

Equal Rights Coalition – Working Group on National Laws and Policies

Factsheet on legal recognition of gender identity – human rights standards and good practices (For Feedback)

Human rights standards – legal recognition of gender identity

Everyone has the right to recognition as a person before the law, including persons of diverse gender identities.¹ States should ensure that all people, including transgender people, have access to legal recognition of their gender identity on the basis of, inter alia, the rights to freedom from discrimination, equal protection of the law, privacy, identity and freedom of expression.² Each person's self-defined gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom.³ Legal recognition of the gender identity of transgender persons is also important in relation to protection from violence, torture and ill treatment and discrimination, rights to health, education, employment, housing and access to social security, political participation, freedom of movement, freedom of expression, peaceful assembly and association.⁴ This includes persons who have non-binary gender identities.⁵ Minors should have access to recognition of their gender identity, and safeguards should not be disproportionate or discriminatory and be in line with the Convention on the Rights of the Child.⁶ States should remove all abusive requirements in relation to legal recognition of gender identity, including presenting medical certifications, undergoing surgery, treatment, sterilization or divorce.⁷

¹ Universal Declaration of Human Rights, Art. 6; International Covenant on Civil and Political Rights, Art. 16; Convention on the Elimination of All Forms of Discrimination against Women, Art. 15; Convention on the Rights of the Child, Art. 8.

² CCPR/C/IRL/CO/3, para. 8; CCPR/C/UKR/CO/7, para. 10; CEDAW/C/BEL/CO/7, paras 44-45; CRC/C/GC/20, para. 34; A/HRC/14/22/Add.2.: Kyrgyzstan, para 92; OHCHR, Living Free and Equal, p. 86-87, 94.

³ Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity, Principle 3.

⁴ United Nations High Commissioner for Human Rights, Report on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23), 2015 paras.69-70; Report of the United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, on a visit to Malaysia (A/HRC/29/33/Add.1), 2015, para.84, OHCHR, Living Free and Equal, p. 94.

⁵ Around the world, a significant number of people identify with a wide diversity of gender identities, including hijra, third gender, khwaja sira, two-spirit, fa'afafine, genderqueer, muxe, waria and meti.

⁶ UN Independent Expert on SOGI, Report on Legal Recognition of Gender Identity and Depathologization, [A/73/152](#) para. 81(d), 2018; OHCHR, [Born Free and Equal Second Edition](#) (2019) p. 67-68, [OHCHR written submission to the Inter-American Court of Human Rights](#), 14 February 2017.

⁷ Ibid.

Key elements for laws and policies on legal recognition of gender identity

1. Based on self-identification and self-determination.

Human rights standards

Non-discrimination, equal protection of the law, autonomy, self-determination, privacy, identity, freedom of expression.⁸

Examples of UN recommendations

UN Human Rights Committee: The State party should... provide and effectively implement a quick, transparent and accessible gender recognition procedure **on the basis of self-identification by the applicant**.⁹

UN CEDAW Committee: Guarantee the rights of transgender women to [...] **autonomy and self-determination**.¹⁰

UN IE SOGI: Enact gender recognition systems concerning the rights of trans persons to change their name and gender markers on identification documents. The procedure involved should [...] be based on **self-determination** by the applicant.¹¹

OHCHR: The process of recognition should be based on **self-identification** by the applicant.¹²

Examples of good practices

Argentina: Law on Gender Identity (2012) – Right of persons to their gender identity (2012). Article 3: *“Any person will be able to request the correction of their official records in relation to sex, first name and image, when these do not coincide with their self-perceived gender identity.”*¹³

Costa Rica Presidential Decree (2018) recognises: *“the right of every person to autonomously define their sexual and gender identity, and that the data contained in the State records, as well as in identity documents, are consistent or correspond to the definition they have of themselves.”*¹⁴

⁸ CCPR/C/UZB/CO/5 para 11, CCPR/C/CZE/CO/4 para. 13.(b), CEDAW/C/AUS/CO/8 para 50; UN Independent Expert on SOGI, Report on Legal Recognition of Gender Identity and Depathologization, [A/73/152](#) para. 81(d), 2018; OHCHR, [Born Free and Equal Second Edition](#) (2019) p. 67-68, [OHCHR written submission to the Inter-American Court of Human Rights](#), 14 February 2017.

⁹ See CCPR/C/UZB/CO/5 para. 11.(d), CCPR/C/CZE/CO/4 para. 13.(b), [CCPR/C/CZE/CO/4 \(CCPR 2019\)](#) para 12

¹⁰ CEDAW/C/AUS/CO/8 para 50

¹¹ UN Independent Expert on SOGI, Report on Legal Recognition of Gender Identity and Depathologization, [A/73/152](#) para. 81(d), 2018.

¹² OHCHR, [Born Free and Equal Second Edition](#) (2019) p. 67-68, [OHCHR written submission to the Inter-American Court of Human Rights](#), 14 February 2017.

