books. |
| | Quote/details | <p>Article 6. The Registry of Births shall contain: [...]</p> <p>(2) amendments, modifications and deletions of the basic entries: ... change of child's personal name and change of parent's, adoptive parents' or legal guardian's personal name, change of sex... subsequent correction of errors and other changes concerning the data in question.</p> <p>Article 14. The data in the registry is changed, amended, or deleted, on the basis of the final decision of the body authorising the change in personal status.</p> |
| | Conditions for gender marker change | <p>Montenegro operates a gendered ID number system, governed by <i>Zakon o centralnom registru stanovništva Službeni list Republike Crne Gore, broj 49/2007</i>. Article 22 determines the number: it includes a three-number grouping (Group V), which is 000-499 for a male-assigned person and 500-999 for one female-assigned. Article 27 allows for a change in number with a change of birth certificate. Each person is assigned a registration number. The Ministry can annul the registration number and assign a new one, based on a final decision [of the authorising body, as above] where there is a correction of gender data or date of birth to be made to the birth certificate. The Ministry will cancel the incorrect registration number and determine the new one.</p> <p>The <i>Act on Amendments to the Health Insurance Act</i>¹⁶⁹ envisions 80% of the cost of “change of sex for medical reasons” being covered by insurance (Article 16b).</p> <p>This is elaborated on in the <i>Ordinance on Determination of Medical Reasons for Change of Gender</i>.¹⁷⁰ An applicant for “change of sex for medical reasons” must be over 16 (Article 2). The determination procedures include: examination by a primary care physician; review and diagnosis by a specialist in internal medicine (general internal medicine, endocrinology); review and diagnosis by a specialist surgeon (general surgery, plastic and reconstructive surgery, urology and gynaecology); review and diagnosis, as needed, by other doctors or medical specialists; report by a psychiatrist and psychologist, and report on “social history” by a social worker (Article 3).</p> <p>A determination will then be given on the basis of these reports and histories by a medical doctor of an appropriate specialty from the Clinical Centre of Montenegro (Article 4).</p> |

¹⁶⁸ Original name: *Zakon o ličnom imenu "Službeni list Crne Gore, broj 47/2008*.

¹⁶⁹ Original name: *Zakon o izmjenama i dopunama Zakona o zdravstvenom osiguranju "Službeni list Crne Gore, broj 14/2012*.

¹⁷⁰ Original name: *Pravilnik o utvrđivanju medicinskih razloga za promjenu pola "Službeni list Crne Gore, broj 47/2014*.

Netherlands

| | | |
|---|--|--|
|  | Name change | Possible , including specifically along with change of gender. |
|  | <i>Quote/details</i> | As stated below. |
|  | Gender marker change | Possible. |
|  | <i>Legislation</i> | <i>Act of 18 December 2013 (amending Book 1 of the Civil Code and the Act municipal base administration personal data related to the change of the terms and conditions for matters of change of the mention of the gender in the deed of birth).</i> |
|  | <i>Conditions for gender marker change</i> | <p>Civil Code, Book 1.¹⁷¹</p> <div style="border: 1px solid #ccc; padding: 10px;"> <p><i>Article 28. Any Dutch citizen aged 16 years or older who has a “conviction of belonging to the sex other than that which is mentioned on their birth certificate” can make an application to the appropriate area’s Civil Registrar. A non-national can apply if they have been resident in the Netherlands for a year and have a valid residence permit. A minor aged 16 or over is competent to represent themselves in this process.</i></p> <p><i>Article 28a. The application should be accompanied by a statement from an expert (appointed by executive order) to the effect that the applicant has the conviction of belonging to the gender other than mentioned in his birth certificate and, in the opinion of the expert, has proven that they understand the scope and meaning of this statement and of the change in birth certificate. The expert should not enter the statement if they have reasonable reason to doubt the validity of such conviction.</i></p> <p><i>Article 28b. If these terms are complied with, the registrar can enter the change of gender into the registry. They can also enter a change of first name for the applicant.</i></p> </div> |

Norway

| | | |
|---|--|--|
|  | Name change | Possible , non-LGR-specific. |
|  | <i>Quote/details</i> | Administrative procedure - fill out a form and send it to the tax office of your region. |
|  | Gender marker change | Possible. |
|  | <i>Legislation</i> | <i>Legislation: LOV-2016-06-17-46, Law Amending the Legal Status.</i> |
|  | <i>Conditions for gender marker change</i> | <div style="border: 1px solid #ccc; padding: 10px;"> <p><i>Article 2. Persons who are resident in Norway and experiencing belonging to the gender other than which he or she is registered as in the National Register, have the right to amend their legal gender.</i></p> <p><i>Article 4. Children over 16 may apply for LGR. Children between 6 and 16 can apply along with a parent/guardian; if the parents have joint custody, the consent of one will be sufficient provided the County Governor is satisfied it is in the best interests of the child. Children under 6 can have applications submitted by their parent/guardian; if the child is capable of giving their opinion, they must also be heard. Children with variant sex characteristics must have a medical report submitted also.</i></p> </div> |

¹⁷¹ Original name: *Burgerlijk Wetboek Boek 1.*



Poland

| | | |
|--|--|---|
| | Name change | Possible , not LGR-specific. |
| | <i>Legislation</i> | <i>Law on the change of name and surname</i> , 17 October 2008. ¹⁷² |
| | <i>Quote/details</i> | <p>A change of name can only be made for important reasons, for example:</p> <ol style="list-style-type: none"> 1) a name or surname which is ridiculous or contrary to human dignity; 2) change for a name or surname used; 3) a name or surname, which has been unlawfully altered; 4) a name or surname which is in accordance with the laws of a country of which one also holds citizenship. <p>Applications to change one's name should be made in writing and include your justifications for wanting the change along with any documentation which supports your application (Article 11).</p> <p>The decision is made by the head of the civil registry of your geographical area (Article 13).</p> |
| | Gender marker change | Possible , but complicated. Court procedure. |
| | <i>Legislation</i> | <i>Polish Civil Code</i> , Article 189. |
| | <i>Conditions for gender marker change</i> | <p>Court procedure in which the applicant must file an “assessment suit”, manufacturing proceedings between the applicant and their family. Very subjective and can result in dismissal of the applicant's suit. Conditions can include a ‘real-life test’—if the applicant has expressed their gender identity publicly for (usually) two years, often without any medical intervention, before LGR can be granted - and medical testing, both psychological and physical. This is based on the Supreme Court decision of 22 March 1991 which interprets the sense of belonging to a gender as a personal good, per Article 23 of the Civil Code, meaning that a suit can be brought on this basis under Article 189 of the Civil Code.</p> <p>Another Supreme Court judgment of 22 September 1995 established the parents or guardians of the applicant for LGR as the appropriate parties to form the defendants in the lawsuit taken.¹⁷³</p> <p><i>Transfuzja</i> Report about experiences of trans persons on the courts process.¹⁷⁴ A transsexual diagnosis in Poland can be obtained through a series of tests and examinations (both psychological and physical—including head x-rays, genitalia examination and karyotype check). One of the most common elements of this method is the “real life test (RLT)”, where one is forced to live full-time as their preferred gender. Healthcare providers recommend a two-year RLT during which one is not prescribed any hormonal treatment nor is able to change their legal status... the RLT is being gradually withdrawn. However, since there are no unitary standards on transsexual diagnosis in Poland, some diagnosticians still use it in their practice.</p> <p>Apart from the RLT, a person going through gender recognition in Poland is subjected to physical examination, along with psychological and psychiatric evaluations. After those are fulfilled, the diagnostician decides whether to prescribe hormones, but usually does so after the person has already been diagnosed as transsexual. While it is possible to receive hormonal treatment without the diagnosis, this practice might be problematic for further court procedures.</p> |

¹⁷² Original name: *USTAWA z dnia 17 października 2008 r. o zmianie imienia i nazwiska*.

¹⁷³ Quotes and info from <http://www.transseksualizm.pl/p74> - the forum cited in the *Transfuzja* report as the most common source of information for Polish people seeking LGR proceedings.

¹⁷⁴ Source: http://transfuzja.org/download/publikacje/gender_recognition_in_poland.pdf.



Portugal

| | | |
|--|--|--|
| | Name change | Possible. |
| | <i>Quote/details</i> | As explained below. |
| | Gender marker change | Possible. |
| | <i>Legislation</i> | <i>Law No. 7/2011 of 15th March. Creating a procedure for change of sex and name in the civil registry and providing for the seventeenth amendment to Code of Civil Registration.</i> ¹⁷⁵ |
| | <i>Conditions for gender marker change</i> | <p><i>Article 2. Legitimacy and capacity. The procedure can be requested by persons: of Portuguese nationality; of legal age; not prohibited or incapacitated by reason of “psychological abnormality”/mental incapacity; who are diagnosed with gender identity disorder.</i>¹⁷⁶</p> <p><i>Article 3. Application and notice.</i></p> <p><i>1. The request may be made at any Civil Registry Office and must be accompanied by the following documents:</i></p> <p><i>a. Application for change of sex, indicating the civil identification number and proper name by which the applicant wants to be identified; it may, of course, be required to acquire a new birth certificate.</i></p> <p><i>b. Report of a diagnosis of gender identity disorder (also referred to as transsexuality) prepared by a multidisciplinary team of clinical sexologists; this can be at a public or private health facility, at home or abroad.</i></p> <p><i>2. The report referred to in section b) should be signed by at least one doctor and one psychologist.</i></p> <p>As of September 2017, it has been reported that the Portuguese Parliament is debating Bills on legal gender recognition put forward by the governing party and two other blocs. The Government’s Bill envisions lowering the age for gender marker change to sixteen, and removing the medical requirements from the process.¹⁷⁷</p> |



Romania

| | | |
|--|-----------------------------|--|
| | Name change | Possible. <i>As explained below.</i> |
| | <i>Legislation</i> | <i>Law 119/1996 on civil status acts, republished 2012.</i> |
| | Gender marker change | Possible. |
| | <i>Legislation</i> | <p>Article 100 of the Civil Code allows for changes to be made to one’s civil status. It must be approved by a final court decision (100.1) and the mayor of the administrative district concerned (100.2). The approval can be given “only if an action for modification of the civil status, which was admitted by a final court decision, has been formulated” (100.3).¹⁷⁸ →</p> |

¹⁷⁵ Original name: *Cria o procedimento de mudança de sexo e de nome próprio no registo civil e procede à décima sétima alteração ao Código do Registo Civil / Law No. 7/2011 of 15th March.*

¹⁷⁶ Original text: “a quem seja diagnosticada perturbação de identidade de género”.

¹⁷⁷ Source: <https://esqrever.com/2017/09/18/auto-determinacao-de-genero-no-parlamento/>.

¹⁷⁸ Original text: “daca a fost formulata si o actiune de modificare a starii civile, admisa printr -o hotarare judecatoreasca ramasa definitiva”.

Law 119/1996 on civil status acts, republished 2012.¹⁷⁹

Article 43. In acts of birth and, where appropriate, in marriage or death certificates changes in the civil status of the person will be noted in the following cases: [...]

(f) change of name;

(h) correction, addition or cancellation of acts of civil status or markings thereon;

(i) change sex after a final and irrevocable court decision.



Conditions for gender marker change

Court process.

The law governing the ability of transgender persons to change their identity was vague and incomplete, resulting in inconsistency in judicial practice concerning legal recognition of gender identity. In some cases, authorities denied recognition of a change in identity unless a sex-reassignment intervention had occurred.¹⁸⁰

It is a court process; before the hearing, two letters are needed (from a psychiatrist and an endocrinologist). The decision most often reached is that genital surgery is needed before you can change your civil documents and identity card. There has been a court case in Iasi where permission to change documents was granted without surgery.¹⁸¹



Russia



Name change

Possible.



Legislation

Russian Civil Code, Article 19; Law on Acts of Civil Status, Chapter VII.



Quote/details

Name change is available in law, however in practice it is difficult or even impossible.

While traditionally most Russian names (first name, patronymic, surname) are gendered, there are no official lists of male and female names or rules regulating how they should be formed. At the same time, in practice it is usually easy to change “traditionally” gendered name to a gender-neutral one, but not to a “traditionally opposite-gender name.”

One such case has been exhausted recently on the national level, and submitted to the European Court of Human Rights in October 2016 by the Transgender Legal Defense Project.



Gender marker change

Nominally possible.



Legislation

No. 143-FZ. Law on Acts of Civil Status.



Quote/details

Article 70. It is possible to correct/change one's civil gender status with the presentation of certification by a medical institution, following procedure to be established by the executive authority for the region, and following state policy and legal regulation of public health.

¹⁷⁹ Original name: *Legea 119/1996 cu privire la actele de stare civila, republicata 2012.*

¹⁸⁰ Source: United States Department of State, *2016 Country Reports on Human Rights Practices - Romania*, 3 March 2017, available at: <http://www.refworld.org/docid/58ec89dd13.html>.

¹⁸¹ Source: TRANSform, ONG rumana trans <http://transformgroup.wixsite.com/transform-romania/pasi-in-tranzitie>.



Conditions for gender marker change

Legislation (not trans specific), civil registry and court applications.

No.143-FZ. Law on Acts of Civil Status, Article 70.

Conditions are not established by law and are therefore subject to the practices of the individual regional civil registry office or court. The application is presented to the civil registry office, although in practice most of these are refused, as there is no legal definition of the medical certification required under Article 70.

There should be at least a diagnosis of “Transsexualism” using code F64.0 of the International Classification of Diseases-10, hormone therapy, gender reassignment surgery, and, in exceptional cases, one surgery such as mastectomy. Cases where the applicants have not had phalloplasty did not amount to enough surgical requirements for Gender marker change

At the time of going to print, a new draft law on legal gender recognition is scheduled to come into force in Russia in January 2018. The new law would establish “a permanent medical commission [...] consisting of a psychiatrist, a sexologist and a medical psychologist”. This Commission would hear application for gender marker change on the basis of a referral from a psychiatrist who has observed the applicant for a period of eighteen months. The psychiatrist must certify to “establishing sexual reorientation” as a result of “medical supervision”; no clarification is offered as to whether physical medical treatments are required.

RUSSIA

Making the court system work for trans persons in Russia

Sandra Duffy interviewed **Diana Iashenkova**, Monitoring and Information Coordinator, Transgender Legal Defense Project (TLDP).

SANDRA DUFFY (SD): *Can you tell me, from your experience, what the situation is like for transgender people in Russia for legal gender recognition?*

DIANA IASHENKOVA (DI): For transgender people in Russia, there are two different procedures for legal gender recognition, both done at the local civil registry office.

One is for name change only, using “Form 15”, which allows a person to change their names (first name, patronymic and surname); and one is used for name and legal gender change, using a “Form 17”, which technically allows a person to change any information in the birth certificate. According to Russian law, you can change your name legally, just with an application; but in practice it works differently. Civil registries refuse to change a male name to a female one, or vice versa, because the officers say that traditionally they cannot do that. There are not that many applications. And in Russia we don’t have a list of names that are allowed or not, but the civil registry officers say that it is impossible to change a female name to a male one, or vice versa.

