

# Chapter

# 11

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## Equal Access for LGBTI Individuals

**Why it is important:** Access to civil registration and identity registration is vitally important for all individuals as these systems establish and provide documentation of legal identity, which is essential for the exercise of human and civil rights and to benefit from public and private services. However, lesbian, gay, bisexual, transgender and intersex (LGBTI) often face exclusion from these systems, which have traditionally been built around certain assumptions and biases that are inclusive of cisgender heterosexual people and those who fit into binary sex and gender categories. To fulfil international human rights obligations, civil registration and identity registration systems should be reformed to be inclusive of LGBTI individuals.

## Equal Access for LGBTI Individuals

### INTRODUCTION: AN INCLUSIVE HUMAN RIGHTS-BASED APPROACH TO GENDER AND CRVSID

Civil registration, vital statistics and Identity management (CRVSID) systems are essential for the functioning of government, as these systems provide the basis for public policy and administrative planning. CRVSID systems are also essential for individuals, as these systems enable a person to prove who they are, as well as their civil or marital status. These systems form the basis for “legal identity”, defined by the UN Legal Identity Agenda as “the basic characteristics of an individual’s identity. e.g. name, sex, place and date of birth conferred through registration and the issuance of a certificate by an authorized civil registration authority following the occurrence of birth. In the absence of birth registration, legal identity may be conferred by a legally recognized identification authority; this system should be linked to the civil registration system to ensure a holistic approach to legal identity from birth to death. Legal identity is retired by the issuance of a death certificate by the civil registration authority upon registration of death.”<sup>1</sup> Legal identity, which is a legal construct, is distinct from gender identity, which is a person’s internal and individual experience of gender (see full definition below). While distinct concepts, each individual is fully entitled to have their gender identity reflected in their legal identity.

Sexual orientation and gender identity are integral to every person’s dignity and humanity and must not be the basis for discrimination.<sup>2</sup> Yet, lesbian, gay, bisexual, transgender and intersex (LGBTI) people<sup>3</sup> continue to face discrimination, including in CRVSID systems. Legal requirements, de facto practices, and binary “sex” terminology used in CRVSID systems have resulted in the exclusion and stigmatization of members of the LGBTI community. Traditionally, CRVS and ID systems have been built around certain assumptions and biases that are inclusive of cisgender heterosexual people and those who fit into binary sex and gender categories. For example, civil registration systems have traditionally recorded “sex” at birth as either male or female; birth registration forms typically request information on the baby’s “mother” and “father”; and marriage registration forms require information on the “bride” and “groom.” All of these binary categorizations exclude more diverse family structures and non-binary individuals. Moreover, many ID laws throughout the world require invasive and often unwanted medical or psychological interventions for those who wish to change their sex or gender marker, with associated name change, on identity documents. These laws can result in individuals holding identity documents that are incongruous with their gender identity, which can result in a denial of essential services and cause mental distress or even violence. This chapter aims to highlight practices observed in CRVS and ID systems around the world that can lead to the exclusion and/or discrimination of LGBTI individuals, and recommends ways for legal frameworks to support more inclusive systems that align with international best practices and human rights obligations.

States must consider human rights obligations in the design and implementation of legal frameworks for CRVSID systems. Numerous global and regional international human rights conventions - including, but not limited to, the Universal Declaration of Human Rights; the Convention on the Rights of the Child (CRC); the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages; and the International Covenant on Civil and Political Rights (ICCPR), the American Convention on Human Rights and the European Convention on Human Rights - contain rights that are affected directly or indirectly by CRVSID systems.<sup>4</sup> These rights include the right to register a birth, death, marriage and divorce; the right to one’s own identity; the right to life, health, and privacy; the right of the family to protection; and the right of children to be cared for by their parents; among others.<sup>5</sup> In addition, proof of legal identity is essential to the enjoyment of many fundamental rights, including the rights to vote, own property, work, migrate, receive an education, receive social security, and maintain an

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<sup>1</sup> United Nations Legal Identity Agenda website, available at: <https://unstats.un.org/legal-identity-agenda/>

<sup>2</sup> Yogyakarta Principles, Introduction to the Yogyakarta Principles, page 6.