¹³ Argentina, Law 26.743 on Gender Identity – Establishing the right of persons to gender identity, 23 May 2012. <http://servicios.infoleg.gob.ar/infolegInternet/anexos/195000-199999/197860/norma.htm>. See an unofficial translation here by Transgender Europe: <https://tgeu.org/argentina-gender-identity-law/>

¹⁴ See Executive Decree N° 41173-MP: <https://www.mep.go.cr/sites/default/files/ID24-decreto-41173-MP.pdf>

India: Transgender Persons (Protection of Rights) Act (2019) Article 4 (2): “A person recognised as transgender under sub-section (1) shall have a right to self-perceived gender identity.”¹⁵

Malta: Gender Identity, Gender Expression and Sex Characteristics Act (2015) Article 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.” LGBTIQ Action Plan 2015-2017 4.5 (d): “A person can opt to have “X” marked based on self-identification in their documents.”¹⁶

New Zealand “applicants have an option to have their gender in their passport marked as male (M), female (F) or as a third (X) category, based solely on self-determined identity.”¹⁷

Pakistan: Transgender Persons (Protection of Rights) Act (2018): Article 3(1): “A transgender person shall have a right to be recognized as per his or her self-perceived gender identity, as such, in accordance with this Act.”¹⁸

2. Simple administrative process

Human Rights standards

Non-discrimination, equal protection of the law

Examples of UN recommendations

UN IE SOGI- Ensure that the process of legal recognition of gender identity is based on self-determination by the applicant, is a **simple administrative process** [...].¹⁹

OHCHR- States should provide for a simple administrative process, allow for recognition of non-binary identities, and give minors access to recognition of their gender identity.²⁰

Examples of good practice

Argentina the Law on Gender Identity (2012) – Right of persons to their gender identity Article 4: “Submit to the National Registry of Persons or its corresponding sectional offices, an application stating that it is covered by this law, requiring the registration rectification

¹⁵ See India Transgender Persons (Protection of Rights) Act, 2019 available at <https://socialjustice.nic.in/writereaddata/UploadFile/TG%20bill%20gazette.pdf>

¹⁶ See Gender Identity, Gender Expression and Sex Characteristics Act (2015) available <https://legislation.mt/eli/cap/540/eng/pdf> See also Maltese Action Plan 2015-2017 available <https://humanrights.gov.mt/en/Documents/Publications/LGBTI%20Action%20Plan%202015-2017.pdf>

¹⁷ See <https://www.passports.govt.nz/change-your-name-or-gender/change-your-gender-in-your-passport/>

¹⁸ See Transgender Persons (Protection of Rights) Act (2018) available at http://www.na.gov.pk/uploads/documents/1526547582_234.pdf

¹⁹ See [A/HRC/41/45/ADD.1 \(IE Sexual Orientation & gender identity 2019\)](#) para 90 and A/73/152 para 81.4 (d)(ii)

²⁰ See OHCHR Living Free and Equal (2016) p 95 available at <https://www.ohchr.org/Documents/Publications/LivingFreeAndEqual.pdf>

of the birth certificate and the new corresponding national identity document, keeping the original number.”²¹

Belgium Legal Gender Recognition law (2017), Article 3 § 1: *“Any major Belgian or emancipated Belgian minor or any foreigner registered in the population registers who is convinced that the sex mentioned in their birth certificate does not correspond to their intimately experienced gender identity, can make a declaration of this conviction to the officer civil status.”²²*

Chile Ley de Identidad de Género (2018), Art 4 (2): *“Submit to the National Registry of Persons or its corresponding sectional offices, an application stating that it is covered by this law, requiring the registration rectification of the birth certificate and the new corresponding national identity document, keeping the original number.”²³*

3. No requirement of medical certification, sterilization, surgery, medical treatment or pathologization.

Human Rights standards

Non-discrimination, health, autonomy, freedom from torture and ill-treatment, physical and psychological integrity.²⁴

Examples of UN recommendations

UN Human Rights Committee- The State should [...] eliminate abusive requirements for legal gender recognition, including **mandatory sterilization and psychiatric diagnosis**[...].²⁵

UN Human Rights Committee- The State should [...] establish a procedure for legal gender recognition **without a medical requirement** that is compatible with the Covenant.²⁶

UN CEDAW- Amend current laws and practices, in particular the law of 10 May 2007 on transsexuality, to **abolish the requirements for a psychiatric assessment, sterilization and surgery** for transgender women who wish to obtain legal recognition of their gender.²⁷

²¹ Argentina, Law 26.743 on Gender Identity – Establishing the right of persons to gender identity, 23 May 2012. <http://servicios.infoleg.gob.ar/infolegInternet/anexos/195000-199999/197860/norma.htm>. See an unofficial translation here by Transgender Europe: <https://tgeu.org/argentina-gender-identity-law/>

²² See Belgium Legal Gender Recognition law (2017)

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2017062503&table_name=loi

²³ See Chilean Ley de Identidad de Género (2018) <https://www.bcn.cl/leychile/navegar?idNorma=1126480>

²⁴ See [CCPR/C/CZE/CO/4 \(CCPR 2019\)](#) para 12 and 13, [CCPR/C/SVK/CO/4 \(CCPR 2016\)](#) para 14; [CEDAW/C/MNE/CO/2 \(CEDAW 2017\)](#) para 47(b); [CEDAW/C/CHE/CO/4-5 \(CEDAW 2016\)](#) para 38(d); [CEDAW/C/BEL/CO/7 \(CEDAW 2014\)](#) para 44; [CEDAW/C/AUS/CO/8 \(CEDAW 2018\)](#) para 50(e)

²⁵ See [CCPR/C/CZE/CO/4 \(CCPR 2019\)](#) para 12

²⁶ See [CCPR/C/VNM/CO/3 \(CCPR 2019\)](#) para 16(b)

²⁷ See [CEDAW/C/BEL/CO/7 \(CEDAW 2014\)](#) para 45(b)

UN IE SOGI- Eliminate abusive requirements as prerequisites for change of name, legal sex or gender, including forced, coerced or otherwise involuntary sterilization; medical procedures related to transition, including surgeries and hormonal therapies; undergoing medical diagnosis, psychological appraisals or other medical or psychosocial procedures or treatment [...]²⁸

UN IE SOGI- Legal gender recognition processes should “Be based solely on the free and informed consent of the applicant without requirements such as medical and/or psychological or other certifications that could be unreasonable or pathologizing”²⁹