Since 2012, Transgender Legal Defense Project lawyers help to submit civil registry applications. We recommend not to choose gender specific names, but to apply for a gender neutral name, because the

chances of succeeding are much higher and then you don’t have to go to court. If you are denied at the civil registry, you go to court. People don’t want to go to court.

SD: *If there is a law for legal gender change, why is it so difficult for civil registries to grant the requests?*

DI: The first problem is that for gender marker change, the law says you have to provide a certificate of a specific form, but this form has not been specified since 1998! Often this is a reason for registries to formally deny applications. They say, “because there are no documents using this specific form, we deny you”. So, we advise to give as many medical certificates as possible. It also depends on the region and the court, and it has nothing to do with whether it is a big city or not. If the court is friendly, it will say that any medical certificate which can prove transitional “sex change” is sufficient.

In my own case, I gave evidence of two endocrinologist letters and one psychiatric evaluation certificate, with the F64.0 diagnosis (of “transsexualism” from the International Classification of Diseases, 10th revision). However, sometimes the courts demand that the person has surgery or multiple surgeries. By this, they usually

mean complete surgical transition, which mean genital surgery and sterilisation.

The shortest time needed is 2-3 months from submitting an application to a civil registry until receiving a court decision. I believe the longest time has been 5 years—this is usually when someone is born in another country, and the civil registry has to write to the civil registry of that country, and years go by, and the person is denied several times.

SD: What does TLDP think can be done to improve the situation?

DI: A few weeks ago, we recommended to the Ministry of Health that surgeries are included in public funding, so that transgender people don't have to pay themselves. However, advocacy is difficult because if they actually make this specific form (the one missing since 1998), we are afraid it will contain demands to have certain surgeries. So, people in my situation, for example, would not have the opportunity to have their gender recognised.

SD: Do you think the Ministry is willing to listen to your recommendations?

DI: We did receive responses from them—one was that any medical certificate that confirms sex change is fine, no matter what (hormonal, genital, psychiatric). Actually, this reply is useful in some court cases.

SD: Can you tell me about the accessibility and cost of transition-related healthcare?

DI: Transgender people can receive a psychiatric evaluation and diagnosis covered by our obligatory medical insurance, but only at places called "Psychoneurological Dispensaries", which are state clinics all over the country. They are extremely unfriendly to transgender people, and everyone is afraid of them.

There was a case of a woman who went to a regional clinic to receive the F64.0 diagnosis and she was hospitalised and medicated for about 6 months. In the end of it, she didn't even receive the diagnosis of "transsexualism". Cases where transgender people receive a diagnosis without spending a lot of time in these clinics is rare, so it is possible but it's dangerous.

Hormone treatment is not covered publicly. Usually a transgender woman can buy hormones over the counter in a pharmacy, but transgender men have to get a receipt by having the F64.0 diagnosis, otherwise no endocrinologist will give him the hormones.

The average salary in St Petersburg is officially about 37,000 Rubles. Unofficially I would say it is 25,000—

28,000 Rubles (USD 430-500). My treatment costs 4,000 Rubles (1/7 of my salary).

For transgender men, even though they have trouble receiving receipts from doctors, their drugs are about half this cost. But this is still expensive. We did a survey and most respondents said the cost of hormonal treatment is rather high and they have to plan their budgets for it.

Surgeries are basically paid by transgender people. We have heard of people getting surgeries free of charge, but these cases are unbelievably rare. Most people have to take a loan for surgeries. Chest surgery costs at least 70,000 Roubles, but it's often twice this. Genital surgeries are even

more expensive and there are not many clinics and doctors that do them. Very few people have lower surgery, because of the cost, but also because they don't want to have them done by Russian doctors.

SD: Is there a difference in how people are treated by doctors if they have their gender markers changed or not?

DI: Yes, there is a difference. If you have your gender marker changed, and you ask things from a doctor they are then curious about you. If not, you will face discrimination, or even bullying, verbal abuse or denial of care.

SD: Can you tell me about the new draft law on legal gender recognition, which is suggesting the establishment of a medical commission to hear applications on gender marker change?

DI: Right now, our lawyers together with activists from "T-Action" and "Coming Out", as well as several psychologists, are writing recommendations to the Ministry of Health about their draft law. We want to change are the following:

- 1) The psychiatric evaluation period in the draft states "no less than 1.5 years". We recommend it is "no more than one year".
- 2) It is unclear whether "old" medical documents (with the F64.0 diagnosis) will still be valid for legal gender recognition. We want the medical commission to accept these documents and to issue a new medical document without needing a new evaluation.
- 3) It is unclear what happens when the commission denies issuing a new medical certificate based on their evaluation. We want clarification on this and are suggesting that a person can re-apply to the commission without needing an additional waiting time for a new referral from the psychiatrist.

For gender marker change, the law says you have to provide a certificate of a specific form, but this form has not been specified since 1998. This is often a reason for registries to formally deny applications.

- 4) It is unclear why the new certificate will only be valid for one year. Medical certificates should not (and do not, according to Russian law) have a limited duration of validity. We want that line from the draft removed completely.

SD: Does the transgender movement in Russia have support from the medical profession?

DI: I can't say that we have their support, but, for example, some psychologists come to court and give witness statements for our cases. So I can say there are a few friendly doctors who are willing to work with transgender patients and organizations.

SD: Do you address legal gender recognition issues in your international advocacy?

DI: Yesterday, we asked the UN Committee on Economic, Social and Cultural Rights to make two recommendations. The first is that the Russian government provides swift, transparent and accessible legal gender recognition processes; and the second is that transgender-specific healthcare is covered by public health funds. But the main thing we seek is a simplified procedure of legal gender recognition based on self-determination. Because it all starts with your ID. If you change it, everything is much simpler: the doctors are friendlier, and there is little to no discrimination.



Slovakia

|  Name change | Possible. |
|---|---|
|  Legislation | Act on Name and Surname 300/1993, as amended. |
|  Quote/details | <p>Section 6(6). A person undergoing 'sex change' can enable the district office to use a neutral name and surname for them, at their request, and with confirmation from the medical facility in which they are undergoing treatment.</p> <p>Section 7. Permission to change one's forename and surname is not required where it is requested on grounds of gender reassignment. The application is made at the civil registry office. If it is being requested on grounds of gender reassignment a medical report must be submitted.</p> <p><i>Transfuzia</i> states that in order to enact this process, a diagnosis from a psychiatrist is usually required.</p> |
|  Gender marker change | Possible, with unclear/prohibitive requirements. |
|  Legislation | Act 301/1995 on personal identification numbers. |
|  Quote/details | <p>Section 8(2): The Ministry shall, on request, change Social Security number,</p> <p>b) based on a medical opinion on the change of sex of the person.</p> |
|  Conditions for gender marker change | <p>The law on changing one's identification number requires a 'medical opinion'. Slovak NGO <i>Transfuzia</i> cites psychiatric report and evidence of sterilisation as being commonly required.¹⁸²</p> <p>PQ to the European Commission in November 2016 noted: "Unlike many Member States, Slovakia does not authorise transgender persons to have their gender legally recognised without undergoing gender reassignment treatment. However, there is no clear legal basis specifying that such treatment entails sterilisation. And yet, since July 2016, birth registries have required a medical certificate to be submitted, testifying that 'reproductive functions of the patient have been definitely eliminated'. As a result, transgender persons are not able to have their gender legally recognised without undergoing forced sterilisation."¹⁸³</p> |

¹⁸² Source: <http://www.transfuzia.org/situacia-na-slovensku/legislativa>.

¹⁸³ Source: <http://www.europarl.europa.eu/sides/getdoc.do?pubref=-//ep//text+wq+e-2016-008856+0+doc+xml+v0//en>.



Slovenia

| | | |
|--|--|---|
| | Name change | Possible , not LGR-specific. |
| | <i>Legislation</i> | <i>Law on Personal Names (ESL-1) No. 001-22-3/06.</i> |
| | <i>Quote/details</i> | <p>Article 18. Names can be changed on request by an adult citizen. It is decided by the competent authority to which the application is made.</p> <p>Minors need the consent of their legal guardians (Article 20).</p> |
| | Gender marker change | Nominally possible , different in practice. |
| | <i>Legislation</i> | <i>Rules on the Implementation of the Law of the Central Register (Official Gazette of RS, Nos. 40/05 and 69/09).¹⁸⁴</i> |
| | <i>Quote/details</i> | <p>Article 37 (Sex change). A change of gender marker will be entered in the registry based on the decision of the competent authority concerned. Confirmation that the person has “changed gender” from a doctor or medical institution is required.</p> <p>Before the change of gender marker is registered, the applicant must request a new EMSO (identification number).</p> |
| | <i>Conditions for gender marker change</i> | Per legislation, medical certification. However, there are no criteria for what this must include or what level of intervention must have been performed. It is therefore dependent on the individual civil registrar and uncertain for the applicant. |



Spain

| | | |
|--|--|--|
| | Name change | Possible . Provided for with gender marker change, as explained below. |
| | Gender marker change | Possible . |
| | <i>Legislation</i> | <p><i>Law 3/2007, of the 15th of March, regulating the rectification of mentions in the registry of the sex of persons.¹⁸⁵</i></p> <p>Note: Spain is also currently debating a Bill which would remove pathologisation requirements and introduce self-determination.¹⁸⁶</p> |
| | <i>Conditions for gender marker change</i> | <p>Article 1.1. Legitimacy. Any person of Spanish nationality of legal age and capacity can request change of gender, including change of name (so as to keep the name in accordance with the registered gender).</p> <p>Article 4. Conditions.</p> <p>4.1.a. That they have been diagnosed with gender dysphoria, certified by a doctor or clinical psychologist, including stable and persistent dissonance between gender identity and psychosocial sex, and in the absence of other personality disorders; →</p> |

¹⁸⁴ Original name: *Pravilnik o izvrševanju zakona o matičnem registru (Uradni list RS, št. 40/05 in 69/09).*

¹⁸⁵ Original name: *Ley 3/2007, de 15 de marzo, reguladora de la rectificación registral de la mención relativa al sexo de las personas.*

¹⁸⁶ Source: <http://www.lavanguardia.com/vida/20170919/431397357606/trans-derechos-lgtb-igualdad-congreso-sanidad.html> (19.09.17).

4.1.b. That they have had two years of medical treatment to alter physical characteristics to match gender identity; this must be certified by the doctor under whose care the treatments have taken place, or an approved medical examiner;

4.2. These medical interventions do not have to include sex "reassignment" surgery. The requirement for medical treatment/certification of such can be waived to account for "health or age reasons".



Autonomous Region of Andalucía [Spain]



Gender marker change

Possible. The Andalusian Parliament in Spain passed a separate law on transgender status in 2014. It is based on freedom of gender expression, self-declaration, and depathologisation.



Legislation

Law 2/2014, of July 8, integral for non-discrimination on grounds of gender identity and recognition of rights of transgender persons in Andalusia.¹⁸⁷



Conditions for gender marker change

Article 9. Administrative documentation.

1. In order to promote better integration and avoid situations of 'outing' or discrimination, Andalusia will provide to any person requesting it, whatever accreditation of their self-declared identity as may be necessary for access to its administrative services.

2. Regulation of the accreditation procedure will be established based on the following criteria:

(a) Applications will be made by the persons concerned or, where appropriate, by their legal representatives.

(b) The procedures for issuing administrative documents under this Act shall be free; they will not require any intermediary; and in no case will they involve an obligation to provide or accredit any type of medical documentation.

(c) It shall ensure that persons are treated according to their freely determined gender identity, and the dignity and privacy of the person concerned will be respected.



Community of Madrid [Spain]



Gender marker change

Possible.



Legislation

Law 2/2016, of 29 March, on Identity and Expression of Gender and Social Equality and Non-Discrimination of the Community of Madrid.



Conditions for gender marker change

Article 7.2. In order to promote better integration and avoid situations of suffering for public exhibition or discrimination, the Community of Madrid will provide to any person who requests it accreditations match their gender identity manifested necessary for access to their services and administration of all kinds.

Article 7.3. The accreditation procedure will be based on the following criteria:

(a) Applications will be made by the persons concerned or, where appropriate, by their legal representatives.

(b) The procedures for issuing administrative documents under this Act shall be free and not require any intermediary, and in no case imply an obligation to provide or accredit any medical documentation.

(c) It is ensured that people are treated according to their freely determined gender identity, and that the dignity and privacy of the person concerned will be respected.

¹⁸⁷ Original name: Ley 2/2014, de 8 de julio, integral para la no discriminación por motivos de identidad de género y reconocimiento de los derechos de las personas transexuales de Andalucía.



San Marino

| | | |
|---|-----------------------------|---------------|
|  | Name change | Unclear. |
|  | Gender marker change | Not possible. |



Serbia

| | | |
|---|--|--|
|  | Name change | Possible , separate to gender marker change. |
|  | <i>Legislation</i> | Family law Articles 342-356. ¹⁸⁸ |
|  | <i>Quote/details</i> | <p>Article 346. (1) Everyone who has reached the age of 15 years and who is capable of reasoning has the right to change a personal name.</p> <p>(2) A child who has reached the age of 10 years and who is capable of reasoning has the right to give consent to the change of a personal name.</p> <p>Article 350.</p> <p>(1) The request for the change of a personal name shall be submitted to the municipal administration in whose area the applicant has his / her place of residence or residence.</p> <p>(2) The municipal administration that accepts the request for a change of personal name shall be obliged to inform the competent registrar about this in order to register the change of the personal name in the register of births and marriages and the body that keeps records on the place of residence of the citizens.</p> <p>There is no requirement for a name to be gendered.</p> |
|  | Gender marker change | Possible , but with unclear and difficult requirements. |
|  | <i>Quote/details</i> | There is no legislation governing LGR in Serbia. Changing gender markers is an administrative procedure, but the lack of regulation renders it difficult and often lengthy as there are no guidelines for registrars to follow and no legal support for applicants. |
|  | <i>Conditions for gender marker change</i> | <p>The following procedural steps are indicated by TransBalkan.¹⁸⁹</p> <p>When applying for a change in registry number and the gender marker, the application must be accompanied by: ID card; proof of "gender change" (medical documentation); and the decision of the MIA to annul the old registry number and to determine the new, after the adoption of the same.</p> <p>If the decision is in your favour, you can acquire a new birth certificate, passport, etc.</p> |

¹⁸⁸ Original name: *Porodični zakon čl.342-čl.356.*

¹⁸⁹ Fuente: <http://www.transbalkan.org/dokumenti/srbija>.