<sup>3</sup> We recognize that different countries and cultures use different terms to describe people who have same-sex relationships or who exhibit non-binary gender identities (such as queer, hijra, meti, lala, skesana, motsoalle, mithli, kuchu, kawein, travesty, muxé, fa’afafine, fakaleiti, hamjensgara and two-spirit). We use the term LGBTI in this Chapter as short-hand to describe this diverse group of people.

<sup>4</sup> See Guidelines on the Legislative Framework for Civil Registration, Vital Statistics and Identity Management, United Nations, 2019 (hereafter “UN GOLF”), Chapter 3, for a full list and explanation of international conventions containing rights that affect or are affected by civil registration and identity management systems,

<sup>5</sup> U.N. GOLF, para. 118-142, citing the Universal Declaration on Human Rights; CRC; ICCPR; and Convention On Consent To Marriage, Minimum Age For Marriage And Registration Of Marriages; among others.

adequate standard of living.<sup>6</sup> International courts, including the Inter-American Court of Human Rights and the European Court of Human Rights, have recognized that states that are Parties to international conventions have an existing obligation to respect, protect and fulfil the human rights contained in these conventions for all people in their country, including LGBTI people.<sup>7</sup>

To collate and clarify States' *existing obligations* under international human rights law to LGBTI people, the International Commission of Jurists and the International Service for Human Rights drafted the Yogyakarta Principles in 2007.<sup>8</sup> The Yogyakarta Principles collate a broad range of human rights that are contained in various international conventions and are binding upon Parties to those conventions. The Principles analyze these binding human rights standards as they apply to sexual orientation and gender identity and provide detailed recommendations on measures to be taken to implement those standards and rights.<sup>9</sup> Although the Yogyakarta Principles themselves have not been put to vote by the UN General Assembly or other UN body, and therefore are not technically binding, taking the recommended actions will not only help States fulfill their existing human rights obligations, they will also benefit States by fostering fast, efficient, and effective administration of civil registration and identity management systems. Reducing the bureaucratic, and often invasive, hurdles faced by the LGBTI community when registering vital events and amending civil registration records will help to ensure that States have accurate and timely vital statistics. Similarly, eliminating hurdles in changing gender and name on identity documents will help to ensure that everyone has an accurate legal identity, known to the State, that is consistent across agencies and platforms. This benefits both individuals and governments.

As discussed in more detail below, in order to protect human rights and foster fair and efficient government administration, civil registration and identity management laws should at a minimum:

- Be based on self-defined gender identity and not require verification by others, including medical personnel;
- Eliminate sex and gender markers where not necessary and, where sex or gender markers continue in use, Include more than two sex or gender options for those who identify outside the binary categories of male and female;
- Establish an administrative process for changing gender and name in civil registration and identity documents and records that: is quick, transparent and accessible; is free or low cost; does not require medical or psychological interventions or diagnosis; has no minimum or maximum age; and does not discriminate, including based on marital or parental status;
- Establish a simple process for aligning gender and name across all other civil registration and government-issued identity documents after amendment of a foundational document, such as a birth certificate or national identity card;
- Protect the personal privacy of LGBTI persons; and
- Provide the same rights in marriage and divorce to same-sex couples and gender-diverse couples as to different sex couples.

This chapter covers the following topics:

1. Key Terms
2. Birth Registration: Sex Marker Options For Child At Birth Registration And On Birth Certificates
3. Birth Registration: Right Of Parents To Be Recorded In The Birth Register With Their Self-Defined Gender Identity And Name
4. Identity Documents: Gender Options On Identity Documents

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<sup>6</sup> UNGOLF, para. 117.

<sup>7</sup> *Inter-American Court Of Human Rights, Advisory Opinion OC-24/17, of November 24, 2017, Requested by the Republic of Costa Rica: Gender identity, and equality and non-discrimination of same-sex couples* (ICHR Opinion OC-24/17).