OHCHR- States should address discrimination by Issuing legal identity documents, upon request, that reflect preferred gender, eliminating abusive preconditions, such as **sterilization, forced treatment**[...]³⁰

United Nations Joint Statement on Eliminating forced coercive or otherwise involuntary sterilization- In many countries, transgender and often also intersex persons are required to undergo sterilization surgeries that are often unwanted, as a prerequisite to receiving gender affirmative treatment and gender-marker changes. These sterilization requirements run counter to respect for bodily integrity, self-determination and human dignity, and can cause and perpetuate discrimination against transgender persons³¹

Examples of good practice

Germany through a Federal Constitutional Court decision, it was held that the requirement to be forcibly sterilized to acquire legal gender recognition was unconstitutional.³²

Iceland Gender Autonomy Act (2019) Article 4 “*It is prohibited to make a surgical operation, medication, hormonal treatment or other medical treatment, such as psychiatric or psychological therapy, a requirement for changing the registration of gender.*”³³

Malta Gender Identity Gender expression and Sex Characteristics Act (2015) Section 3(4): “*The person shall not be required to provide proof of a surgical procedure for total or*

²⁸ See HRC A/73/152 para 81(b)

²⁹ HRC A/73/152 para 81(d)(iv)

³⁰ See A/HRC/23/29 para 79 (i)

³¹ See United Nations Joint Statement on Eliminating forced coercive or otherwise involuntary sterilization OHCHR, UN-Women, UNAIDS, UNDP, UNFPA, UNICEF, WHO) available at

https://www.unaids.org/sites/default/files/media_asset/201405_sterilization_en.pdf

https://apps.who.int/iris/bitstream/handle/10665/112848/9789241507325_eng.pdf;jsessionid=E7516CDA1B71EAA22F26BFF738287C06?sequence=1

³² See Federal Constitutional Court Decision 1 BvR 3295/07 available <https://tgeu.org/wp-content/uploads/2015/01/Germany-Engl-Press-Release-Court-on-Sterilisation-requirement-1-BVR-3295-7.pdf>

³³ See Iceland Gender Autonomy Act [https://www.government.is/library/04-Legislation/U%C3%9EM2019080051%20-%20L%C3%B6g%20um%20kynr%C3%A6nt%20sj%C3%A1lfr%C3%A6C3%B0i%20\(002\)%20_loka.pdf](https://www.government.is/library/04-Legislation/U%C3%9EM2019080051%20-%20L%C3%B6g%20um%20kynr%C3%A6nt%20sj%C3%A1lfr%C3%A6C3%B0i%20(002)%20_loka.pdf)

partial genital reassignment, hormonal therapies or any other psychiatric, psychological or medical treatment to make use of the right to gender identity.”³⁴

Norway- The Norwegian Government's action plan against discrimination based on sexual orientation, gender identity and gender expression 2017–2020 *“A person will be able to change gender marker in the National Registry (legal gender) without any particular diagnosis or medical treatment.”³⁵*

4. No requirement of divorce

Human Rights standards

Non-discrimination, right to privacy and family life.³⁶

Examples of UN recommendations

UN Human Rights Committee The State party should [...] also ensure that transgender persons and representatives of transgender organizations are effectively consulted in the finalization of the Gender Recognition Bill so as to ensure that their rights are fully guaranteed, including the right to legal recognition of **gender without the requirement of dissolution of marriage or civil partnership**.³⁷

UN Human Rights Committee [...] Additionally, the Committee is concerned that the new Gender Recognition Bill approved by the Cabinet in June 2014 **retains the requirement for married transgender persons to dissolve the existing marriage or civil partnership** to have their preferred gender formally recognized³⁸

UN IE SOGI [...] Under those parameters, the process of recognition should not require applicants [...] to fulfil abusive requirements, such as [...] **divorce**.³⁹

OHCHR States should also remove restrictions to the recognition of relationships for transgender persons. They should, among other things, officially recognize the gender identity of transgender persons without abusive requirements, such as **forced divorce**.⁴⁰

³⁴ See Malta Gender Identity Gender expression and Sex Characteristics Act Section <https://legislation.mt/eli/cap/540/eng/pdf>

³⁵ See The Norwegian Government's action plan against discrimination based on sexual orientation, gender identity and gender expression 2017–2020 <https://www.regjeringen.no/contentassets/6e1a2af163274201978270d48bf4dfbe/safety-diversity-opennes.pdf> and Gender Recognition Act Norway 2016

³⁶ See G. v. Australia, Human Rights Committee, Communication No. 2172/2012 (CCPR/C/119/D/2172/2012), 2017, paras. 7.10 and 7.15; CCPR/C/IRL/CO/4 para 7

³⁷ See [CCPR/C/IRL/CO/4 \(CCPR 2014 \)](#)

³⁸ See [CCPR/C/IRL/CO/4 \(CCPR 2014 \)](#)

³⁹ See A/73/152 para 39

⁴⁰ See OHCHR, Living Free and Equal p 76 <https://www.ohchr.org/Documents/Publications/LivingFreeAndEqual.pdf>

OHCHR States should address discrimination by Issuing legal identity documents, upon request, that reflect preferred gender, eliminating abusive preconditions, such as [...] **divorce**.⁴¹

Examples of good practice

Austria and Germany, Constitutional Courts outlawed divorce as a precondition to attain legal gender recognition.⁴²

Argentina Gender Identity Law (2012) contains no provision of divorce as a pre-condition to access legal gender identity.⁴³

Iceland Gender Autonomy Act (2019) contains no provision of divorce as a pre-condition to access legal gender identity.⁴⁴