Sweden

| | | |
|---|--|---|
|  | Name change | Possible. |
|  | <i>Legislation</i> | <i>Law on Personal Names, 2016: 1013.</i> |
|  | <i>Quote/details</i> | <p><i>Section 36. The Swedish Tax Agency decides on acquisition or amendment of personal names following an application pursuant to section 3.</i></p> <p><i>Section 37. Applications are made in writing to the Swedish Tax Agency. They should include the applicant's name, social security number, address and phone number, and the "circumstances relied on in support of the application".</i></p> <p><i>Section 46. A minor over the age of 12 must consent to an application for name change on their behalf.</i></p> |
|  | Gender marker change | Possible. |
|  | <i>Legislation</i> | <i>Act (1972: 119) on establishing gender in certain cases.¹⁹⁰</i> |
|  | <i>Conditions for gender marker change</i> | <p><i>Section 1. an application may be made for a person avowing that they have for a long time felt they belong to the gender to which they wish to change their registry; that they have lived in this gender identity for a period of time and will continue to do so; that they are over 18.</i></p> <p><i>Section 2. An application may be made for someone who has "a congenital abnormality/deviation in sexual development" and for whom LGR is "compatible with development... and physical condition". This can apply to minors; the consent of the child is required if they are over 12.</i></p> <p><i>Section 3. An application under paragraph 1 or 2 may only be granted if the person is a registered resident of Sweden. The person cannot be in a registered partnership.</i></p> <p>Minors must apply through their legal guardian. Permission for surgical intervention (either modification or "remov[al of] the genital glands") will only be given following permission for gender marker change and except in exceptional circumstances the applicant must be over 23.</p> <p>Applications are made to the National Health and Welfare Board. They must be accompanied by a medical report stating that the person has undergone the primary "investigation", via psychiatrist, to confirm the "diagnosis of transsexualism".¹⁹¹</p> |



Switzerland

| | | |
|---|----------------------|---|
|  | Name change | Possible , not LGR-specific. |
|  | <i>Legislation</i> | <i>Swiss Civil Code, Art. 30.2.a.</i> |
|  | <i>Quote/details</i> | <p>Art. 30.2.a of the Swiss Civil Code allows for anyone to change their name for "<i>des motifs légitimes/legitimate reasons</i>". For trans persons, proof may be required that the new name has already been unofficially in use for a period of time, usually 2 years, along with a doctor's certification.¹⁹²</p> |

¹⁹⁰ Original name: *Lag (1972:119) om fastställande av könstillhörighet i vissa fall.*

¹⁹¹ Source: Foreningen for Transpersoner (organización trans sueca) <http://fpes.se/om-transtransición>.

¹⁹² Source: Transgender Network Switzerland.

| | | |
|---|--|---|
|  | Gender marker change | Possible. |
|  | <i>Legislation</i> | <i>Swiss Civil Code, Art. 42.IV.1.</i> |
|  | <i>Quote/details</i> | The Swiss Civil Code provides for modification of civil registry entries by a court. All persons with a legitimate personal interest may request that a judge order the entry, correction, or removal of disputed information to do with civil status. No specific mention is made of gender recognition. |
|  | <i>Conditions for gender marker change</i> | <p>The Swiss courts affirm the right to judicial change of civil status for transgender persons in Federal High Court decision: BGE 119 II 264.</p> <p>This judgment requires “irreversible sex change” but does not specify further. However, other Courts in Zurich¹⁹³ and the Bern Jura-Seeland Regional Court¹⁹⁴ have not required surgical interventions before granting gender recognition. The Office Fédéral d’État Civil has also stated in 2012 that it does not require sterilisation as a condition for gender change. It also declared that dissolution of marriage should not be a condition for gender change.¹⁹⁵</p> <p>The application must be filed with the Court of First Instance in the appropriate area. It is possible to ask for a ruling on changing name at the same time as changing gender marker. There is no age limit. A medical report and gender-normative expression are often expected by the Court.</p> |



Turkey

| | | |
|---|--|--|
|  | Name change | Possible , specifically provided for with LGR. |
|  | <i>Quote/details</i> | Article 27, Civil Code - the court can order the changes to be made to the population register. Article 35 of the <i>Population Law</i> ¹⁹⁶ also states that without a provisional court judgment, no alteration or annotation can be made to registry information. |
|  | Gender marker change | Possible , with prohibitive requirements. |
|  | <i>Legislation</i> | <i>Civil Code, Article 40.</i> |
|  | <i>Quote/details</i> | <p>An individual wishing to change legal gender can do so on application to a court.</p> <div style="border: 1px solid #ccc; padding: 5px; margin-top: 10px;"> <p>Note: Article 40 is under consideration by the Turkish Constitutional Court as at June 2017.</p> </div> |
|  | <i>Conditions for gender marker change</i> | Applicant must be over 18 and unmarried. “Continual deprivation of reproductive ability” / sterilisation surgery is required and must be medically certified. |

¹⁹³ Source: http://www.gerichte-zh.ch/fileadmin/user_upload/entscheide/oeffentlich/NC090012.pdf.

¹⁹⁴ Source: <https://www.transgender-network.ch/wp-content/uploads/2011/09/Zivilgericht-Jura-Urteil-vom-3.9.2012.pdf>.

¹⁹⁵ Source: https://www.transgender-network.ch/wp-content/uploads/2011/09/2012_02_01_EAZW_Kein-Operationszwang.pdf.

¹⁹⁶ Original name: *Nufus Hizmetleri Kanunu, Law no. 5490.*



Ukraine

| | | |
|--|-------------------------------------|--|
| | Name change | Possible. |
| | Legislation | Civil Code of Ukraine, Article 295. |
| | Quote/details | Article 295. The right to a name change. An individual who has attained the age of sixteen is entitled at their discretion to change their name. |
| | Gender marker change | Possible. |
| | Legislation | Order No 1041 of the Ministry of Health “On establishing biomedical and psychosocial indications of change (correction) of sex and approval of the form of primary records and instructions for its completion.” |
| | Conditions for gender marker change | The Order establishes the “medical and biological indications” for allowing gender marker change as being “transsexualism” per the ICD-10. It also cites “socio-psychological indications”: “discomfort or distress due to the discrepancy between the gender identity of the individual and the gender assigned to them at birth (and the related gender roles, and/or primary and secondary sexual characteristics)”. With these conditions being met, the procedures are administrative. |



United Kingdom

| | | |
|--|-------------------------------------|---|
| | Name change | Possible. |
| | Quote/details | Change of name for identification purposes is possible by deed poll. |
| | Gender marker change | Possible , with prohibitive requirements. |
| | Legislation | Gender Recognition Act 2004 (2004, Chapter 7). |
| | Quote/details | Part II, Section 9. (1) Where a full gender recognition certificate is issued to a person, the person’s gender becomes for all purposes the acquired gender (so that, if the acquired gender is the male gender, the person’s sex becomes that of a man and, if it is the female gender, the person’s sex becomes that of a woman). |
| | Conditions for gender marker change | Note: the UK Government is currently undertaking consultation on publishing a new Gender Recognition Bill (due Autumn 2017). It is likely that this Bill will include self-determination of gender identity and a lessening or removal of medical requirements. Note 2: Although the Gender Recognition Act 2004 is UK-wide legislation, the process for applying for legal gender recognition is a devolved matter that the Scottish Parliament can legislate for. The Scottish Government is currently in a process of reviewing the Act, proposing reforms to remove medical evidence requirements and the 2-year “real life” test, and lower the threshold age from 18 to 16 years. ¹⁹⁷ |

¹⁹⁷ See: https://consult.gov.scot/family-law/review-of-the-gender-recognition-act-2004/?utm_content=bufferfdb1&utm_medium=social&utm_source=facebook.com&utm_campaign=buffer.

The applicant must be “living in the other gender” or have been granted legal gender recognition by another state (1(1) (a) and (b)). The application will be determined by a Gender Recognition Panel (1(1) 3). The applicant must have/have had gender dysphoria; they must be living in the “acquired gender” for two years before the application; they must intend to remain of that gender for the rest of their life (2(1) (a), (b), (c).)

The applicant must be at least 18 (1(1)).

The applicant must supply either: (3(1))

- (a) a report made by a registered medical practitioner practising in the field of gender dysphoria and a report made by another registered medical practitioner (who may, but need not, practise in that field), or
- (b) a report made by a registered psychologist practising in that field and a report made by a registered medical practitioner (who may, but need not, practise in that field).

This report must include details of the applicant’s gender dysphoria (3(2)) and medical interventions undergone or planned (3(3)).

They must also report if they are married or in a civil partnership (3(6) (a)). Dissolution of the marriage is required before a change of gender can be recognised. Until the applicant’s marriage is annulled, an interim gender recognition certificate will be supplied (4(3) and 4(4); 5(1) through (7); 5(A) in the event that the union is a civil partnership).

Latin America & The Caribbean

By Matilda González Gil

There are at least two ways in which the legal systems in the region categorize “sex”. The first considers sex to be a mere biological category: that there are only two sexes, and that there is a direct relationship between the genitals and the sex of a person. Usually, this view also causes a distinction between sex and gender, where sex is considered biological and gender a social construction. This same view privileges surgical and other medical and psychiatric proof as the main criteria to determine sex because it considers that sex can only be legally modified if the body itself is modified. The second interpretation found in Latin America is that sex is a mode of classification of bodies based on social and cultural perceptions, where sex is not a biological and static truth, but rather a cultural process: sex is assigned at birth, not based on science or biology, but on prejudices and stereotypes regarding genitals. This system privilege how persons self-identify as the main criterion to determine sex or gender.

These views directly impact on how States regulate name and gender marker changes. The closer the legal systems are to the first view - sex as a mere biological category - the more difficult these processes are for trans persons. When they are closer to the second view - sex is assigned at birth but understood as a cultural process - the easier the processes are. Nevertheless, in most of the countries that have started to move towards the second view, States are still afraid to recognize the existence of trans children.

The “new” ghost against human rights fuelled by transphobia

In Colombia, Chile, Uruguay, Panamá, Perú, Guatemala and El Salvador,¹⁹⁸ the concept of “gender ideology” has also been positioned politically to create panic during elections. Used as a derogatory term by anti-human rights agendas it misinterprets the theory “that the sexual identity of people, as well as gender roles, are socially constructed and not eternal”.¹⁹⁹ These groups argue that this goes against religious beliefs and biology.

Even though the term “gender ideology” has its origins in the Catholic Church for a significant length of time (under the previous administration of Popes John Paul II and Benedict XVI),²⁰⁰ the term has become an unprecedented force in public opinion in different countries in the region. One reason might be the positioning of anti-gender ideology as a concern to protect the wellbeing of children, but it really was the depiction of trans children as abnormal for broader political interests.

Gender ideology contributes to misinformation about trans children, school uniforms and the use of bathrooms to great effect, causing public anxiety and fear during election times. For example, in Colombia, one of the reasons people voted against the peace plebiscite in 2016²⁰¹ was because of a misleading campaign²⁰² that the peace deal contained gender ideology.

¹⁹⁸ *Semana*, Proponen “frente latinoamericano” contra la ideología de género, September 13, 2016.

¹⁹⁹ Julieta Lemaitre, ¿Qué es una ideología de género?, August 11, 2016.

²⁰⁰ Julieta Lemaitre, ¿Qué es una ideología de género?, August 11, 2016.

²⁰¹ It used to be one of the oldest guerrilla groups in the region. Today it is a political party with a new name (with the same acronym: FARC).

²⁰² *La República*, El No ha sido la campaña más barata y más efectiva de la historia, October 4, 2016.

Legal systems

Some legal systems conceive the categories of “sex” and “gender” as different categories. The systems that equate genitals with biological sex often require surgeries (and/or sterilization) and psychological or psychiatric requirements in order for a trans person to change their name and gender marker. For example, in Ecuador, every citizen has a “sex” marker, but a trans person who seeks legal gender recognition will receive a “gender” marker instead, and not a “sex” marker.

Argentina’s Gender Identity Law allows a person’s gender identity to define their gender. The City of Mexico’s modifications to its Civil Code and civil proceedings has a very similar definition²⁰³. Colombia’s Decree requires an affidavit which states the person’s intention to change the “sex” marker and specifies that the affidavit “shall refer to the socio-cultural construction that a person has of their sexual identity”. Mexico City’s modifications, Argentina’s Law and Colombia’s Decree allow trans persons to change their names and sex or gender markers through simple and fast administrative procedures, eliminating cumbersome judicial processes and surgical, sterilization and psychiatric requirements.

Then there are legal systems with intermediate solutions, as in Peru and Bolivia.

Peru’s situation, although stepping in the right direction, is still fraught with human rights issues. Its Constitutional Tribunal changed the legal system’s traditional understanding of sex to one that is “within the social, cultural and interpersonal realities” the person experiences. It also said sex should not always be determined in terms of genitality.²⁰⁴ However, the process for legal recognition is still a judicial one.

Bolivia’s Gender Identity Law of 2016 defines sex as the “biological, organic and genetic condition that distinguishes women from men” and gender as “the social construction of roles, behaviors, uses, ideas, clothing, practices or cultural characteristics and other customs for men and women”.²⁰⁵ However, at the same time the Law uses the concept of the sex assigned at birth in its definition of gender identity. This intermediate interpretation coexists with an intermediate legal remedy: the Law does not require sterilization, surgeries or a mental disorder diagnosis, but it does require a psychological examination.

In the meantime, the regional picture for the rights of trans children has two trends. Argentina allowed a 10-year-old trans boy to change his gender marker based on the consent of the child. While, in 2017, Mexico allowed a 6-year-old trans girl to do so through an administrative process without involving a court, doctor or psychologist.²⁰⁶ On the other hand, progress in Chile and Colombia on legal gender recognition has left out consideration of children.²⁰⁷ Colombia’s Constitutional Court ruled in 2017 that trans man who was almost 18 years old could change his name and sex marker; however, it required “certifications of doctors, therapists, social workers or other professionals”.²⁰⁸

A Gender Identity Law is not the only way

Even though a number of trans organizations in the region campaign for Gender Identity Laws in Latin America and the Caribbean, the political and legal contexts in the different countries demand different

²⁰³ Gender identity will be understood as the personal and internal conviction, as each person’s self-perception, which may or may not correspond to the sex assigned on the first birth certificate. In no case it will be a requirement to accredit any surgical intervention, therapies or other diagnosis and/or procedure for the recognition of gender identity. Taken from Gaceta Oficial del Distrito Federal, *Decreto por el que se reforman y adicionan diversas disposiciones del código civil para el Distrito Federal y del Código de Procedimientos Civiles para el Distrito Federal*, February 5, 2015.

²⁰⁴ Constitutional Tribunal of Peru. Exp N ° 06040-2015-Pa/Tc -*San Martin-Rodolfo Enrique Romero Saldarriaga (Ana Romero Saldarriaga)*, 2016.

²⁰⁵ Bolivia, Ley No 807 del 21 de Mayo de 2016.

²⁰⁶ Sinembargo.mx, Sophia, 6 años, se convierte en la primera niña trans mexicana en cambiar nombre y género en acta, October 15, 2017.

²⁰⁷ El Desconcierto, “Constanza Valdés, primera mujer trans en ser vocera de una coalición política, critica la ignorancia en el Congreso”, Junio 16, 2017.

²⁰⁸ Constitutional Court of Colombia. Judgement T-498/2017, Judge Cristina Pardo Schlesinger, August 3, 2017.

solutions and legal strategies. Some countries have had legislative branches that have approved laws benefiting historically discriminated groups (Argentina, Mexico City, Chile), while others have achieved human rights progress through superior Court decisions (Brazil (pending)) or executive branch Decrees (Colombia and the Dominican Republic) and policies.