<sup>8</sup> In 2017, an additional set of 10 principles – Yogyakarta Principles plus 10 (YP+10) – were released. YP+10 recognizes the significant developments since the release of the Principles in 2007, both in the field of international human rights law and in the understanding of violations affecting persons of diverse sexual orientations and gender identities, as well as the often distinct violations affecting persons on grounds of 'gender expression' and 'sex characteristics'.

<sup>9</sup> Yogyakarta Principles, Introduction to the Yogyakarta Principles, page 7.

5. Identity Documents: Process For Amending One's Gender And Name On ID Documents (Including Birth Registration)
6. Identity Documents: Process For Aligning Gender And Name Across All Civil Registration And Identity Documents
7. Identity Documents: Number Of Times One Can Change Gender/Name
8. Identity Documents: Unique Identity Codes/Numbers (UIC/UIN)
9. Death Registration: Gender Options At Death Registration
10. Registration of Marriage and Civil Union
11. Registration Of Divorce And Dissolution Of Civil Union
12. Vital Statistics
13. Coordination And Integration Of Different Systems
14. Accountability and Enforcement

As explained in Chapter 1 of the CRVSID toolkit, the term “legal framework” includes legislation passed by the legislature or parliament, as well as implementing regulations, standard operating procedures, guidelines, and other implementing directives promulgated or adopted by government bodies. The term “law” is used broadly, to mean legislation or implementing regulations. The “legal framework” and “law” also include any judicial decisions that are binding upon the country, including decisions issued by the country’s highest court and any binding decisions issued by international or regional courts or tribunals, such as the European Court of Human Rights and the Inter-American Court of Human Rights. Before beginning a legal review, reviewers should collect and read these court decisions, as well as relevant laws and documents that make up the legal framework. For example, lawyers who are reviewing the legal framework of any country that is member of the Organization of American States (OAS) should be sure to review Inter-American Court of Human Rights Advisory Opinion OC-24/17,<sup>10</sup> as well as any other relevant court decisions.

## 1. Key Terms:

**Best Practice:** Clearly defined terminology is important for any law in order to ensure that the law is fully and commonly understood by all. Terminology used in CRVSID laws regarding sex, sexual orientation, gender, gender identity, and related concepts should be clearly defined.

The terms below are important for understanding CRVSID practices and how they may impact LGBTI people. A country’s CRVS laws may or may not include all the terms listed below. However, if any of the terms are contained in a law or other legal document (such as SOPs, instructions, or guidance), the term should be defined. Regardless of whether all these terms are used in the law, reviewers should be familiar with these terms in order to analyze and compare the law with best and good international practices. Unless otherwise noted, all definitions are from the United Nations GLOBE website.<sup>11</sup> Other organizations and laws may define these terms slightly differently; however, the key concepts are the same.

- a. **Sex characteristics:** Each person’s physical features relating to sex, including chromosomes, gonads, sex hormones, genitals, and secondary physical features emerging from puberty.
- b. **Sex:** The classification of a person as having female, male and/or intersex sex characteristics. While infants are usually assigned the sex of male or female at birth based on the appearance of their external anatomy alone, a person’s sex is a combination of a range of bodily sex characteristics.<sup>12</sup>

<sup>10</sup> ICHR Advisory Option OC/24-17 of November 24, 2017 Requested by the Republic of Costa Rica, “Gender Identity, and Equality and Non-Discrimination of Same Sex Couples”, available at: [https://www.corteidh.or.cr/docs/opiniones/seriea\\_24\\_eng.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_24_eng.pdf)

<sup>11</sup> See UN GLOBE Resources/Training: International Organization for Migration, Full Glossary of Terms to describe sexual orientation, gender identity, gender expression and sex characteristics, updated November 2020, available at: <http://www.unglobe.org/resources>

<sup>12</sup> This definition of sex, from UN GLOBE and IOM, differs from the definition provided in the UN Principles and Recommendations for a Vital Statistics System (paragraph 113), which states: “Sex refers to the biological characteristic and it is needed to describe a newborn child, a