Luxembourg The Law on modification of the modification of the mention of sex and forename(s) (2018) contains no provision of divorce as a pre-condition to access legal gender identity.⁴⁵

New Zealand, Marriage Act 1955, as amended by Legislation Act 2012: Article 2(1): *“marriage means the union of 2 people, regardless of their sex, sexual orientation, or gender identity.”*⁴⁶

5. Respect the gender identity of minors.

Human Rights standards

Freedom of expression, respect for physical and psychological integrity, gender identity autonomy and non-discrimination.⁴⁷ The Convention on the Rights of the Child also includes provisions that safeguard the recognition of the young trans persons gender identity including: non-discrimination (Art 2), the best interest of the child (Art 3), need to respect the growing capacity of a child to make decisions about their life (Art 5), the right to preserve one’s identity (Art 8), and children’s views are to be listened to and given due weight in accordance with the age and maturity of the child (Art 12).

⁴¹ See A/HRC/23/29 para 79 (i)

⁴² See German Federal Constitutional decision 1BvL 10/05 in available <https://tgeu.org/germany-constitutional-court-rules-divorce-requirement-in-gender-recognition-is-incompatible-with-the-basic-law/>; See also Austria Constitutional Court V 4/06-7 (June 2006)

⁴³ See Argentina, Law 26.743 on Gender Identity – Establishing the right of persons to gender identity, 23 May 2012. <http://servicios.infoleg.gob.ar/infolegInternet/anexos/195000-199999/197860/norma.htm>. See an unofficial translation here by Transgender Europe: <https://tgeu.org/argentina-gender-identity-law/>

⁴⁴ See Iceland Gender Autonomy Act

⁴⁵ See Luxembourg Loi du 10 août 2018 relative à la modification de la mention du sexe et du ou des prénoms à l’état https://tgeu.org/wp-content/uploads/2019/03/2018_LGR_FINAL.pdf

⁴⁶ See New Zealand, Marriage Act 1955, as amended by Legislation Act 2012 available at <https://www.legislation.govt.nz/act/public/1955/0092/latest/DLM292063.html>

⁴⁷ CRC/C/GC/20 para 20 and para 21

Examples of UN recommendations

UN IE SOGI: Ensure that the process of legal recognition of gender identity [...] **is accessible to minors.**⁴⁸

UN IE SOGI: Enact recognition systems for the **gender identity of trans and gender diverse children**, taking into account the best interests of the child as a primary consideration and respect for the child's right to express views in accordance with age and maturity, in line with the Convention on the Rights of the Child (arts. 3 (1) and 12 and general comments Nos. 12 and 14) and, in particular, in keeping with the safeguards established pursuant to article 19 of the Convention, which must not be excessive or discriminatory in relation to other safeguards that give recognition to the autonomy and decisional power of children of a certain age in other areas [...].⁴⁹

UN CRC: States should put in place measures to ensure **that all adolescents** enjoy their freedom of expression and respect for their physical and psychological integrity, gender identity and emerging autonomy.⁵⁰

UN CRC: Recognize the right to identity of lesbian, gay, bisexual, transgender and intersex children, including the **gender identity of transgender children.**⁵¹

OHCHR: **Minors should have access to recognition of their gender identity.** Safeguards for minors should not be discriminatory or disproportionate, and should respect the rights enshrined in the Convention on the Rights of the Child.⁵²

Examples of good practice

Argentina law (2012) Art 5 *"In relation to persons under eighteen (18) years of age, the request for the procedure referred to in article 4 must be made through their legal representatives and with the express consent of the minor, taking into account the principles of progressive capacity and interest. superior of the child in accordance with the provisions of the Convention on the Rights of the Child and Law 26.061 for the comprehensive protection of the rights of girls, boys and adolescents. Likewise, the minor must have the assistance of the child's lawyer provided for in article 27 of Law 26,061."*⁵³

Chile Ley de Identidad de Género, (2018) Article 5 (f): *"Principle of progressive autonomy: every child or adolescent will be able to exercise his or her rights on his or her own, in accordance with the evolution of his or her faculties, age and maturity. The father, mother, legal representative or whoever has the legal personal care of the child or adolescent shall provide guidance and direction in the exercise of the rights contemplated in this law."*⁵⁴

⁴⁸ See [A/HRC/41/45/ADD.1 \(IE Sexual Orientation & gender identity 2019 \)](#) para 90

⁴⁹ See A/73/152 para 81(a)

⁵⁰ CRC/C/GC/20 para 20

⁵¹ See [CRC/C/CHL/CO/4-5 \(CRC 2015 \)](#) para 34

⁵² See OHCHR Living Free and Equal p 121 available at <https://www.ohchr.org/documents/publications/livingfreeandequal.pdf>

⁵³ See <http://servicios.infoleg.gob.ar/infolegInternet/anexos/195000-199999/197860/norma.htm>

⁵⁴ See Chilean Ley de Identidad de Género <https://www.bcn.cl/leychile/navegar?idNorma=1126480>

Iceland Gender Autonomy Act (2019) Article 5 “A child under the age of 18 may, with the assistance of its guardians, change its official gender registration.”⁵⁵

6. Recognise non-binary identities

Human Rights standards

Non-discrimination, equal protection of the law, autonomy, self-determination, privacy, identity, freedom of expression

Examples of UN recommendations

UN IE SOGI: Ensure that the process of legal recognition of gender identity is based on self-determination by the applicant [...] **recognizes non-binary identities** [...].⁵⁶

UN IE SOGI: Ensure that gender recognition processes acknowledge and recognize non-binary identities, such as gender identities that are neither “man” nor “woman” and offer a multiplicity of gender marker options.⁵⁷