These experiences should inform LGBT and trans organizations' legal strategies and may help us in thinking creatively and strategically. Advancing other intermediate and less ambitious objectives, aside from Gender Identity Laws, is also important for social change. If we think about legal gender recognition as a political struggle, we can imagine a castle, where at the top would be a Gender Identity Law that is effective in its implementation and that transforms a transphobic society into a fairer one for trans persons. Nevertheless, advancing other intermediate, less ambitious objectives is also important for social change. As Daniel Hunter said:

Small achievements will not bring the whole system down. However, they certainly create the energy that reinforces our belief that we can change things. In addition, it is important to note that these small achievements will bring us closer to the 'castle', especially when we help people to understand the problems in such a profound way that they join the mission of seizing the castle.¹⁶

¹⁶ Daniel Hunter, *Cómo construir un movimiento social para abolir el nuevo Jim Crow: Guía para la organización comunitaria*, 2016, p. 65.



Argentina

| | | |
|--|--|---|
| | Name change | Possible. See gender marker change information below. |
| | Gender marker change | Possible , without prohibitive requirements. |
| | <i>Legislation</i> | <i>Act 26.743/2012 Gender Identity Law (trans specific)</i> states that total or partial reassignment surgery, hormone therapies or any medical or psychological treatment, are not needed. |
| | <i>Documents amended</i> | Birth certificate, national identity card. |
| | <i>Conditions for gender marker change</i> | <p>Anyone is entitled to request the rectification of sex marker, name and/or picture in the civil registry when any or all of these features are contrary to the petitioner's gender identity. These procedures are considered as part of the recognition and guarantee of the right to gender identity. The petitioner must meet the following requirements:</p> <ol style="list-style-type: none"> 1. Be at least 18 years old, unless authorization of the legal representatives of the child is taken and a lawyer is present to assist with the application. But even if "the consent of any of the minor's legal representative is denied or impossible to obtain", the judge may rule in favour of the child "taking into account the evolving capacities and best interest of the child as expressed in the Convention on the Right of the Child".²¹⁰ 2. Submit an application to the Office of National Registry of Persons. Birth certificates are amended and new national identity cards are issued with the original number retained. 3. To provide the new first name they want to be registered in. <p>Once the requirements are met, "the public officer will proceed—without any additional legal or administrative procedure—to notify the amendment of the sex and the change of first name to the Civil Register corresponding to the jurisdiction where the birth certificate was filed so that it will issue a new birth certificate incorporating the said changes, and to issue a new national identity card reflecting the amended sex and the new first name as now recorded".²¹¹</p> |

ARGENTINA

The implementation of a law that marked a watershed in gender recognition

Matilda Gonzalez Gil interviewed **Blas Radi**, Coordinator of the Office on Gender Identity and Sexual Orientation Issues within the Gender Observatory of the City of Buenos Aires.

MATILDA GONZÁLEZ GIL (MGG): *Let's talk about the implementation of the Argentine Law on Gender Identity. Specifically, regarding the change of name and gender marker—what have been the main obstacles to accessing the rights granted by the Law (for example, fees, non-binary identities, lack of political will, ignorance of the law by the trans population or others)?*

BLAS RADI (BR): Thank you very much for this question. I think that in recent times the tenor of the interviews has changed. Until a few years ago, the Law on Gender Identity was analysed only with regard to its positive aspects. But now, the problematic aspects of the law have come into focus, and I think that's fine.

²¹⁰ Article 5, Act 26.743 / 2012: <http://tgeu.org/argentina-gender-identity-law/>.

²¹¹ Article 6, Act No. 26.743 / 2012: <http://tgeu.org/argentina-gender-identity-law/>.

First, because it produces a turn of a practical nature, because it looks into the actual lived experience of the communities (what the law means in practice), and not so much the black letter of the law (how the law says things should be). Secondly, it produces a shift of interlocutors, because it does not seek the authoritative word of lawyers, judges or other legal professionals to say how significant this law is, but appeals to the knowledge of the communities, whose analysis takes into account their material conditions of existence.

Your question points to a very specific aspect of the Law on Gender Identity. We must bear in mind that the law establishes a human right to gender identity, to the free development of one's personhood according to one's gender identity and to be treated and identified

accordingly. This means that the change of name and gender marker in IDs is only one of its many dimensions. A very important one, and one that has been implemented satisfactorily: it is regarded as the aspect of the law that "works best". However, systematic monitoring of the difficulties and problems that applicants experience during the process is lacking (either from the State or from civil society organizations).

With regard to economic obstacles to the exercise of this right, I would say that *in principle* there are none. I say "in principle" because it is free of any charge, it is quite speedy and personal (i.e. no legal aid is required), but the nature of any process like this one requires at least an investment of time and there always are expenses.

Migrants usually experience certain difficulties in the process of data rectification. For the most part, these difficulties are generated from the lack of consistency or overlapping of different regulatory frameworks and bureaucratic apparatuses.

For example, migrants living in Argentina who keep their passport of their countries of origin—countries where it is either not possible to change their IDs, or the available procedures entail a violation of basic human rights—end up having a passport with a certain gender marker and an Argentine document with a different one. For example, this is the case of people with Argentine IDs and Israeli passports.

Paradoxically, migrants from countries with more progressive laws face certain problems as well. The Argentine Law on Gender Identity allows the change of name and gender marker to migrants with permanent residence in the country. So, a few months ago, several Colombian trans women who are living in prostitution explained that they have two options to change their documents: to do it in Colombia or through the Colombian consulate in Argentina. Either option requires a lot of money,

which of course they don't have, so they can't have access to rectified IDs.

MGG: Which are the government agencies in charge of the Law's implementation and how effectively have they carried out their work?

BR: There are different agencies that intervene when a person wants to change their gender marker and their name in their ID. The first is the Civil Registry (either within Provincial Registries or the Autonomous City of Buenos Aires) that is charge of rectifying birth certificates, the first step in the procedure. Subsequently, the National Registry of Persons intervenes.

There is consensus regarding the proper

functioning of these institutions in relation to the rectification of personal documents. Recently, I made contact with a large number of people whose process was delayed due to different bureaucratic reasons. In many cases, these people received their new documents with their names changed but without a change in gender markers. Given the novelty of these procedures, officials lack the training to respond to inconveniences efficiently. This means that people who encounter these problems spend a lot of time wandering from office to office. Anyway, I don't think this can be attributed to the unwillingness of the personnel of the registries. On the contrary, both staff members and directors are usually ready to help applicants with the procedure and are committed to finding solutions. However, these solutions are not always within their powers.

MGG: Do you know how many people have changed their names and gender markers?

BR: So far there are no official statistics. It would be great if this data is available and can be disaggregated by provinces and localities. Last year, the vice-president of a national organization said that the total number exceeded 10,000 people and, a few months ago, a national newspaper published that 5,703 people have benefited from the Law on Gender Identity.

MGG: What are the factors that most affect access to the Law (for example, socio-economic status, ethnic or racial group, migration status, age (children), persons deprived of liberty, etc.)?

At this point, it might be convenient to be more specific about the idea of "access to the Law on Gender Identity". Are we thinking about the rectification of identity documents? Or the "dignified treatment" clause (that is, the right to be treated according to one's gender identity regardless of any change in one's ID)? Or access to hormonal

The Law on Gender Identity allows for name and gender marker change, but once the document is rectified, the new id is not by itself a guarantee that the holder will have access to a job, housing, education, etc. In fact, all of this is still an unfulfilled promise.

treatments and surgical interventions? All the variables you mentioned—socio-economic status, ethnic or racial group, etc.—have an impact on the lived experience of people, even more so when they are combined, and that has an impact on the different dimensions of the Law.

MGG: *Could you describe the procedure for children to change their names and gender markers? Is it in any way different to the procedure for adults? Have judges rectified any legal gaps in this regard?*

BR: Article 5 of the law establishes a specific mechanism for persons under 18 years of age. First, the application must be made through the child's legal guardians and with express consent of the child, taking into account the principles of evolving capacities and the best interest of the child. Likewise, it establishes that children and adolescents must receive legal aid from a "child's advocate".

However, if any of the child's legal guardians refuse to give their consent, the law allows summary judicial proceedings to be initiated so that a judge may ultimately decide on the matter, taking into account the principles mentioned earlier.

MGG: *What has been the impact of the Law on other rights, like access to education, health, work, forming a family and the right to life?*

BR: The right to health, to work, to life, to education, etc., were part of the agenda of trans activism in Argentina before the enactment of the Law, and they remain so five years on. By this I don't mean to say that the Law didn't have any impact at all on these rights, but rather that there are certain issues that go beyond its scope.

The Law on Gender Identity allows for name and gender marker change, but once the document is rectified, the new ID is not by itself a guarantee that the holder will have access to a job, housing, education, etc. In fact, all of this is still an unfulfilled promise. On the other hand, one could expect that the mere existence of a law like this would bring about structural changes in the way in which we deal with gender issues and sexualities. Except for a few public policies and legislative measures specifically

designed for the "trans population", the rest of the institutions and initiatives (public or private) still work under very traditional notions of gender.

With regard to health, the situation is a bit more complicated because the law guarantees access to gender affirmation surgeries and treatments. However, actual access to this right is far from effective.

MGG: *I read an article of yours entitled "Travesticide/Transfemicide", how do you think the change of name and gender marker affects that classification?*

BR: Both the terms "travesticide" and "transfemicide" are part of the conceptual repertoire among local trans communities. The article I wrote that reflects these terms was after the enactment of the law. It is the result of a request we received at the Observatory from different sectors interested in carrying out a systematic monitoring of the crimes perpetrated against *travestis* and trans women. This was quite a challenge, because defining this concept implies defining what kind of events are going to be monitored.

It is not the same to speak of a "hate crime", or a

"homophobic crime" than to speak of a "travesticide". It is not a superficial question, nor a minor detail.

The definition of a concept implies establishing a universe of discourse, the type of violence contemplated and the agents of that violence. That's why we did a deep bibliographic exploration and called the communities to participate in the process. In that joint work, we arrived by consensus at the definition. We carried out meetings with different work teams and enabled modalities of teleworking to give the opportunity for all who wanted to participate to do so.

Now, does talking about transfemicide (and not "femicide") imply that trans women are not women? Many asked this question and the answer in all cases was the same: no. We understand that the gender of each person is that which the person feels. In this case, it is about defining a term for the purposes of analysis, in order to capture the phenomenon of violence experienced by people who were assigned "male" at birth and whose identity and/or expression of gender is/are female.

One could expect that the mere existence of a law like this would bring about structural changes in the way in which we deal with gender issues and sexualities. Except for a few public policies and legislative measures specifically designed for the "trans population", the rest of the institutions and initiatives (public or private) still work under very traditional notions of gender.



Bolivia

| | | |
|--|--|--|
| | Name change | Possible. See gender marker change information below. |
| | Gender marker change | Possible , without surgical/sterilisation requirements. |
| | <i>Legislation</i> | <i>Act 807/2016, Act on Gender Identity.</i> |
| | <i>Conditions for gender marker change</i> | <p>The Act of Gender Identity determines the procedure for name, sex marker and personal photograph change in identity documents of trans persons. The data can be changed only once.</p> <p>The competent authority for regulation and modification of documents is the Civil Registry Service. Requirements:</p> <ol style="list-style-type: none"> 1. A letter enlisting name and sex, both given and requested; 2. Psychological examination attesting that the petitioner consents the decision; 3. Original birth certificate; 4. Certificate of personal remarks from the General Service of Personal Identification (SEGIP in Spanish); 5. Certificate of marital status; 6. Certificate of offspring; 7. Criminal Record Certificate; 8. Updated personal photograph; <p>Those living abroad may apply by proxy. The process should take a maximum of 15 calendar days from the application date. The change cannot be denied without the petitioner being given the opportunity to rectify any issues. After 15 days, the Resolution of the Civil Registry Service notifying the amendment of sex marker, name and personal photograph of the petitioner is sent to institutions relating to identification, banking, immigration, tax, registration of property, criminality and the police, education, defence, insurance and any other records that the applicant requires.</p> <p>On November 2017, the Constitutional Plurinational Tribunal of Bolivia declared one part of the Gender Identity Law (Article 1, paragraph II) unconstitutional. This part refers to rights and obligations of persons that change their gender markers. According to the media, it was a veto for trans persons to get married or adopt.²¹²</p> |



Brazil

| | | |
|--|----------------------|--|
| | Name change | Not possible. |
| | <i>Quote/details</i> | <p>Not possible. Current federal legislation only allows name change in exceptional cases and with a judicial order of the Public Ministry.²¹³</p> <p>The “social name” of trans persons must be acknowledged and used by public officers in any institutional procedure or document, if the person request so.²¹⁴</p> |

²¹² La Razón Digital. José Luis Columba: *TCP declara inconstitucional el matrimonio entre trans*, November 10, 2017.

²¹³ Article 58, Act No. 6015 approved by the National Congress in December 31st 1973: http://www.planalto.gov.br/ccivil_03/leis/L6015original.htm.

²¹⁴ Article 2, Decree No. 8727 approved by the President of the Republic on April 28th 2016: https://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2016/Decreto/D8727.htm.

| | | |
|---|-----------------------------|--|
| | | In official documents and records, one's "social name" can be added as a separate marker next to the given "civil name" (which will be used "only for administrative procedures" ²¹⁵), just by request. However, it is not possible to change the given name in civil registry and personal identity documents yet. |
|  | Gender marker change | Not possible. |
|  | <i>Quote/details</i> | <p>In 2013, a Gender Identity Bill was brought to the National Congress.</p> <p>The proposed Act would allow transgender people to change their name, personal photograph and gender marker without any medical intervention or judicial authorisation.²¹⁶ However, it has not been approved by the Congress.</p> <p>Note: At time of this publication, there is a pending decision by the Supreme Court which will decide if trans persons can change their name and gender markers without any surgical requirement.²¹⁷</p> |



Chile

| | | |
|---|-----------------------------|---|
|  | Name change | Possible , but not intended for trans persons. |
|  | <i>Quote/details</i> | <p>Act No. 17.344/1970 allows name change in some specific cases, including if the given name is injurious or if a foreign person wants to translate her/his name to Spanish.</p> <p>However, it does not include the recognition of gender identity as a valid reason to request name change.²¹⁸</p> |
|  | Gender marker change | Not possible. |
|  | <i>Quote/details</i> | <p>Current Chilean legislation does not provide any grant for the legal recognition of gender identity.</p> <p>There is an <i>Act of Gender Identity</i> that was proposed to the Congress on 7 May 2013. It will allow trans people to correct the given name and sex assigned at birth in their civil registry without any medical or judicial requirement.²¹⁹ In September 2016, the Act was approved by the Human Rights Commission of the National Congress and should be voted by the Senate on 2 November 2016.²²⁰</p> <p>There is a bill, which excludes children, that was approved by the Senate and sent to the House of Deputies to continue its process.²²¹</p> |

²¹⁵ Article 3, Decree No. 8727/2016.

²¹⁶ Articles 3-5, Proposal 5002/2013: http://www.camara.gov.br/proposicoesWeb/prop_mostrarintegra?codteor=1059446&filename=PL+5-002/2013.

²¹⁷ Radiozero.cl. *Brasil podría autorizar el cambio de nombre y género en documentos oficiales*, June 12, 2017. This information is correct as at October 18, 2017 because that is the last record from the official webpage of the Supremo Tribunal Federal with a list of *amicus curiae*, retrieved on October 20, 2017.