- c. **Intersex:** Intersex people are born with physical or biological sex characteristics, such as sexual anatomy, reproductive organs, hormonal patterns and/or chromosomal patterns, which do not fit the typical definitions of male or female. These characteristics may be apparent at birth or emerge later in life, often at puberty. Intersex people can have any sexual orientation and gender identity.<sup>13</sup>
- d. **Sexual orientation:** Each person's enduring capacity for profound romantic, emotional and/or physical feelings for, or attraction to, other people. Encompasses hetero-, homo-, bi-, pan- and asexuality, as well as a wide range of other expressions of sexual orientation. This term is preferred over the terms and phrases sexual preference, sexual behavior, lifestyle and way of life when describing an individual's attraction to other people. (Sexual orientation is not related to gender identity and sex characteristics.<sup>14</sup>)
- e. **Homosexual:** A person whose romantic, emotional and/or physical attraction is to people of the same gender. Note that, in English, homosexual may be considered an outdated clinical term that should be avoided, and gay and lesbian may be preferred. The term remains acceptable in many non-English-speaking contexts.
- f. **Heterosexual:** A person whose romantic, emotional and/or physical attraction is to people of a different gender.
- g. **Pansexual:** A person who has the capacity for romantic, emotional and/or physical attraction to people of any gender.
- h. **Lesbian:** A woman whose enduring romantic, emotional and/or physical attraction is to women.
- i. **Gay:** Men whose enduring romantic, emotional and/or physical attraction is to men; also, women who are attracted to other women.
- j. **Bisexual:** A person who has the capacity for romantic, emotional and/or physical attraction to people of more than one gender.
- k. **Asexual:** A person who may experience romantic or emotional attraction, but generally not sexual attraction.
- l. **Gender:** The socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for individuals based on the sex they were assigned at birth.
- m. **Gender identity:** Each person's deeply felt internal and individual experience of gender, which may or may not correspond with their sex assigned at birth or the gender attributed to them by society. It includes the personal sense of the body, which may or may not involve a desire for modification of appearance or function of the body by medical, surgical or other means.
- n. **Gender expression:** Gender expression is the way in which we express our gender through actions and appearance. Gender expression can be any combination of masculine, feminine and androgynous. For a lot of people, their gender expression goes along with the ideas that our societies deem to be appropriate for their gender. For other people it does not. People whose gender expression does not fit into society's norms and expectations, such as men perceived as 'feminine' and women perceived as 'masculine' often face harsh sanctions, including physical, sexual and psychological violence and bullying. A person's gender expression is not always linked to the person's biological sex, gender identity or sexual orientation.<sup>15</sup>
- o. **Transgender:** A term used by some people whose gender identity differs from what is typically associated with the sex they were assigned at birth. Transwomen identify as women but were classified as males when they were born, transmen identify as men but were classified female when they were born, while other trans people don't identify with the gender-binary at all. Some transgender people seek surgery or take hormones to bring their body into alignment with their gender identity; others do not. Being transgender does not imply

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decedent or a foetal death. Data should be categorized into "male" and "female", and in case of a foetal death, the category "unknown" is also appropriate." We note that the UN definition, with only a binary "male/female" option, is too restrictive to be inclusive of LGBTI individuals.

<sup>13</sup> United Nations Free and Equal, Definitions, available at: <https://www.unfe.org/definitions/>

<sup>14</sup> United Nations Free and Equal, Definitions, available at: <https://www.unfe.org/definitions/>

<sup>15</sup> United Nations Free and Equal, Definitions, available at: <https://www.unfe.org/definitions/>

any specific sexual orientation. Therefore, transgender people may identify as heterosexual, gay, lesbian, bisexual, etc.<sup>16</sup>

- p. **Cisgender:** A person whose gender identity and the sex they were assigned at birth align.
- q. **Gender transition:** The process of changing one's external gender presentation to be more in line with one's gender identity. Transition typically occurs over a long period of time and may include telling one's family, friends and co-workers, using a different name, pronoun and/or title, dressing differently, changing one's name and/or sex on legal documents, and undergoing hormone therapy and/or other treatment. In some countries, surgery is a requirement for legal gender recognition, which is a violation of UN human rights norms.

**Guidance:** State whether each term below (or similar term) is used in your legal framework and whether it is defined. If defined, state the definition contained in the legal framework. Provide the legal citation where the term is found. If other key terms are used in your legal framework, state the definition and provide the citation. In the comments sections, provide your analysis on whether a definition is needed, or whether the definition is clear and understood in the context of law. State how the definition could be improved if necessary.