OHCHR: Acknowledge and recognize **non-binary identities**, such as gender identities that are neither “man” nor “woman”.⁵⁸

OHCHR: States have a duty to protect, respect and fulfil the human rights of all persons regardless of their gender identity, including those who have **non-binary gender identities**, such as gender identities that are neither “man” nor “woman”⁵⁹

Examples of good practice

Denmark Legislative Amendment to the Civil Registration System (2014), Art 2(2): “For people who before this Act entered into force, applied for permission to carry a name that denotes the opposite gender, permission to change the gender designation in the passport to X...”⁶⁰

⁵⁵ See Iceland Gender Autonomy Act [https://www.government.is/library/04-Legislation/U%C3%9EM2019080051%20-%20L%C3%B6g%20um%20kynr%C3%A6nt%20sj%C3%A1fr%C3%A6%C3%B0i%20\(002\)%20_loka.pdf](https://www.government.is/library/04-Legislation/U%C3%9EM2019080051%20-%20L%C3%B6g%20um%20kynr%C3%A6nt%20sj%C3%A1fr%C3%A6%C3%B0i%20(002)%20_loka.pdf)

⁵⁶ See [A/HRC/41/45/ADD.1 \(IE Sexual Orientation & gender identity 2019\)](https://www.ohchr.org/Documents/Publications/LivingFreeAndEqual.pdf) para 90

⁵⁷ See A/73/152 para 81(d)(v)

⁵⁸ See OHCHR Amicus Brief to the Inter-American Court of Human Rights Advisory Opinion to Costa Rica available

https://www.corteidh.or.cr/sitios/observaciones/costaricaoc24/1_alto_com_naciones_unidad_ddhh.pdf

⁵⁹ OHCHR Living Free and Equal p 97 <https://www.ohchr.org/Documents/Publications/LivingFreeAndEqual.pdf>

⁶⁰ See Legislative Amendment to the Civil Registration System, L182, 11 June 2014 https://www.ft.dk/Ripdf/samling/20131/lovforslag/L182/20131_L182_som_vedtaget.pdf

Bangladesh Government issued a decision to formally recognize the gender identity of hijras and ensure their access to education and other rights.⁶¹

Canada *“There are 3 options for the “sex” field on passports for Canadians and travel documents for non-Canadians F, M and X.”*⁶²

Malta Gender Identity Gender expression and Sex Characteristics Act Section 9 (2): *“gender marker other than male or female, or the absence thereof, recognised by a competent foreign court or responsible authority acting in accordance with the law of that country is recognised in Malta”*⁶³

New Zealand: *“Your New Zealand passport can be issued in your preferred gender without you needing to change these details on your birth or citizenship record and the gender can be Male(M), Female (F) or X.”*⁶⁴

Nepal, the Supreme Court ruled in 2007 that: *“the Government should recognize third gender categories based on self-identification by individuals.”*⁶⁵

Pakistan the Supreme Court issued orders to authorities to recognize the gender identity of eunuchs (sometimes also referred to as third gender) on registration forms, take steps to protect them from police harassment, ensure their access to education and employment, protect their right to inheritance and ensure that they are entered into electoral voting lists.⁶⁶

7. Access to health care for trans persons includes gender affirming procedures and treatments.

Human Rights standards

Right to health, non-discrimination

Examples of UN recommendations

UN IE SOGI: Take immediate measures to improve the health and well-being of [...] **trans and gender diverse** persons and guarantee their access to good quality health-care services and health-related information. This includes incorporating their needs and

⁶¹ See Asia Pacific Transgender Network, UNDP and Health Policy Project, Blueprint for the Provision of Comprehensive Care for Trans People and Trans Communities, 2015, [http://www.asia-pacific.undp.org/content/dam/rbap/docs/Research & Publications/hiv_aids/rbap-hhd-2015-asia-pacific-trans-healthblueprint.pdf](http://www.asia-pacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/hiv_aids/rbap-hhd-2015-asia-pacific-trans-healthblueprint.pdf)

⁶² See <https://www.canada.ca/en/immigration-refugees-citizenship/services/canadian-passports/change-sex.html>

⁶³ See Malta Gender Identity Gender expression and Sex Characteristics Act Section <https://legislation.mt/eli/cap/540/eng/pdf>

⁶⁴ See <https://www.passports.govt.nz/change-your-name-or-gender/change-your-gender-in-your-passport/>

⁶⁵ See Supreme Court Division Bench, Sunil Babu Pant and Others v. Nepal Government and Others, Writ Number 917, 21 December 2007, http://njanepal.org.np/index.php?option=com_rokdownloads&view=file&task=download&id=33%3Anja-law-journal-2008-issue-2&Itemid=157

⁶⁶ See Khaki v Rawalpindi Supreme Court of Pakistan 2009.

specificities in the State Strategy on Health Care and considering the **provision of gender-affirming care as a State obligation**.⁶⁷

UN IE SOGI: Take measures to improve the health and well-being of **trans persons** and guarantee their **access to good-quality health-care services** and health related information, which includes giving consideration to establishing the **provision of gender-affirming care as a State obligation** not dependent on a diagnosis, [...].⁶⁸

UN CEDAW: Review the decisions taken by civil courts requiring transgender persons to undergo surgical and/or hormonal treatment before legal gender recognition can be granted, and **ensure that the costs for such interventions are reimbursed**.⁶⁹

OHCHR: [...] Good practice includes establishing health-care protocols to address the specific health needs of LGBT and intersex persons in line with international human rights standards. Access to health care should not be predicated on the use of stigmatizing or pathologizing diagnostic categories.⁷⁰