²¹⁸ Article 1, Act 17.344 / 1970: <http://www.leychile.cl/Navegar?idNorma=28940>.

²¹⁹ Article 4, Proposal for "Act of Gender Identity": <https://www.iguales.cl/archivos/ley-de-identidad-de-genero/proyecto-de-ley.pdf>.

²²⁰ Organizando Trans Diversidades – OTD Chile, "Proyecto de Ley de Identidad de Género será votado en particular en Sala del Senado", September 11th 2016: <http://otdchile.org/proyecto-de-ley-de-identidad-de-genero-sera-votado-en-particular-en-sala-del-senado/>; Iguales, "Iguales celebra que comisión de DDHH despache proyecto de identidad de género", September 12th 2016: <https://www.iguales.cl/iguales-celebra-comision-ddhh-despache-proyecto-identidad-genero/>.

²²¹ Constanza Valdés C., *La patologización de las personas trans en el proyecto de ley de Identidad de Género*, September 9, 2017.



Colombia

| | | |
|--|--|--|
| | Name change | Possible. |
| | <i>Quote/details</i> | <p>Any citizen can modify their given name in the civil registry through a public deed.²²²</p> <p>This procedure is allowed just once,²²³ but trans people can change their names in their civil registry and identity documents twice.²²⁴</p> |
| | Gender marker change | Possible , without prohibitive requirements. |
| | <i>Authority</i> | Decree (trans specific). <i>Decree 1227/2015</i> . ²²⁵ |
| | <i>Conditions for gender marker change</i> | <p><i>Decree 1227/2015</i> allows the “correction” of the “sex” marker in documents through a public deed. The petitioner must also provide:</p> <ol style="list-style-type: none"> 1. A copy of the civil registry; 2. A photocopy of the ID document (cédula)²²⁶; 3. An affidavit with the intention of making the change of the marker “sex”. <p>The component can be renamed only 10 years after the first modification and a maximum of twice in one’s life. The notary must issue a public document within five working days of making the request.²²⁷</p> <p>The Decree did not include children because it required a photocopy of a “cédula”, which is only given to adults when they turn 18 in Colombia. However, in August 2017, the Constitutional Court ruled in a case of an underage trans man who was close to turning 18 years old that he could change his name and correct the sex marker.</p> <p>Even though the Court said that “the specific case will be solved taking into account its particularities and without fixing effects for other similar concrete cases”, the Court established “the most relevant criteria for deciding whether to proceed with this procedure when requested by a minor” and based on prior judgements were:</p> <ol style="list-style-type: none"> 1. The will of the parents and the child 2. Professional judgment of third parties, such as certifications by doctors, therapists, social workers or other professionals 3. The person’s proximity to the majority of age. The manifestation of the will of a person close to the age of 18 is more important and should be attended more carefully, than that of a pre-pubertal or infant. 4. The constitutional judge must weigh the importance of the decision to be made, its side effects and the possibilities of reversing it.²²⁸ |

²²² Article 6, Decree No. 999 / 1988 approved by the President of the Republic: http://www.icbf.gov.co/cargues/avance/docs/decreto_0999_1988.htm

²²³ ColConectada, “Cambio de nombre en Colombia”, January 6th 2015: <http://www.colconectada.com/cambio-de-nombre-en-colombia/>

²²⁴ Colombian Constitutional Court, Ruling T-086/14: <http://www.corteconstitucional.gov.co/relatoria/2014/T-086-14.htm>.

²²⁵ *Por el cual se adiciona una sección al Decreto 1069 de 2015, Único Reglamentario del Sector Justicia y del Derecho, relacionada con el trámite para corregir el componente sexo en el Registro del Estado Civil.*

²²⁶ A “Cédula” is only given to adults in Colombia when they turn 18.

²²⁷ Decree No. 1227 / 2015 approved by the Ministry of Interior and the Ministry of Justice: <https://www.minjusticia.gov.co/Portals/0/Ministerio-decreto%20unico/%23%20decretos/1.%20decreto%202015-1227%20sexo%20c%C3%A9dula.pdf>.

²²⁸ Constitutional Court of Colombia. Judgement T-498/2017, Judge Cristina Pardo Schlesinger, August 3, 2017.



Costa Rica

| | | |
|--|-----------------------------|--|
| | Name change | Possible. |
| | <i>Quote/details</i> | <p>Only by a ruling of the Supreme Tribunal of Elections (TSE).²²⁹ However, so far only two trans persons have successfully changed their names in their identity documents.²³⁰ The person is allowed to have a photograph in the identity documents that reflects their gender identity, and to add a name next to their given name with the marker “known as”.²³¹</p> <p>There is no legislation that guarantees the right to gender identity by amending one’s name or gender in personal identity documents without medical, psychiatric or judicial interventions.²³²</p> |
| | Gender marker change | Not possible. |
| | <i>Quote/details</i> | <p>In June 2017, a bill was presented in the Legal Assembly which will allow trans persons to change their name and rectify their sex marker once they turn 18 years old.²³³</p> |



Cuba

| | | |
|--|--|--|
| | Name change | Possible. |
| | Gender marker change | Possible, with prohibitive requirements. |
| | <i>Documents amended</i> | Birth certificate |
| | <i>Conditions for gender marker change</i> | <p>The sex in identity documents can be amended only if it corresponds to the genitalia of the petitioner. This is because “current legislation registers sex depending on genitalia, even if genitalia were reassigned by surgery”.²³⁴ Integral medical care (including sex reassignment surgery and hormonal treatment) is provided and covered by the national health care system since 2008 (Public Health Ministry, Resolution 126).²³⁵</p> <p>The petitioner submits the request to the Civil Section of the Local Tribunal. Then, the request is taken to the National Commission for Integral Attention to Trans Persons along with the medical certification that the petitioner has undergone sex reassignment surgery.</p> <p>Finally, the Local Tribunal where the request was originally submitted orders the amendment of sex and name in identity documents. After this, the Civil Registry issues a new birth certificate.²³⁶</p> |

²²⁹ Artículo 54 del Código Civil de Costa Rica: <http://www.cendeiss.sa.cr/etica/codcivil.pdf>.

²³⁰ CRHOY, “María José: el dilema de una persona transgénero que no logra que la llamen por su nombre”, May 24th 2015: <http://www.cr-hoy.com/archivo/maria-jose-el-dilema-de-un-transgenero-que-no-logra-que-la-llamen-por-su-nombre/nacionales/>

²³¹ CRHOY, “Registro Civil permite utilizar opción del “conocido como” para nombre en cédula de población transexual”, December 9th 2014: <http://www.crhoy.com/archivo/registro-civil-permite-utilizar-opcion-del-conocido-como-para-nombre-en-cedula-de-poblacion-transexual/>.

²³² REDLACTRANS, “Violaciones a los Derechos Humanos de las Personas Trans en Costa Rica, El Salvador, Guatemala, Honduras y Panamá”: <http://redlactrans.org.ar/site/wp-content/uploads/2016/01/Informe-completo.pdf>.

²³³ Nación. Personas trans podrían cambiar su sexo en el Registro al cumplir 18 años, June 7, 2017.

²³⁴ BBC, “Cambio de sexo ya es una realidad en Cuba”, January 23th 2010: http://www.bbc.com/mundo/america_latina/cuba_cambio_sexos_shtml.

²³⁵ Inter Press Service, “HEALTH-CUBA: Free Sex Change Operations Approved”, June 6th 2008: <http://www.ipsnews.net/2008/06/health-cuba-free-sex-change-operations-approved/>; Washington Blade, “Amid Change, LGBT Cubans face lingering challenges”, May 27th 2015: <http://www.washingtonblade.com/2015/05/27/amid-change-lgbt-cubans-face-lingering-challenges/>.

²³⁶ Juventud Rebelde, “El carné tal como soy”, June 12th 2014: <http://www.juventudrebelde.cu/cuba/2014-06-12/el-carne-tal-como-soy/>.



Dominican Republic

| | | |
|--|-----------------------------|---|
| | Name change | Possible. |
| | <i>Quote/details</i> | <p>There has been a case of a trans woman who changed her name²³⁷ under the <i>Law No.659 of July 17th 1944 on acts of civil status</i>.²³⁸ She is the first transgender women authorized to change her name in her identity documents in the Dominican Republic.</p> <p>In 2014, President Danilo Medina signed Decree 76-14 authorizing 36 trans persons to change their names.²³⁹</p> |
| | Gender marker change | Not possible. |



Ecuador

| | | |
|--|--|---|
| | Name change | Possible. |
| | <i>Quote/details</i> | Anyone over 18 years old can change their own names personally and once, without further requirements. ²⁴⁰ |
| | Gender marker change | Possible , without surgical/sterilisation requirements. |
| | <i>Legislation</i> | <i>Ley Orgánica de Gestión de la Identidad y Datos Civiles</i> (not trans specific), Articles 76 and 94. |
| | <i>Documents amended</i> | Birth certificate. |
| | <i>Conditions for gender marker change</i> | <p>Anyone over 18 years old can change the “sex” marker in the personal identity document for a “gender” marker as masculine or feminine.²⁴¹ Personal photographs in the identity document can also be amended to show the owner’s gender identity. To change the “sex” marker in the civil registry, they must have a judicial order.²⁴²</p> <p>In other words, every citizen in Ecuador has a “sex” marker, but if a trans person changes it will say “gender” and not “sex” as the rest of the population.</p> <p>Nevertheless, in May, 2017 the Constitutional Court of Ecuador, in a case of a trans man who went through sex affirming surgery, ordered the General Directorate of Civil Registry, Identification and Registration to change the birth registration from female to male.</p> <p>The Court urged the National Assembly to regulate the change of “sex” in the identity cards of trans persons and gave it a period of one year to do it.²⁴³</p> |

²³⁷ Más VIP, “Por decreto Mía Cepeda cambia de nombre”, July 14th 2014: <http://www.masvip.com.do/secciones/quien/por-decreto-mia-cepeda-cambia-de-nombre> (retrieved 12/10/2016).

²³⁸ “Ley No.659 del 17 julio de 1944 sobre actos del estado civil en República Dominicana”, attached with Cristian King’s email, 02/10/2016.

²³⁹ Bureo. Decreto del Poder Ejecutivo autoriza a Mía Cepeda cambiar de nombre, July 15, 2017.

²⁴⁰ Article 78, *Ley Orgánica de Gestión de la Identidad y Datos Civiles*, approved by the National Assembly on February 4th 2016: http://www.-registrocivil.gob.ec/wp-content/uploads/downloads/2016/03/ley_organica_rc_2016.pdf.

²⁴¹ Article 94, *Organic Law on Management of Identity and Civil Information* [*Ley Orgánica de Gestión de la Identidad y Datos Civiles*].

²⁴² Article 76, *Organic Law on Management of Identity and Civil Information* [*Ley Orgánica de Gestión de la Identidad y Datos Civiles*].

²⁴³ Constitutional Court of Ecuador. Judgement No. 133-17-SEP-CC. Case No. 0288-12-EP, Mayo 10, 2017.



El Salvador

| | | |
|--|-----------------------------|---|
| | Name change | Not possible. |
| | <i>Quote/details</i> | <p>Article 23, <i>Ley del Nombre de la Persona Natural, Decreto No. 450 de 1990 de la Asamblea Legislativa</i> allows for a change of name under certain conditions, which do not include recognizing gender identity. Salvadorian legislation only allows change of a person's name under exceptional circumstances and provided that the new name reflects the same gender as in the original document (for which gender marker changes are not allowed). In 2003, a lawyer who made such an application was given a disciplinary sanction.²⁴⁴</p> <p>In May 2017, the Supreme Court of El Salvador partially upheld a decision from the State of Virginia, United States, that recognized the name change of a trans woman. The judgement from the United States also recognised the person's gender marker change, but the Supreme Court of El Salvador did not recognise this in El Salvador. This marks a difference in reasoning because, in 2015, a similar case was brought to the Salvadorian Court where a trans person sought to uphold a judgement from the United States that recognized her name and gender marker change, but that Court said it was incompatible with its legal system.²⁴⁵</p> |
| | Gender marker change | Not possible. ²⁴⁶ |



Guatemala

| | | |
|--|-----------------------------|---|
| | Name change | Possible. |
| | <i>Quote/details</i> | <p>Any person can submit a request of name change to the Notary of the Civil Registry: Articles 18-20, <i>Ley Reguladora de Asuntos de Jurisdicción Voluntaria, Decree No. 54/1977</i> (approved by the National Congress).</p> <p>Once the request is formulated, it is published in the government gazette. Other persons can oppose the request if they are negatively affected by that change. If there is no opposition, the Civil Registry will proceed to amend the birth certificate.</p> <p>If there is opposition, a court will determine if the given name of the petitioner will be changed or not.²⁴⁷</p> |
| | Gender marker change | Not possible. ²⁴⁸ |

²⁴⁴ Asociación Salvadoreña de Derechos Humanos - Entre Amigos, International Gay and Lesbian Human Rights Commission, Global Rights, International Human Rights Clinic Harvard Law School, REDLACTRANS, *The Violation of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in El Salvador*, Shadow Report submitted to the United Nations Human Rights Committee, October 2010. <https://www.outrightinternational.org/sites/default/files/439-1.pdf>.

²⁴⁵ Nodal. "El Salvador: la Corte Suprema reconoce la identidad de género de una persona trans", May 10, 2017.

²⁴⁶ American University – Washington College of Law, Heartland Alliance, ASPIDH Arcoiris, COMCAVIS TRANS and Generación de Hombres Trans de El Salvador: "Violaciones de derechos humanos de las personas transgénero en El Salvador", Shadow Report submitted to the United Nations Human Rights Committee, February 2015: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/SLV/INT_CCPR_ICS-SLV_19856_S.pdf.

²⁴⁷ Artículo 3.1. del "Manual del Procedimiento para la Inscripción de Cambio de Nombre, Identificación de Persona e Identificación de Tercero", Acuerdo de Directorio No. 27-2010 del Registro Nacional de las Personas.

²⁴⁸ Organización Trans Reinas de la Noche, Heartland Alliance for Human Need and Human Rights, Akahatá: "Situación de los Derechos Humanos de las Personas Travestis, Transgénero y Transexuales en Guatemala", Shadow Report submitted to the United Nations Human Rights Committee, August 2015: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/GTM/INT_CCPR_ICS_GTM_21419_S.pdf.