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a. **Sex** (or sex assigned at birth, sex characteristics, or similar term):

Used in law? \_\_\_\_\_ Yes \_\_\_\_\_ No      Defined? \_\_\_\_\_ Yes \_\_\_\_\_ No

Definition:

Citation:

Comment:

b. **Sexual orientation** (or similar term):

Used in law? \_\_\_\_\_ Yes \_\_\_\_\_ No      Defined? \_\_\_\_\_ Yes \_\_\_\_\_ No

Definition:

Citation:

Comment:

c. **Gender** (or gender identity, gender expression, or similar term):

Used in law? \_\_\_\_\_ Yes \_\_\_\_\_ No      Defined? \_\_\_\_\_ Yes \_\_\_\_\_ No

Definition:

Citation:

Comment:

d. **Other important terms** (add as many lines as necessary):

Used in law? \_\_\_\_\_ Yes \_\_\_\_\_ No      Defined? \_\_\_\_\_ Yes \_\_\_\_\_ No

Definition:

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<sup>16</sup> See IOM, Full Glossary of Terms to describe sexual orientation, gender identity, gender expression and sex characteristics, and United Nations Free and Equal, Definitions; and Human Rights Campaign, Glossary of Terms, available at: <https://www.hrc.org/resources/glossary-of-terms>

Citation:

Comment:

## BIRTH REGISTRATION

### 2. Birth Registration: Sex Marker Options For Child At Birth Registration And On Birth Certificates

**Best Practice:**<sup>17</sup> The legal framework should provide for a third sex-neutral sex-marker option at birth registration in addition to “male” and “female”, such as “X”, “intersex”, “undetermined”, or “unspecified”. While one of these three sex markers should be recorded at birth registration, law makers should consider removing sex markers from registrar-issued birth certificates and other certified copies of extracts of the register or, at minimum, provide an option to obtain a birth certificate without a sex marker.

#### a. Background

Traditionally, healthcare workers have assigned a child one of two “sex” options at birth – male or female. However, not all infants fit neatly within these distinct binary categories. According to experts, between 0.05% and 1.7% of the population is born with intersex traits.<sup>18</sup> Intersex is a collective term used for many natural variations in sex characteristics and bodily characteristics that do not match strict medical definitions of male or female. These characteristics may be chromosomal, hormonal and/or anatomical and may be present to differing degrees. Many variants of sex characteristics are immediately detected at birth, or even before. Sometimes these variants become evident only at later stages in life, often during puberty. These are natural variations and intersex is not a medical condition.<sup>19</sup>

The legal requirement to assign only “male” or “female” sex at birth forces those involved in certifying and registering a birth (which can include the parents or other family members responsible for the child, health professionals, and birth registration officials) to choose between “male” or “female”. This can have a profound impact on the fundamental rights of intersex people, whose sex characteristics cause them to fall outside of this binary classification. Many services and social benefits (such as ID card, passport, education enrolment, and health services) may only be obtained by providing a birth certificate. When a person’s birth certificate does not align with their gender expression, the service provider might question the authenticity of their identity and deny services. Further, the requirement to classify a child as either male or female at birth has caused intersex people to be subjected to cosmetic and other medically unnecessary surgery in infancy, resulting in irreversible sex assignment and often sterility, without informed consent of either the person in question or their parents or guardians.<sup>20</sup> This is a grave violation of rights to physical and psychological integrity and violates Yogyakarta Principle 10 (The Right to Freedom From Torture and Cruel, Inhuman or Degrading Treatment or Punishment), Principle 18 (Protection from Medical Abuses) and Principle 33 (The Right to Bodily and Mental Integrity). As stated in Yogyakarta Principle 18, states must “ensure that no child’s body is irreversibly altered by medical procedures in an attempt to impose a gender identity without the full, free and informed consent of the child in accordance with the age and maturity of the child.”<sup>21</sup>

#### b. Sex markers at initial birth registration

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<sup>17</sup> Best Practices are based primarily on the Yogyakarta Principles. Where noted in footnotes, these best practices are also based upon the UN Principles and Recommendations for a Vital Statistics System and the UN Guidelines on a Legislative Framework for a Civil Registration, Vital Statistics and Identity Management.