Examples of good practice

Argentina Law on Gender Identity (2012) Article 11: *“Right to free personal development. All persons over eighteen (18) years of age may, in accordance with article 1 of this law and in order to guarantee the enjoyment of their integral health, access total and partial surgical interventions and / or integral hormonal treatments to adapt their body, including their genitality, to their self-perceived gender identity, without requiring judicial or administrative authorization. For access to comprehensive hormonal treatments, it will not be necessary to prove the will in the surgical intervention of total or partial genital reassignment. In both cases, only the informed consent of the person will be required. In the case of minors, the principles and requirements established in article 5 for obtaining informed consent shall govern. Notwithstanding this, in the case of obtaining the same with respect to the total or partial surgical intervention, it must also have the consent of the competent judicial authority of each jurisdiction, who must ensure the principles of progressive capacity and interest superior of the child in accordance with the provisions of the Convention on the Rights of the Child and in Law 26. 061 of comprehensive protection of the rights of girls, boys and adolescents. The judicial authority must be issued within a period of no more than sixty (60) days from the request for conformity. The effectors of the public health system, whether state, private or of the subsystem of social works, must permanently guarantee the rights that this law recognizes. All the health benefits contemplated in this article are included in the Mandatory Medical*

⁶⁷ See [A/HRC/41/45/ADD.1 \(IE Sexual Orientation & gender identity 2019\)](#) para 117

⁶⁸ See A/73/152 para 79(a)

⁶⁹ See [CEDAW/C/CHE/CO/4-5 \(CEDAW 2016\)](#) para 39 (d)

⁷⁰ See OHCHR Living Free and Equal pp 130 available at <https://www.ohchr.org/Documents/Publications/LivingFreeAndEqual.pdf>

Plan, or the one that replaces it, in accordance with the applicable authority regulations.”⁷¹

Malta gender Identity, Gender Expression and Sex Characteristics Act (2015) Section 15(1): *“All persons seeking psychosocial counselling, support and medical interventions relating to sex or gender should be given expert sensitive and individually tailored support by psychologists and medical practitioners or peer counselling. Such support should extend from the date of diagnosis or self-referral for as long as necessary”⁷²*

Uruguay Ley Integral de Persona Trans (2018) Article 21: *(Right to comprehensive care): Every trans person has the right to comprehensive care to adapt their body to their gender identity, which includes at least all the programs and benefits that are determined in accordance with the provisions of Article 45 of the [No. 18,211 Law](#) of December 5, 2007 (National Integrated Health System), including medical and surgical treatments.⁷³*

8. Access to justice and remedy including compensation for past violations including forced sterilizations.

Human Rights standards

Non-discrimination, health, freedom from torture and ill-treatment, physical and psychological integrity, access to justice and remedy⁷⁴

Examples of UN recommendations

UN IE SOGI in relation to access to justice, the Independent Expert recommends that States adopt all measures necessary to [...] **provide reparations** to victims, regardless of whether the violence occurred in the public or the private sphere.⁷⁵

Examples of good practice

The Netherlands, the government has set up a voluntary compensation scheme for trans persons who had undergone suffering under the provisions of the Transgender Act.⁷⁶

⁷¹ Argentina, Law 26.743 on Gender Identity – Establishing the right of persons to gender identity, 23 May 2012. <http://servicios.infoleg.gob.ar/infolegInternet/anexos/195000-199999/197860/norma.htm>. See an unofficial translation here by Transgender Europe: <https://tgeu.org/argentina-gender-identity-law/>

⁷² See Malta Gender Identity Gender expression and Sex Characteristics Act Section <https://legislation.mt/eli/cap/540/eng/pdf>

⁷³ See Ley Integral de Persona Trans <https://www.gub.uy/ministerio-desarrollo-social/comunicacion/publicaciones/ley-19684-ley-integral-para-personas-trans>

⁷⁴ See [CCPR/C/CZE/CO/4 \(CCPR 2019\)](#) para 12 and 13, [CCPR/C/SVK/CO/4 \(CCPR 2016\)](#) para 14; [CEDAW/C/MNE/CO/2 \(CEDAW 2017\)](#) para 47(b); [CEDAW/C/CHE/CO/4-5 \(CEDAW 2016\)](#) para 38(d); [CEDAW/C/BEL/CO/7 \(CEDAW 2014\)](#) para 44; [CCPR/C/MEX/CO/6 \(CCPR 2019\)](#) para 13 (c); A/73/152 para 80

⁷⁵ See A/73/152 para 80

⁷⁶ See Government Press Release <https://www.government.nl/latest/news/2020/11/30/government-offers-apologies-for-old-transgender-act>

Sweden a 2018 Law passed provides for compensation for all transgender persons who had to undergo sterilisation under the Gender Recognition Act.⁷⁷

Uruguay Ley Integral de Persona Trans (2018) Article 10 (Reparatory regime): *“Establish a reparatory regime for trans people born prior to December 31, 1975, who reliably prove that due to causes related to their gender identity, they were victims of institutional violence or deprived of their liberty, having suffered moral or physical damage, as well as being prevented from fully exercising the rights of free movement, access to work and study, due to discriminatory practices committed by State agents or those who, without being so, would have had the authorization, support or acquiescence thereof.”*⁷⁸

Other Related Steps

States should:

1. **Repeal laws criminalising trans people on the basis of their gender identity or gender expression.** Transgender people not only face sanctions in countries that criminalise same sex relations but may also be specifically targeted under vaguely worded laws such as on sex work, vagrancy, loitering and “cross-dressing”. Criminalization hinders trans people’s ability to openly reveal their gender identity or expression thereby creating barriers in their access to services including legal gender recognition.