Haiti

| | | |
|--|-----------------------------|----------------------|
| | Name change | Not possible. |
| | Gender marker change | Not possible. |



Honduras

| | | |
|--|-----------------------------|---|
| | Name change | Not possible. |
| | Gender marker change | Not possible. |
| | <i>Quote/details</i> | It is forbidden by law to make any modification of the sex assigned in the original birth certificate. ²⁴⁹ |



Jamaica

| | | |
|--|-----------------------------|--|
| | Name change | Possible. |
| | <i>Quote/details</i> | By deed poll to change driver's license, medical records, passport, etc. The process is governed by policy from the Registrar General's Department. ²⁵⁰ |
| | Gender marker change | Not possible. |



Mexico

| | | |
|--|-----------------------------|---|
| | Name change | Possible , only in Federal District of México City. <i>See gender marker change information below.</i> |
| | Gender marker change | Possible , without prohibitive requirements (only in Federal District of México City). |
| | <i>Legislation</i> | <i>Legislation (not trans specific). Civil Code, Article 135.</i> |
| | <i>Quote/details</i> | In Mexico, the laws concerning changing name and gender marker are not uniform and depend on the federal states. Only the Federal District of México City has taken measures to recognize gender identity, allowing trans people to change their name and gender on identity documents. |

²⁴⁹ Artículo 30, Numeral 5 del Reglamento de la Ley del Registro Nacional de las Personas, Acuerdo No. 73 del Directorio del Registro Nacional de las Personas. Available at: <http://www.poderjudicial.gob.hn/CEDIJ/Documents/Reglamento%20de%20la%20Ley%20del%20Registro%20Nacional-%20de%20las%20Personas.pdf>.

²⁵⁰ Contact by email with Glenroy Murray, JFLAG, 30/09/2016.



Conditions for gender marker change

Since 13 March 2004, the amendments to the México City Civil Code allowed transgender people to change their gender marker and name on birth certificates. However, sex reassignment surgery was required.⁶⁹ In 2008, this right was extended to recognize gender identity.

In November 2014, the legislative assembly approved by vote a proposal so that transgender persons can change their name and gender without medical examination nor judicial order.⁷⁰

This amendment points the recognition of gender identity as a necessity, unlike the former amendments. In addition, the new article modifies the process from being judicial and up to the judge's discretion to an administrative procedure.

The requirements are listed in Article 135 of the *Civil Code*. The applicant must be Mexican, over 18 years old and provide the following documents: a filled application, proof of residency in the district of México City, birth certificate and official ID.²⁵¹

An important step forward in this reform is that no longer are surgical and medical interventions are required: "In no event shall be required surgical interventions of any kind, as well as therapies or other diagnostic and/or procedure (alike) for the recognition of gender identity."

In 2017, a 6-year-old trans girl, became the first minor in Mexico to change her name and gender marker in her birth certificate through an administrative process, without having to go through a court, or have certification from a doctor or psychologist to prove her identity.²⁵²

MEXICO

Progress for children, persons in prisons, and in different regions

Matilda Gonzalez Gil interviewed **Ari Vera**, President of *Almas Cautivas*.

MATILDA GONZALEZ GIL (MGG): Please tell me about the implementation of the modifications to the Civil Code in Mexico City.

ARI VERA (AV): Thanks to a resurgence of the trans movement in Mexico City, the Civil Code of the City of Mexico faced a second reform, which was published on February 5, 2015, concerning the issuance of a new birth certificate. Under these provisions it is no longer necessary to initiate judicial proceedings, but only a simple administrative proceeding before the corresponding authorities. Moreover, surgery, therapies or other diagnoses or procedures is not required for legal recognition of the applicant's gender identity. Nowadays, this administrative procedure has no cost: the only fee is the issuance of the new birth certificate (70 pesos/4 dollars), which must be paid to the Civil Registry of Mexico City. According to Rosario Moon, Deputy Legal Director of Civil Registry in Mexico City, between 2009 and 2014, 199 proceedings for legal gender recognition for trans persons were performed (MtF: 125; FtM: 74). Since the last reform in 2015, more than 2,000

administrative proceedings for the issuance of a new birth certificate for trans persons were registered. It bears mentioning that, on July 13, 2017, the State of Michoacán approved an amendment to its Family Civil Code so that trans people can access legal recognition of their self-perceived gender identity. Additionally, on July 20 of the same year, the state of Nayarit followed suit, thereby becoming the third Mexican state to legally recognize the identity of trans people.

MGG: Which government institutions are in charge of the implementation and how have they carried out their work?

AV: The institutions in charge of the process for the recognition of the identity of trans people were the Courts of Civil Registries of the 16 delegations of Mexico City and the Central Court of the Civil Registry. However, the latter is where the administrative procedure is now carried out. In fact, the Court hired a trans woman as a liaison with the local trans population.

²⁵¹ Código Civil Para el Distrito Federal de México <http://www.aldf.gob.mx/archivo-c9dc6843e50163a0d2628615e069b140.pdf> (retrieved 27/09/2016).

²⁵² Sinembargo.mx, "Sophía, 6 años, se convierte en la primera niña trans mexicana en cambiar nombre y género en acta", October 15, 2017.

MGG: What is the process for children to change their name and gender marker? Are you aware of any progressive judicial decision in this regard?

AV: Applications for children are resolved via court judgments and need the approval of parents or guardians. Very few cases have been registered.

On October 15, 2017, 6-year-old Sophia became the first minor to change their name and gender marker on their birth certificate through the administrative procedure, thanks to the sensitivity of the authorities of the Civil Registry, to COPRED (Council for the Prevention and Elimination of Discrimination of Mexico City) and the organisations *Ledeser* (Strategic Litigation on Sexual and Reproductive Rights) and *Ser Gay*.

(Since 2015) it is no longer necessary to initiate judicial proceedings, but only a simple administrative proceeding before the corresponding authorities. Moreover, surgery, therapies or other diagnoses or procedures are no longer required.

MGG: Tell me a little about your work with people deprived of their liberty and if they can change their name and gender marker. What obstacles do they encounter? How can they be solved?

AV: *Almas Cautivas* is a non-profit civil association led by trans women. We work for LGBTI persons deprived of their liberty in prisons in Mexico City and we also advocate for the trans community that is not incarcerated.

Regarding recognition of gender identity of transgender people deprived of their liberty, to date there has only been one case of a trans woman who could do it with the support of her family. *Almas Cautivas*, along with other allies, is working to promote the recognition of the legal identity of transgender people in prison.

The Undersecretary of the Penitentiary System of the City of Mexico, asked the trans person who changed their birth certificate while in prison if they wanted to remain in the male detention centre or if they preferred to be transferred to a women's facility. This good practice must be guaranteed by means of a binding regulation or protocol to ensure its continued implementation. This is something we are working on at *Almas Cautivas*.

MGG: What is the relationship between different governments and these modifications? Do they get any attention during electoral campaigns? Could a government hinder implementation of the modification to the Civil Code, now or in the future?

AV: The *Democratic Revolution Party* (PRD) has been sympathetic to the agenda of sexual diversity. Trans

issues made progress in Mexico City during the administration of Marcelo Ebrard, and the current administration of Miguel A. Mancera has followed the same line.

The issue of sexual diversity is an item in the electoral agenda in the metropolis, but not in the rest of the Mexican Republic. In fact, progress on the LGBTI agenda at the federal level was slowed down by conservative and right-wing groups, such as the National Front for the Family [*Frente Nacional por la Familia*] after President Enrique Peña Nieto introduced a bill on May 17, 2016, which would have recognized equal marriage and legal recognition of gender

identity for trans people throughout the Mexican territory.

Mexico City has consolidated the rights of the LGBTI community in its first Constitution, but this is under review because of opposition by anti-LGBTI groups. There is always the possibility of setbacks to our agenda, given the growing conservatism not only in Mexico but on our continent as a whole.

MGG: I understand that this only applies to Mexico City. What is the situation in other regions?

AV: This is a point of contention in the 2015 reform to the Civil Code of Mexico City, and it has pros and cons for trans people.

Cons: The removal of the requirement for judicial proceedings in 2008, which was locally referred to as "Procedure for the issuance of a certificate to match sex-gender", meant that there is no longer a warrant or court order for government agencies, especially the Civil Registry from the place of origin, to archive the original birth certificate of the trans person. Therefore, in most cases, trans people from other states who travel to Mexico City to have their identity legally recognized via administrative procedure, find themselves in a legal limbo when agencies refuse to archive their original certificate, thereby falling into a state of "double legal personality".²⁵³ Not having an injunction issued by a judge also means greater difficulties in updating educational certificates, social benefits and other official IDs.

Pros: Given the situation described above, trans activists from the other states of the Republic have had to group together to advocate and pressure their leaders to modify their local Civil Codes to ensure access to legal recognition of their gender identity, as in the case of Michoacán and Nayarit.

²⁵³ The Spanish term for this archival process is "reservar". The original birth certificate is not destroyed but sent to the archives, where it cannot be accessed or consulted unless with a court order and justified reasons. The new birth certificate replaces the "archived" one for all purposes. If the old one is not archived (as described in this example), then the new one issued by Mexico City coexists with the "old" one in the place of origin of the applicant. Hence, the situation of double legal personality described here.



Nicaragua

| | | |
|--|-----------------------------|----------------------|
| | Name change | Not possible. |
| | Gender marker change | Not possible. |



Panama

| | | |
|--|--|--|
| | Name change | Possible. |
| | <i>Quote/details</i> | Resolution 221 of the National Direction of the Civil Registry, commencing in 2016. ²⁵⁴ Before that, trans persons were required to have had sex reassignment surgery to change their names. ²⁵⁵ |
| | Gender marker change | Possible , with prohibitive requirements. |
| | <i>Legislation</i> | <i>General Assembly's Law on Civil Registry, Law 31 of 2006, Section 121.</i> |
| | <i>Documents amended</i> | Birth certificate. |
| | <i>Conditions for gender marker change</i> | By a ruling of the National Direction of the Civil Registry. ²⁵⁶ A forensic doctor must certificate that the sex of the person is the same as that corrected to in the identity documents. ²⁵⁷ For trans people, this means that they can only request a correction of sex in their identity documents if they go under sex reassignment surgery. ²⁵⁸ |



Paraguay

| | | |
|--|-----------------------------|---|
| | Name change | Possible. |
| | <i>Quote/details</i> | Current legislation only allows name change in exceptional cases and with a judicial order. If someone else is affected by this change, they can request the judge to revert it. ²⁵⁹ It is unclear if this can be used by trans persons also. |
| | Gender marker change | Not possible. |

²⁵⁴ La Estrella de Panamá, "Candy Pamela, primera transexual en cambiar su nombre en Panamá", May 22th 2016: <http://laestrella.com.pa/-panama/nacional/candy-pamela-primera-transexual-cambiar-nombre-panama/2393962>.

²⁵⁵ Corresponsales Clave, "Avances en el derecho a la identidad de género en Panamá": <http://www.corresponsalesclave.org/id-genero-pan.html>.

²⁵⁶ Artículo 121 de la Ley del Registro Civil, Ley 31 de 2006 de la Asamblea Nacional: http://www.tribunal-electoral.gob.pa/html/fileadmin/-user_upload/archivos_en_general/Ley_31-2006_del_Registro_Civil.pdf.

²⁵⁷ Artículo 121 de la Ley del Registro Civil, Ley 31 de 2006 de la Asamblea Nacional: http://www.tribunal-electoral.gob.pa/html/fileadmin/-user_upload/archivos_en_general/Ley_31-2006_del_Registro_Civil.pdf.

²⁵⁸ "Situación de derechos humanos de las personas trans en Panamá", Public Hearing before the Inter-American Commission of Human Rights, October 2015: <https://www.youtube.com/watch?v=At3Lp26inKw>.

²⁵⁹ Articles 42 and 48, Act No. 1183, Paraguay Civil Code, approved by the National Congress: https://www.oas.org/dil/esp/Codigo_Civil_Paraguay.pdf.



Peru

| | | |
|---|--|---|
|  | Name change | Possible. ²⁶⁰ |
|  | Gender marker change | Possible. ²⁶¹ |
|  | <i>Authority</i> | Judicial (Summary process). ²⁶² |
|  | <i>Conditions for gender marker change</i> | <p>The judgement that allowed the name change and sex change also determined that should be done through a summary process. Even though the court did not establish a specific set of requirements, it gave a new interpretation:</p> <p>“biological reality [...] should not be the only determining factor for the allocation of sex, since it, as a construction, must be understood within the social, cultural and interpersonal realities that the person himself experiences during his existence. Therefore, sex should not always be determined in terms of genitality, because it would thus be falling into a biological determinism, which would reduce human nature to a mere physical existence, and that would obviate that the human is also a psychic and social being”.²⁶³</p> |



Saint Lucia

| | | |
|---|-----------------------------|--|
|  | Name change | Possible. |
|  | <i>Quote/details</i> | <p>By Deed Poll and by rectification under the <i>Civil Status Act</i>.</p> <p>Deed Poll - see s.15 of the <i>Civil Status Act No 9 of 2010</i> and amendment to s.15 by s.10 of the <i>Civil Status (Amendment) Act No.10 of 2014</i>.</p> <p>Rectification - see s.23C of the <i>Civil Status (Amendment) Act No.10 of 2014</i>.</p> |
|  | Gender marker change | Not possible. Only possible in cases of incorrect or incomplete entries, supported by documentary evidence. |
|  | <i>Quote/details</i> | <p><i>Civil Status (Amendment) Act No. 10 of 2014</i>, s.25A, allows the Registrar to rectify a "clerical error" in a record of civil status, including changing the sex of the person.</p> <p>It is an administrative process by the Office of Adjudicator headed by the Registrar of Civil Status.</p> |

²⁶⁰ Constitutional Tribunal of Peru. Expte. No. 06040-2015-PA/TC - *San Martin-Rodolfo Enrique Romero Saldarriaga (Ana Romero Saldarriaga)*, 2016.

²⁶¹ Constitutional Tribunal of Peru. Expte. No. 06040-2015-PA/TC - *San Martin-Rodolfo Enrique Romero Saldarriaga (Ana Romero Saldarriaga)*, 2016.

²⁶² Constitutional Tribunal of Peru. Expte. No. 06040-2015-PA/TC - *San Martin-Rodolfo Enrique Romero Saldarriaga (Ana Romero Saldarriaga)*, 2016.

²⁶³ Constitutional Tribunal of Peru. Expte. No. 06040-2015-PA/TC - *San Martin-Rodolfo Enrique Romero Saldarriaga (Ana Romero Saldarriaga)*, 2016.



Uruguay

| | | |
|--|--|--|
| | Name change | Possible. See gender marker change procedure below. |
| | Gender marker change | Possible , without prohibitive requirements. |
| | <i>Legislation</i> | <i>Act No.18.620 Right to Gender Identity and Change of Name and Sex in Identification Documents (trans specific).</i> |
| | <i>Conditions for gender marker change</i> | <p><i>Act No. 18.620 allows name change and correction of gender marker in identity documents as ways to guarantee the right to gender identity. Both name and gender marker change applications can be made by anyone to the Family Court.</i></p> <p>Along with the request, the petitioner must submit evidence to prove that their identity documents do not match their gender identity. Such contradiction must have lasted at least two years, which is not necessary if the petitioner has had sex reassignment surgery (though this is not a prerequisite).²⁶⁴</p> <p>Psychiatric diagnosis is not required, but the application must be analysed by an interdisciplinary committee of the National Direction of the Civil Registry specializing in gender identity.</p> |



Venezuela

| | | |
|--|----------------------|---|
| | Name change | Possible. |
| | <i>Quote/details</i> | <p>The <i>Organic Act of the Civil Registry</i> states that any adult citizen can modify the given name once. The request must be submitted with a copy of the Civil Registry to be amended, a letter explaining the reasons why the petitioner wants to change her or his name, the address and the signature of the petitioner.</p> <p>Among the valid reasons to change the given name, are whether it is “injurious” or whether it corresponds with the gender of the petitioner.²⁶⁵ The Civil Registry must issue a final decision in a term of 8 days. If the request is denied, the petitioner can ask for a motion of reconsideration to the Civil Registry or can submit the request to a judge.²⁶⁶</p> <p>However, Venezuelan LGBTI activists and organizations have said that most name change requests by trans persons are denied by the Civil Registry and redirected to administrative judges. In such cases, “most of the requests are denied after a prolonged time and invidious medical, psychological, psychiatric or forensic examinations”.²⁶⁷</p> |

²⁶⁴ Articles 2-4, Act No. 18.629 approved by the General Assembly on October 25th 2009: <https://legislativo.parlamento.gub.uy/temporales/ley-temp-8083310.htm>.