<sup>18</sup> Fact Sheet: Intersex, United Nations Free and Equal, available at: <https://www.unfe.org/learn-more/>

<sup>19</sup> Id.; The fundamental rights situation of intersex people, European Union Agency for Fundamental Rights, 2015, page 2, available at: <http://fra.europa.eu/en/publication/2015/fundamental-rights-situation-intersex-people>.

<sup>20</sup> Fact Sheet: Intersex, United Nations Free and Equal, at p.1.

<sup>21</sup> Yogyakarta Principle 18.

Intersex people will remain vulnerable to discrimination as long as birth registers do not record sex appropriately. Therefore, laws should provide for a third sex-neutral sex-marker option, in addition to “male” and “female” at birth registration.<sup>22</sup>

Recognizing that providing a binary sex marker option (male/female) at birth is discriminatory against intersex individuals, many countries have amended their laws to allow a third sex-neutral option at birth registration.<sup>23</sup> How this sex-neutral option is labeled varies across countries and jurisdictions. Some options include: “X” (Australia National Capital Territory<sup>24</sup>, Belgium<sup>25</sup>), “unspecified” (Australia Northern Territory<sup>26</sup>), “indeterminate” (New Zealand<sup>27</sup>), and “unknown”, “unclear” or “sex could not be determined” (United Kingdom, Latvia, Netherlands, respectively<sup>28</sup>). Germany and Austria include “divers”, which translate roughly as “other” or “miscellaneous”, as a third gender marker at birth registration.<sup>29</sup> Countries and jurisdictions might allow the use of additional terms as “gender-markers” later in life, when a person is able to define their gender identity (see Section 4 below). However, because infants cannot define their gender identity, the marker assigned at birth is, by necessity, a “sex marker”.

Some countries provide the option of leaving the sex marker blank, permitting a determination of sex at a later date. However, leaving the sex marker blank may violate rights, as gender identity is integral to every person’s dignity and humanity. Germany’s highest court recognized this in November 2017, ruling that requiring birth registration as either male or female or leaving the sex-marker blank violated the right to identity. The court ruled that the country must provide a third sex option in the nation’s birth register or dispense entirely with information on sex in civil status, which is why they introduced the “divers” option.<sup>30</sup> Recording “sex” is also important for statistical purposes, such as tracking infanticide, particularly in countries that value boy children over all others.

### **c. Who should determine what sex marker is recorded at initial birth registration?**

Laws should also address who has the responsibility and right to determine which sex is recorded at birth registration.

There is no internationally recognized best practice regarding who has the right or responsibility to determine “sex” at birth. Currently, most countries’ laws do not directly address this topic. Instead, in countries where healthcare workers submit birth notification forms to the registrar, the physician or other birth attendant is de facto responsible for making the sex determination. In countries, where the family is the informant (without a medical notification of birth), the family is de facto responsible for making this determination.

The New Zealand Births, Deaths, Registration Act/Regulations is an example of a law that explicitly places responsibility on the medical professional alone, stating “indeterminate” can be used at birth registration only when a medical professional cannot determine a child’s sex to be male or female when they are born.<sup>31</sup> Malta’s

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<sup>22</sup> UN GOLF, para. 302.

<sup>23</sup> UN GOLF, paragraphs 299 – 302, Box 25.