Human Rights Standards

Non-discrimination, equality, equal protection before the law

Examples of UN Recommendations

UN SR Torture: **Repeal laws that target and criminalize [...]transgender [...] persons and take action to combat violence, threats and intimidation on the basis of [...] gender identity.**⁷⁹

OHCHR: Repeal laws that criminalize LGBT persons, including laws criminalizing [...] **expression of gender identity.**⁸⁰

Examples of Good Practice

In Samoa, the revised penal code of 2013 **removed discriminatory legal provisions that criminalized** so-called “impersonation of a female” or cross-dressing.⁸¹

⁷⁷ See Swedish Amendment in 2018 <https://www.government.se/articles/2018/07/chronological-overview-of-lgbt-persons-rights-in-sweden/>

⁷⁸ See Ley Integral de Persona Trans <https://www.gub.uy/ministerio-desarrollo-social/comunicacion/publicaciones/ley-19684-ley-integral-para-personas-trans>

⁷⁹ See [A/HRC/28/68/Add.4 \(SR Torture 2015\)](#)

⁸⁰ See OHCHR, Born Free and Equal available at https://www.ohchr.org/Documents/Publications/Born_Free_and_Equal_WEB.pdf

⁸¹ See Samoa, Crimes Act 2013, April 2013

- 2. Adopt anti-discrimination legislation including on the basis of gender identity or gender expression.** States have an obligation, under international human rights law, to guarantee non-discrimination in the exercise of all human rights for everyone, regardless of their gender identity or expression. Such laws should also ensure remedies for victims of discrimination and the right to equal and effective access to justice.

Human Rights Standards

Non-discrimination, access to justice, right to remedy

Examples of UN Recommendations

UN Human Rights Committee: The State party should **adopt comprehensive anti-discrimination legislation** that: includes a comprehensive list of prohibited grounds of discrimination, including [...]gender identity and other status⁸²

UN Human Rights Committee: The State party should take vigorous steps to eradicate effectively all forms of discrimination and violence on the basis of sexual orientation and gender identity, inter alia by: (a) explicitly listing sexual orientation and gender identity among the **prohibited grounds for discrimination** in comprehensive anti-discrimination legislation; [...] and (c) sanctioning such conduct properly, including by **promptly and effectively investigating** any reports of violence or hatred motivated by sexual orientation and gender identity and by **bringing perpetrators to justice**.⁸³

UN Human Rights Committee: Take all the steps necessary to **strengthen the legal framework** protecting LGBT individuals from discrimination and violence and **ensure the investigation, prosecution and punishment** of any act of violence motivated by the victim's [...] **gender identity**.⁸⁴

UN IE SOGI: The adoption of legislation enshrining **anti-discrimination measures** with explicit reference to sexual orientation and gender identity.⁸⁵

UN IE SOGI: [...] States adopt all measures necessary to **prevent, investigate and punish violence and discrimination based on gender identity** perpetrated by both State and non-State actors, as well as to **provide reparations to victims**, regardless of whether the violence occurred in the public or the private sphere.⁸⁶

⁸² See [CCPR/C/NGA/CO/2 \(CCPR 2019\)](#) para 17

⁸³ See [CCPR/C/BLR/CO/5 \(CCPR 2018\)](#) para 20

⁸⁴ See [CCPR/C/RUS/CO/7 \(CCPR 2015\)](#)

⁸⁵ See A/74/181 para 98(b)

⁸⁶ See A/73/152 para 80

OHCHR: Prohibit and **address discrimination** on the basis of sexual orientation, **gender identity** and sex characteristics **by enacting relevant comprehensive legislation and policies**.⁸⁷

Examples of Good Practice

Plurinational State of Bolivia Constitution 2009 Article 14(2): *The State prohibits and punishes all forms of discrimination based on sex, color, age, sexual orientation, **gender identity** [...]*⁸⁸

Canada Human Rights Act (amended in 2021) Article 3(1): *“For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, [...]”*⁸⁹

Fiji Constitution *“A person must not be unfairly discriminated against, directly or indirectly on the grounds of his or her—actual or supposed personal characteristics or circumstances, including race, culture, ethnic or social origin, colour, place of origin, sex, gender, sexual orientation, **gender identity and expression** [...]”*⁹⁰

Sweden Discrimination Act (2008:567) Article 1: *“The purpose of this Act is to combat discrimination and in other ways promote equal rights and opportunities regardless of sex, transgender identity or expression, [...]”*⁹¹

3. **Tackle discrimination in health, education, employment and all other spheres on life for trans people.** By tackling discrimination that transgender people face, trans people could also gain access to their legal gender recognition which can enable them to fully participate in all spheres of their lives.

Human Rights Standards

Non-discrimination, right to education, right to the highest attainable standard of physical and mental health, right to work and employment.