²⁶⁵ Article 146, “Ley Orgánica del Registro Civil” passed by the National Assembly on August 25th 2009: http://www.cne.gob.ve/registrocivil/uploads/repoDocs/67ec2b3348cc47937ce81e62a2acbfd0615e6514_1293028789.pdf.

²⁶⁶ Article 92, Resolution No. 40.093 / 2013 “Reglamento No. 1 de la Ley Orgánica del Registro Civil” passed by the National Electoral Council on December 20th 2012: <https://derechovenezolano.files.wordpress.com/2013/02/reglamento-nc2b0-1-consejo-nacional-electoral.pdf>.

²⁶⁷ Red LGBTI Venezuela, *Situación de los Derechos Humanos de las Lesbianas, Gays, Bisexuales, Trans e Intersex en Venezuela*, Shadow Report submitted to the United Nations Human Rights Committee, May 2015: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents-ven/int_ccpr_css_ven_20596_s.pdf.

| | | |
|---|-----------------------------|--|
|  | Gender marker change | Not possible. |
|  | <i>Quote/details</i> | <p>In June 2017, Venezuela's Tribunal recognized the right of persons to change their identity and sex, following medical, psychiatric and psychological examinations.</p> <p>The Constitutional Chamber "admitted an unnamed action of a constitutional nature interposed by several citizens with which, invoking the right to the free development of the personality ... they seek to be recognized their rights to change names and gender". Each case will be analysed individually²⁶⁸.</p> |

Kingdom of the Netherlands

Aruba, Curaçao, Sint Marteen are part of the Kingdom of Netherlands. Although they are dependent on the Netherlands for economic reasons, they have their own parliaments and do not have the same legislation as the Netherlands. It appears that these countries do not have any laws concerning gender identity, and by extension, processes for trans people to change gender or name markers on identity documents.

However, the **Caribbean Netherlands** (Saba, Sint Eustatius and Bonaire) have the same legislation as the Netherlands with regard with trans rights. See *Europe section for more information*.



Puerto Rico

| | | |
|---|--|---|
|  | Name change | Possible. |
|  | <i>Quote/details</i> | <p>Applicants must submit a petition to the Court of First Instance in the region where they live. The petition must include the applicant's current legal name/given name, the proposed name, their address of residence, place of birth, and original and copies of documents demonstrating the identification of the petitioner, including birth certificate. No public announcement is required. The amendment of the given name in the birth certificate will be effective with the court order and done by the Vital Statistics Registry.²⁶⁹</p> |
|  | Gender marker change | Possible , without surgical/sterilisation requirements. |
|  | <i>Authority</i> | Policy. |
|  | <i>Documents amended</i> | Identity card, driver's license. |
|  | <i>Conditions for gender marker change</i> | <p>Since August 2015, it has been possible to change one's driver's license or identity card. The applicant must fulfil a gender change form and submit it to the Department of Transportation and Public Works. It must be signed by a licensed clinical professional (psychologist, therapist or social worker).</p> |

²⁶⁸ Agence France Press. Tribunal de Venezuela admite cambio de sexo e identidad con exámenes médicos previos, June 10, 2017

²⁶⁹ National Center for Transgender Equality, ID Documents Center-Puerto Rico, June 5, 2017. <http://www.transequality.org/documents/puerto-rico>.

Overseas Departments and Territories of France

Saint Martin, Martinique, Saint Barthélemy, and Guadeloupe are overseas departments and territories of France, also called DOM-TOM.²⁷⁰ It is possible to ask for gender or name change before the *Tribunal de Grande Instance* (a court of the person's region). It is a judicial process and the judge decides whether to grant or refuse the change.

Overseas Territories of the United Kingdom

Anguilla, British Virgin Islands, Cayman Islands, Montserrat, and the Turks and Caicos Islands are overseas territories of the United Kingdom. They are not part of the United Kingdom, they have their own governments and British law does not apply to them. Most of these islands do not have any laws concerning name or gender changes. Only a few of them have local LGBT organizations, therefore there is a lack of information about LGBT rights.



United States Virgin Islands

| | | |
|--|-----------------------------|--------------------------|
| | Name change | Possible. ²⁷¹ |
| | Gender marker change | Possible. ²⁷² |

²⁷⁰ Décret n° 2000-318 du 7 avril 2000 relatif à la partie Réglementaire du code général des collectivités territoriales: <https://www.legi-france.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000399814&dateTexte=&categorieLien=i>.

²⁷¹ See: <http://transrespect.org/en/map/pathologization-requirement/#>.

²⁷² See: <http://transrespect.org/en/map/pathologization-requirement/#>.

North America

by Florence Ashley²⁷³ and Sasha Buchert²⁷⁴

Canada—*Florence Ashley*

The pace of legal change in recent years across Canada is perhaps best described as bewildering. I remember but a few years ago when I began transitioning, the raw enthusiasm shining in the eyes of activists. Those same activists, today, look rather tired. In those few years, the absence of surgical requirements to changes of name and gender marker has become the norm. No longer are trans people forced into infertility. In most jurisdictions, the process is administrative: no need to appear in front of a judge, either.

Make no mistake, this progress speaks to nothing more than the relentlessness of trans activists. In Québec, it is the new generation of activists who successfully took a stance against the proposed two-year “real life” experience requirement for gender marker change. Now, Québec is one of the rare jurisdictions worldwide where no letter from a health professional is required. Unfortunately, the same cannot be said of almost all the other provinces and territories in Canada.

Today’s activism in Canada with regard to identification documents has shifted. In Québec, access to gender marker change by non-citizens has been a difficult and longstanding battle by amazing trans migrants, which recently led to a bill by the opposition government which, if passed, would allow non-citizens to change their name and gender marker.

Across Canada, the recognition of non-binary genders is a growing focus, with the federal government announcing a third gender option on passports in August 2017; Ontario allowing a third gender option on provincial identification cards; and the first non-binary birth certificate being issued for a new born in British Columbia recently.

Although identification-related law has progressed much in Canada, other areas have been harder to change. Much behaviour related to sex work is still criminalised, and non-disclosure of HIV status is still one of the harshest punished crimes. Not all transition-related services are covered by health insurance (with transfeminine people disproportionately disadvantaged), prison and immigration detention still often segregating people based on genitalia, and essential community organisations suffering from a gross lack of funding. We must keep in mind all that is yet to be done.

United States of America—*Sasha Buchert*

This a difficult moment for transgender and gender nonconforming (“TGNC”) people living in the United States. The current President and administration are working steadily to roll back protections for TGNC people in education, employment, health care and public accommodations. As we have proven over and over again throughout our history, however, we are a resilient community and we will continue to resist gender oppression in all of its forms. Thanks to the work of tireless advocates, one positive trend for TGNC people in the U.S. are the policy advances on the state level to remove barriers to identity documents.

²⁷³ B.C.L./LL.B.

²⁷⁴ Staff Attorney, *Lambda Legal*.

The vast majority of states (38) in the U.S. now allow people to update their gender on state issued identity documents (drivers licenses and state-issued identity cards) without having to show proof of a surgical procedure.²⁷⁵ Most states simply require that TGNC people provide documentation from a licensed professional stating that an individual has obtained “appropriate clinical treatment” (not surgery). The situation is more difficult for people seeking to amend their birth certificate. Only 14 states allow people to amend the gender marker on their birth certificate without showing proof of sex reassignment surgery. 20 states explicitly require surgery to amend the gender on a birth certificate. Four states prohibit gender marker changes on birth certificates altogether and the rest of the states have unclear requirements. Although birth certificates are used less often in everyday life than state-issued identity documents in the U.S., birth certificates are required for instances such as registering for school or seeking to obtain a marriage license.

While every state allows TGNC people to change their name, there have been ongoing efforts to remove the requirement that they must make a public announcement of their name change (only 14 states permit a name change without requiring a public announcement). On the federal level (e.g., passports), the standard has not changed since 2011 and people seeking to amend their gender marker must submit a physician’s affidavit saying they have undergone “appropriate clinical treatment.” While this standard is vague, it does not require that an individual provide proof of surgery.

The policy advocacy work being done to remove barriers to ID documents in the U.S. varies from state to state because the political climate varies significantly from state to state. In more conservative parts of the country, the work is centered around removing surgery requirements. In more progressive parts of the U.S., advocates are beginning to question the purpose and necessity of gender markers altogether and/or are seeking to add third gender markers and working to de-medicalize transgender people by moving to a self-attestation standard wherever possible. For example, California, Oregon and the District of Columbia have recently added a third gender marker (“X”) to state-issued identity documents; and Oregon has moved to a self-attestation standard (eliminating the need for medical validation entirely) for obtaining a gender change court order. One other trend is work focused on advancing criminal justice reform policies to reduce the barriers of incarcerated people who are seeking access to identity documents. For example, California and Delaware have recently passed laws easing the process for TGNC people in prison seeking to change their name and/or gender marker on their identity documents.

In addition to telling our stories and discussing the dire necessity of having accurate identity documents, one advocacy tool that has proven particularly effective with policy makers is a recent survey of over 25,000 TGNC people throughout the U.S.²⁷⁶ The survey captured important disparities such as the low numbers of TGNC people who have actually been able to amend their identity documents, and the high numbers of TGNC people who were harassed or discriminated against because their documents did not match who they are.

There is a lot of work to be done in the U.S., and we have much to learn from those countries that have advanced progressive policies. We look forward to further collaboration so that TGNC people everywhere can live free from harassment and discrimination.

²⁷⁵ In almost every state, the surgical procedures in question or “sex reassignment surgery” has been left undefined. For the most part, this generality has proven useful for TGNC people because it allows for a wide range of surgical procedures.

²⁷⁶ See: <http://www.ustranssurvey.org/>.



Canada

| | Name change | Possible. |
|--|-------------------------------------|---|
| | Quote/details | <p>In Alberta, the name on a birth certificate can be changed under the <i>Vital Statistics Information Regulation</i>, part 3, section 16:</p> <div data-bbox="776 485 1435 752" style="border: 1px solid #ccc; padding: 5px; margin: 5px 0;"> <p><i>“(a) currently used name, (b) date and place of birth, (c) sex, (d) proof of identity that meets the requirements of section 15 of the Vital Statistics Ministerial Regulation, (e) current address and mailing address, (f) telephone number, and (g) signature.” As well as “(i) proof of marital status of the person that meets the requirements of section 17 of the Vital Statistics Ministerial Regulation, (ii) a record of the person’s fingerprints taken by a law enforcement agency in accordance with section 24(2)(j) of the Act, (iii) certificates that show all previous changes of name of the person, (iv) the name being applied for, and (v) the person’s full legal name and any other name by which the person is known”.</i></p> </div> <p>There are other requirements if the applicant is not applying in person or if the applicant is minor.</p> <p>In British Columbia, Manitoba and Nova Scotia, the procedures to change the “sex designation” and name on birth certificates and driver’s license are very similar. The last to remove sex reassignment surgery from its <i>Vital Statistics Act</i> was the province of Saskatchewan in February 2016.⁹⁰</p> <p>To obtain a name change in Québec, the person has to prove Canadian citizenship and have a residency of at least twelve months of Quebec. On the face of it, Quebec has a “five year rule” for trans (and non-trans) persons who are required to prove that they have been using their name widely for at least five years. Proof can include “letters from an employer, school, community worker, doctor, family member, or friend... bills, receipts, ID, membership cards, or a lease in the person’s chosen name. Proof of at least two documents per year over five years.”²⁷⁷</p> <p>Nevertheless, for those who only want a change of name (for example, non-binary people), it is possible to do so with a letter explaining the reasons, including gender identity reasons, or more rarely with a letter from a professional, bypassing the “five year rule”. The proceeding does not require publication, although this is not usually waived unless explicitly asked for.²⁷⁸</p> |
| | Gender marker change | Possible, without prohibitive requirements. |
| | Authority | Legislation (not trans specific) and varies in different provinces. |
| | Conditions for gender marker change | <p>Over the last years, the requirements for sex reassignment surgeries have been removed from all of the provinces. The first one was Ontario, in April 2012, when the Human Rights Tribunal of Ontario ruled that sex reassignment surgery was no longer required to change gender on a birth certificate.²⁷⁹</p> <p>In Alberta, the <i>Vital Statistics Information Regulation</i> has been modified in 2014 because it was considered unconstitutional.²⁸⁰ The amended regulation came into force in September 2015 and it does not require chirurgical reassignment anymore in order to change gender on the birth certificate. →</p> |

²⁷⁷ Réseau Santé Trans du Québec Trans Health Network, *Name & Sex Designation Changes in Quebec*, Consulted in October 7, 2017.

²⁷⁸ Observations made by activist Florence Ashley.

²⁷⁹ The Star, “Transgender Ontarians can now change birth certificates without sex-change surgery”, October 12th 2012: <http://www.the-star.com/news/canada/article/1269454--transgendered-ontarians-now-allowed-to-alter-birth-certificates-without-sex-change-surgery>.

²⁸⁰ See: <http://www.canlii.org/en/ab/abqb/doc/2014/2014abqb237/2014abqb237.html>.

Instead, the applicant must provide an affidavit including a “statement confirming that the person identifies with and is maintaining the gender identity that corresponds with the requested amendment to the sex on the record of birth”, as stated in part 3 section 16 of the *Vital Statistics Information Regulation*.²⁸¹

The application must also include a statement confirming the above, written by “one of the following medical professionals:

- (a) a regulated member of the College of Physicians and Surgeons of Alberta under the Health Professions Act who holds a practice permit issued under that Act;
- (b) a regulated member of the College of Alberta Psychologists under the Health Professions Act who holds a practice permit issued under that Act;
- (c) a person who is practising and who is authorized in a jurisdiction other than Alberta to practise a health profession equivalent to that practised by a person referred to in clause (a) or (b).”

In addition, minors can also amend their gender on the birth certificate, upon the consent of the minor’s parent’s or if the minor is married, or an adult independent partner or in charge of another minor. This applies only in Alberta. The gender marker change can also be amended on a subsisting marriage record.

Requirements for sex designation change is as follows in Québec: Canadian citizenship, residing in Québec for at least one year, providing a duly filled application and a “letter from a physician, psychologist, psychiatrist, sexologist or social worker authorized to practice in Canada or in the State in which you are domiciled, who declares having evaluated or followed you and who is of the opinion that the change of sex designation is appropriate” (ref. 5). In practice, letters are only a requirement for children. Adults can rely on the oath of a witness who has known the person for at least a year.²⁸²

Recently, Canada introduced an “X” option on passports²⁸³. Also, Ontario allows it on identification cards issued by the province²⁸⁴ and in 2017 a baby in British Columbia “has been issued a health card with the letter “U” for a sex marker”.²⁸⁵

For foreign-born people across Canada, and non-citizens in Quebec, federal gender marker and name changes are particularly important because they allow people to change their gender marker without a change at the provincial level.