Examples of UN Recommendations

⁸⁷ See OHCHR Born Free and Equal available at https://www.ohchr.org/Documents/Publications/Born_Free_and_Equal_WEB.pdf

⁸⁸ See Plurinational State of Bolivia, Constitución de 2009 available at https://www.constituteproject.org/constitution/Bolivia_2009.pdf

⁸⁹ See Canada Human Rights Act available at <https://laws-lois.justice.gc.ca/eng/acts/h-6/page-1.html#h-256819>

⁹⁰ See Constitution of the Republic of Fiji available at [https://www.laws.gov.fj/ResourceFile/Get/?fileName=2013%20Constitution%20of%20Fiji%20\(English\).pdf](https://www.laws.gov.fj/ResourceFile/Get/?fileName=2013%20Constitution%20of%20Fiji%20(English).pdf)

⁹¹ See Sweden Discrimination Act available at https://www.government.se/contentassets/6732121a2cb54ee3b21da9c628b6bdc7/oversattning-diskrimineringslagen_eng.pdf

UN SR Health: Legally recognize the gender identity of transgender people and prohibit any discrimination on the basis of gender identity in all areas, including **health, education, employment and access to public services**.⁹²

UN IE SOGI: [...] States should **adopt anti-discrimination legislation** that includes sexual orientation and **gender identity** among prohibited grounds, and develop specific programmes and policies to end the spiral of discrimination, marginalization and exclusion [...], including their rights to **health, education, work and an adequate standard of living, and on their access to justice**.⁹³

OHCHR: Prohibit and address discrimination on the basis of [...] **gender identity** and [...] by **enacting relevant comprehensive legislation and policies**.⁹⁴

OHCHR: States should put in place or amend existing **anti-discrimination legislation** to ensure that discrimination on the basis of actual or perceived [...] **gender identity and expression** [...] is legally prohibited in all contexts, including in **education, employment, health care**, housing, social protection, [...].⁹⁵

Examples of Good Practice

India The Transgender Persons (Protection of Rights) Act (2019), Article 3 prohibits discrimination against transgender persons in education, employment, health among other spheres of life.⁹⁶

Pakistan: Transgender Persons (Protection of Rights) Act (2018) Article 4 prohibits discrimination against transgender persons in education, employment, health among other spheres of life.⁹⁷

⁹² See [A/HRC/29/33/Add.1 \(SR Health 2015 \)](#)

⁹³ See A/HRC/38/43 para 96

⁹⁴ See OHCHR Born Free and Equal available at

https://www.ohchr.org/Documents/Publications/Born_Free_and_Equal_WEB.pdf

⁹⁵ See OHCHR, Living Free and Equal pp 121 available at

<https://www.ohchr.org/Documents/Publications/LivingFreeAndEqual.pdf>

⁹⁶ See India Transgender Persons (Protection of Rights) Act, 2019 available at

<https://socialjustice.nic.in/writereaddata/UploadFile/TG%20bill%20gazette.pdf>

⁹⁷ See Transgender Persons (Protection of Rights) Act (2018) available at

http://www.na.gov.pk/uploads/documents/1526547582_234.pdf

Background

States are required under international human rights law to respect, protect and fulfil the human rights of all persons without discrimination of any kind.

States have an obligation under international human rights law to put in place laws, policies and administrative procedures and processes to ensure that trans persons have access to legal recognition of their gender identity, including through modification of sex/gender marker and names on State-issued documents.

Transgender persons are entitled to the same human rights protections as all other persons, as enshrined in the Universal Declaration of Human rights and other international treaties including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and other Cruel, inhuman and degrading treatment. Transgender persons, like all other persons, are entitled under international human rights law to the protection, respect and fulfilment of their human rights, including the rights to non-discrimination, equality before the law, equal recognition before the law, health, freedom from torture and ill-treatment, privacy, family, bodily autonomy and integrity and personal autonomy. International human rights mechanisms have clarified that denial of legal gender recognition is in violation of one's right to privacy, bodily autonomy, personal autonomy including self-determination and the right to health.⁹⁸

International human rights mechanisms have not only expressed concern with regard to human rights violations based on gender identity and expression including targeted killings, harassment, beatings and sexual abuse⁹⁹ but have also noted that gender identity is a protected ground of discrimination that should be included in national legislation against discrimination, similar to other protected grounds such as race, sex, colour, disability or religious belief.¹⁰⁰ Human rights mechanisms have also highlighted that definitions relating to hate speech and hate crimes must be inclusive of gender identity as a protected ground.¹⁰¹

Over the years a number of countries have taken steps (through legislative reform and court decisions) to ensure that trans persons have access to legal recognition of their gender identity, without abusive requirements. However, in a majority of countries, trans persons have no access to legal recognition of their gender identity – and in many countries where there is access, they are still required to undergo abusive procedures including sterilisation, medical certification or treatment or divorce, in violation of their fundamental rights. International human rights mechanisms have stressed that States should eliminate unwarranted requirements for legal recognition of gender.

⁹⁸ See OHCHR Amicus Brief to the Inter-American Court of Human Rights Advisory Opinion to Costa Rica available https://www.corteidh.or.cr/sitios/observaciones/costaricaoc24/1_alto_com_naciones_unidad_ddhh.pdf

⁹⁹ Special Rapporteur on freedom of opinion and expression, report on communications (E/CN.4/2005/64/Add.1), 2005, para. 648; Special Rapporteur on violence against women, reports on communications (E/CN.4/2005/72/Add.1), 2005, para. 232, (E/CN.4/2006/61/Add.1), 2006, para. 131, (A/HRC/4/34/Add.1), 2007 (para. 448-454

¹⁰⁰ Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, para. 27; Human Rights Committee, communication No. 488/1992, Toonen v. Australia; Committee on the Rights of the Child, general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, para. 8; Committee against Torture, general comment No. 2 (2008) on the implementation of article 2 by States parties, para. 21; and Committee against Torture, general comment No. 3 (2012) on the implementation of article 14 by States parties, paras. 32 and 39

¹⁰¹ Human Rights Committee, Concluding Observations on Poland (CCPR/C/POL/CO/6), 2010, at para. 8

Legal gender recognition is important not only as a right in itself, but also in relation to protection from violence, torture and ill-treatment, discrimination, rights to health, education, employment and housing, access to social security, political participation and freedom of movement. It is important to note that, regardless of whether or not a person has obtained legal recognition of their gender identity, States should at all times respect, protect and fulfil all of their human rights.