Such people face obstacles at the provincial level because their birth certificates are not issued by the provinces. There was recently a recommendation that Quebec allow name change to non-citizens prior to obtaining citizenship.²⁸⁶

²⁸¹ *Vital Statistics Information Regulation*, part 3, section 16. http://www.qp.alberta.ca/documents/Regs/2012_003.pdf.

²⁸² Observations made by activist Florence Ashley from Canada.

²⁸³ The Guardian, *Canada introduces gender-neutral 'X' option on passports*, August 31, 2017.

²⁸⁴ Los Angeles Times, *While Americans fight over transgender rights, a Canadian province has a simple fix*, September 7, 2016.

²⁸⁵ Global News, *B.C. baby first to get health card without gender marker*, June 30, 2017.

²⁸⁶ Observations made by activist Florence Ashley from Canada.



United States of America

| | | |
|--|-----------------------------|---|
| | Name change | Possible. |
| | <i>Quote/details</i> | <p>Alabama, Alaska, Arizona, American Samoa, Arkansas, California, Colorado, Commonwealth of the Northern Mariana Islands, Connecticut, Delaware, District of Columbia, Florida, Georgia, Guam, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, US Virgin Islands, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming an applicant must submit a petition to a court.</p> <p>In Hawaii, “name changes in the State of Hawaii are administered by the Lieutenant Governor and applicants have to use a specific system”²⁸⁷.</p> <p>In California, from September 2017, “state inmates can apply for legal name changes without prior approval by correction officials”.²⁸⁸</p> |
| | Gender marker change | Possible , with some medical requirements to prohibitive requirements (varies within the country). |
| | <i>Quote/details</i> | <p>In California, “starting January 2018, the California Department of Public Health will issue a new birth certificate reflecting a gender of female, male, or nonbinary upon receipt of an application to change the gender along with an affidavit attesting that the change of gender is to conform with the person’s gender identity. No provider attestation is required. The agency creates a new birth certificate and seals the old record. If requesting an amended name on the birth certificate as well, applicant must also submit the legal name change order”.²⁸⁹</p> <p>Lawyer Sasha Buchert explains that “the new law applies to state issued identity documents, birth certificates and court orders. For all of those items now, people can self-attest and receive a non-binary marker (“X”) on their court order, birth certificate or state issued ID”.²⁹⁰</p> |
| | <i>Authority</i> | <p>Legislation, court application and/or policy, varies in different states.</p> <p>The conditions to change gender marker on identity documents vary among the state laws and policies, and depending on the documents to be amended.</p> <p>The three principal ones are the birth certificate, the driving license and the passport. To give an overview of the variable processes US citizens may encounter when they request to change their name and/or gender marker, we will present the different legal possibilities and their processes depending on each document.</p> <p>The processes by which an individual can change the gender marker on their driver’s license and/or birth certificate to accurately reflect their gender identity are governed by state laws and administrative polices and often include intrusive and outdated requirements, such as proof of sex reassignment surgery and court orders.</p> <p>According to the <i>National Center for Transgender Equality</i>, burdensome requirements and prohibitive costs prevent the majority of transgender individuals from obtaining accurate identity documents.”²⁹¹</p> |

²⁸⁷ National Center for Transgender Equality, ID Documents Center, Last updated June 5, 2017.

²⁸⁸ National Center for Transgender Equality, ID Documents Center, Last updated June 5, 2017.

²⁸⁹ National Center for Transgender Equality, ID Documents Center, Last updated June 5, 2017.

²⁹⁰ Observations made by lawyer Sasha Buchert, Lambda Legal, USA.

²⁹¹ Transgender Law Center: Identity Document Laws and Policies: <http://transgenderlawcenter.org/equalitymap>.



Documents amended

Birth certificate, driver's license, passport.

Birth certificate

In 10 states and one district (Washington, California, Hawaii, Minnesota, Pennsylvania, New York, Massachusetts, Rhode Island, Connecticut, Maryland, District of Columbia), it is possible to have a new birth certificate and change gender marker without requiring sex reassignment surgery (SRS) nor a court order.²⁹²

For example, in California, according to the Health and Safety Code, §§ 103425-103445, 103426 (as added by AB 1121, July 2014), the applicant must make a request to the CA Department of Public Health with a statement from a physician that the person has "undergone clinically appropriate treatment for the purpose of gender transition, based on contemporary medical standards."²⁹³

Twelve states (Oregon, Nevada, Utah, Kansas, South Dakota, Mississippi, New Hampshire, Alaska, West Virginia, Indiana, Vermont, Wyoming) are unclear regarding the requirements and/or may require a court order. For example, the state of Wyoming requires a court order stating that "the sex of an individual has been changed", according to the administrative code WY Rules and Regulations HLTH VR Ch. 10 s 4(e)(iii) (2004).²⁹⁴ It seems unclear whether this means SRS is required or if other clinical treatments are accepted. The applicant should submit a birth certificate application, a certified court order with the name and/or gender changes, and payment of fees.²⁹⁵

Twenty-two states (Arizona, New Mexico, Montana, North Dakota, Colorado, Nebraska, Iowa, Missouri, Arkansas, Wisconsin, Illinois, Louisiana, Kentucky, Virginia, North Carolina, Alabama, Georgia, Florida, Delaware, New Jersey, Maine) require proof of SRS. In Alabama, the gender marker on a birth certificate will be amended upon receipt of a certified copy of an order of a court indicating that the "sex... has been changed by surgical procedure and that the name of the individual has been changed" (Alabama Code § 22-9A-19, 22-9A-21).²⁹⁶

Oklahoma, Texas, Ohio and South Carolina have unclear or unwritten policies. Idaho and Tennessee do not allow the gender marker on birth certificates to be amended.

Driver's license

Fifteen states and one district (Washington, Oregon, Alaska, Hawaii, New Mexico, West Virginia, Virginia, Pennsylvania, District of Columbia, Delaware, New Jersey, Connecticut, Rhode Island, Massachusetts, Maine, New Hampshire) accept a large range of documents from licensed professionals and do not require SRS. In the District of Columbia, the applicant must change their name with the Social Security Administration and then submit a court order authorising the name change and a "gender designation" form signed by a medical professional or social service provider.²⁹⁷

Fourteen states (Idaho, California, Nevada, Arizona, Colorado, Nebraska, Minnesota, Wisconsin, Illinois, Indiana, Ohio, Florida, New York, Vermont) accept a limited range of documents by professionals and/or require name change by court order. They do not require SRS.²⁹⁸

²⁹² Transgender Law Center: Identity Document Laws and Policies – Birth Certificate <http://transgenderlawcenter.org/equalitymap>.

²⁹³ Assembly Bill No 1121 http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_1101-1150/ab_1121_bill_20131008_chaptered.pdf; National Center for Transgender Equality: ID Documents Center – California: www.transequality.org/documents/state/california.

²⁹⁴ Lambda Legal, "Changing Birth Certificate Designations: State-by-State Guidelines", March 2 2015: <http://www.lambdalegal.org/know-your-rights/transgender/changing-birth-certificate-sex-designations>.

²⁹⁵ National Center for Transgender Equality: ID Documents Center – Wyoming: <http://www.transequality.org/documents/state/wyoming>.

²⁹⁶ National Center for Transgender Equality: ID Documents Center – Alabama: <http://www.transequality.org/documents/state/alabama> and FindLaw, "Alabama Code Title 22. Health, Mental Health, and Environmental Control. § 22-9A-19", <http://codes.findlaw.com/al/title-22-health-mental-health-and-environmental-control/al-code-sect-22-9a-19.html>.

²⁹⁷ National Center for Transgender Equality: ID Documents Center – District of Columbia: <http://www.transequality.org/documents/state/district-columbia>.

²⁹⁸ National Center for Transgender Equality, ID Documents Center: <http://www.transequality.org/documents> and Transgender Law Center: Identity Document Laws and Policies – Driver's license <http://transgenderlawcenter.org/equalitymap>.

Four states (Utah, Michigan, Kansas, Maryland) require proof of clinical treatment and/or other updated documents in which the gender marker has been changed. They do not require SRS. For example, in Kansas, the person must submit to the Kansas Department of Motor Revenue: any updated legal document(s) demonstrating the name change and a request including a statement from a physician saying the person has undergone appropriate clinical treatment.²⁹⁹

Thirteen states (Montana, Wyoming, Oklahoma, Texas, Iowa, Missouri, Louisiana, Kentucky, Tennessee, Alabama, Georgia, North and South Carolina) require proof of SRS, a court order and/or an amended birth certificate. In Wyoming, the applicant must first change their name with the Social Security Administration and then submit all three mentioned documents to the Department of Transportation.³⁰⁰

Four states (Arkansas, Mississippi, North and South Dakota) have unclear, unwritten or unknown policies.³⁰¹

Passport Gender Change Policy (June 2010)

Since the inception of this policy, an applicant is not required to have undergone SRS, but must provide a certificate from a physician saying they have undergone clinical treatment for gender transition. Issued by the State Department, this policy applies to all federal states. If the identity documents have already been changed, the certificate is not required and the amended documents are sufficient to change gender on a passport.³⁰²

²⁹⁹ National Center for Transgender Equality: ID Documents Center – Kansas: www.transequality.org/documents/state/kansas.

³⁰⁰ National Center for Transgender Equality: ID Documents Center – Wyoming <http://www.transequality.org/documents/state/wyoming>.

³⁰¹ Transgender Law Center: Identity Document Laws and Policies > Driver's license <http://transgenderlawcenter.org/equalitymap>.

³⁰² National Center for Transgender Equality, "Understanding the Passport Gender Change Policy", March 2014: http://www.transequality.org/sites/default/files/docs/kyr/passports_2014.pdf.

Oceania

Australia

|  Name change | Possible. |
|--|--|
|  <i>Quote/details</i> | In common law, a person is taken to have changed their name simply by taking and using the name. However, to take full legal effect, a deed poll or application to the local Births, Deaths and Marriages Registry for a name change certificate is necessary. |
|  Gender marker change | Possible, with varying requirements across the country. |
|  <i>Legislation</i> | <p>Combination of legislation and policy at both State/Territory and Federal levels.</p> <p>Each State and Territory has legislation that allows for birth certificates to be amended and policy guidance on name/gender marker change, while the Federal government has policy that gives guidance on change of gender markers on Australian government records.</p> <p>The different jurisdictions have varying levels of requirements, some of which are improving to accord with rights standards. For example, as of December 2016, sex reassignment surgery is no longer a requirement in South Australia.</p> |
|  <i>Documents amended</i> | <p>Birth certificate, driver's license, Medicare card, passport.</p> <p>The cardinal document in Australia for these purposes is the birth certificate, which is issued by each State or Territory.</p> <p>In some jurisdictions, a person born outside Australia can also apply for a Recognised Details Certificate, and which records a person's new sex/gender and current name.</p> |
|  <i>Third gender option</i> | <p>Possible on some documents.</p> <p>Australian passports, as a federal document, can have an "X" marker because where sex and/or gender information is collected and recorded in a personal record by a federal government agency, individuals should be given the option to select M (male), F (female) or X (Indeterminate/Intersex/Unspecified).</p> <p>The Australian Capital Territory, New South Wales and South Australia provide "X" marker options in limited circumstances.</p> |

New Zealand / Aotearoa

|  Name change | Possible. |
|--|--|
|  <i>Quote/details</i> | Births, Deaths, Marriages, and Relationships Registration Act 1995, ss.21A, 21B. |

| | | |
|---|-----------------------------|--|
|  | Gender marker change | Possible , with prohibitive requirements. |
|  | <i>Legislation</i> | <i>Legislation (not trans specific) and Court application. Births, Deaths, Marriages, and Relationships Registration Act 1995, s.28 (birth certificates for adults) and s.29 (birth certificates for children).</i> |
|  | <i>Quote/details</i> | <p>Section 28 allows and eligible applicant to apply to the Family Court for a declaration that their birth certificate show the sex specified in their application. To be eligible the person’s birth must be registered, or registrable, in New Zealand, or if the person was born overseas they must be a New Zealand citizen or permanent resident.</p> <p>The case in <i>"Michael" v. Registrar-General of Births, Deaths and Marriages</i> [2008] 27 FRNZ 58 described the test in s. 28 as “being satisfied that the applicant has assumed or always has the gender identity of the nominated sex. Secondly, that the applicant has the requisite intention to maintain the gender identity of the nominated sex. That “test’ is necessarily prospective and to a large extent can only be met by assurances from the applicant and a review and analysis of historical conduct and other social and psychological factors. The third step . . . involves a three-limb test which must be satisfied on all levels on the basis of expert medical evidence.”</p> <p>The Department of Internal Affairs summarised the medical evidence test as:</p> <div data-bbox="617 895 1282 1315" style="border: 1px solid #ccc; padding: 10px; margin: 10px 0;"> <p><i>“...ultimately the test is specific to each individual and must be adapted to their needs.... The Court in Michael noted that change can never be ‘complete’... The Court was satisfied that “Parliament did not intend an applicant should necessarily have to undergo all available surgical procedures, including full genital surgery, to satisfy the test under the section.” What is required is “some degree of permanent physical change as a result of the treatment (including psychological treatment) received” ([50]). This means that every applicant does not have to go through full reconstructive surgery to meet the test, although some may do. The level of surgery required for each person will be particular to that person based on what their medical advisors are recommending, and what that individual personally feels is required to be comfortable with their gender identity. So there is no ‘tick-box’ list of treatments to reach the level of “permanent physical change” required. It will vary for every person and cannot be detailed any further because there are an infinite range of circumstances that may arise.”</i></p> </div> <p>Evidence of a change of name is also proof to the Court that the person is committed to the nominated sex.</p> <p>It is not possible under s.28 to record a sex as “indeterminate” if the sex was previously recorded as “male” or “female” on the birth certificate. Section 29 allows a child’s guardian to apply for a declaration as to the appropriate gender identity of the child, and there is no minimum age requirement. The criteria under s.29 differ from those under s.28.</p> <p>For passports, policy dictates that a person should submit a statutory declaration indicating the sex/gender they wish to be displayed in their passport, and how long they have maintained their current gender identity. A person can choose M (male), F (female) or X (indeterminate/unspecified). There is no need to amend the sex/gender marker on the birth certificate. There is also no minimum age requirement for passports.</p> <p>There is currently a Select Committee recommendation that the birth certificate process should follow the passports one (administrative, not judicial), including allowing a third gender option.</p> |
|  | <i>Documents amended</i> | Birth certificate, passport, citizenship certificate. |
|  | <i>Third gender option</i> | Possible, on passports only. |



Samoa

| | | |
|--|-----------------------------|--|
| | Name change | Possible. |
| | <i>Legislation</i> | By deed poll to change Driver's License and Passport. Birth certificates cannot be altered. |
| | Gender marker change | Not possible. |