<sup>24</sup> Australia National Capital Territory Births, Deaths and Marriages Registration Regulations, Regulation 2, 3

<sup>25</sup> The Brussels Times, Belgium to introduce ‘X’ as third, non-binary gender, 9 November 2020, available at:

<https://www.brusselstimes.com/belgium/139909/belgium-to-introduce-x-as-third-non-binary-gender-genderfluid-genderqueer-belgian-laws-transgender-justice-minister-vincent-van-quickenborne-minister-petra-de-sutter/>

<sup>26</sup> Northern Territory of Australia, Births, Deaths And Marriages Registration And Other Legislation Amendment Act 2018, available at:

[https://legislation.nt.gov.au/en/LegislationPortal/Acts/~/link.aspx?\\_id=6DC22FAECB4149C3944C0F6851C55751&z=z&format=assented](https://legislation.nt.gov.au/en/LegislationPortal/Acts/~/link.aspx?_id=6DC22FAECB4149C3944C0F6851C55751&z=z&format=assented)

<sup>27</sup> New Zealand Government website at: <https://www.govt.nz/browse/passports-citizenship-and-identity/changing-your-gender/change-the-registered-sex-on-your-birth-certificate/>

<sup>28</sup> The fundamental rights situation of intersex people, European Union Agency for Fundamental Rights, 2015, page 4, available at:

<https://fra.europa.eu/en/publication/2015/fundamental-rights-situation-intersex-people>.

<sup>29</sup> PinkNews, Austria recognises third gender option in official documents, 14 May 2019, available at:

<https://www.pinknews.co.uk/2019/05/14/austria-third-gender-option-documents/>

<sup>30</sup> Germany: Personal Status Act Must Allow Third Gender Option for Intersex People, Library of Congress Global Legal Monitor, available at:

<https://www.loc.gov/law/foreign-news/article/germany-personal-status-act-must-allow-third-gender-option-for-intersex-people/#:~:text=20%2C%202017%20In%20a%20decision,female%20or%20male%20gender%20at>

<sup>31</sup> New Zealand Government website at: <https://www.govt.nz/browse/passports-citizenship-and-identity/changing-your-gender/change-the-registered-sex-on-your-birth-certificate/>



Gender Identity Law takes a different approach and allows parents to decide to postpone the recording in the civil register of the sex of their newborn so that the child may decide upon their gender as they mature.<sup>32</sup>

Because designating a sex-marker has important consequences in the life of the infant, policy makers should carefully consider who has the right and responsibility to make such a determination. Policymakers and law drafters should consider whether it is appropriate to place this responsibility on health professionals alone, parents alone, or health professionals in consultation with parents. There may be pros and cons to each of these approaches, which may vary depending on country context. Regardless of where the responsibility for this decision is placed, policymakers should recognize that the decision may be imperfect; therefore, changing one's gender on one's birth certificate should be a simple administrative process (see Section 5 below).

#### **d. Time for determination**

Countries that allow a non-determination of sex, such as “unknown sex” or “unclear sex”, should not require a determination of sex within a restrictive time frame. The time allowed for determination of sex should be unlimited. This is in keeping with Yogyakarta Principle 31, which guarantees every person the right to legal recognition without reference to, or requiring assignment or disclosure of, sex, gender, sexual orientation, gender identity, gender expression or sex characteristics. However, if and while countries impose time limits, these time frames should allow sufficient time for either: a) the sex characteristics of the child to become clear, and/or b) the child to determine their gender identity.

In the Netherlands “sex” can be recorded as “undetermined” at birth registration. The law provides for the amendment of “sex” within three months, based upon a medical statement. However, if sex still cannot be determined or no medical statement is provided, the designation remains “undetermined” until the person has decided upon their gender identity, with no set time limit.<sup>33</sup> Since 2015, Malta has allowed parents to postpone the recording in the civil register of the sex of their newborn until the child's 18<sup>th</sup> birthday, at which time the child must choose their legal gender.<sup>34</sup>

#### **e. Naming conventions**

Countries should consider how their naming laws impact birth registration and repeal provisions that require names to be sex-specific. Naming laws should allow names that are unisex or sex-neutral.

Some countries have naming laws that require a child's given name to be gender-specific. For example, in Denmark parents must choose a given name for their child from a list of government pre-approved names, including names for girls and names for boys. Iceland similarly requires that names be chosen from a pre-approved list; however, since 2019, given names are no longer restricted by gender. Previously, the German Ministry of Interior issued instructions for registrars that male children may only have male names and female children only female names. In 2008, the German Federal Constitution Court ruled that parents have a constitutional right to name their child and overturned these instructions. Countries should review their naming laws, including registrar instructions, and repeal any provisions that effectively force parents and/or registrars to make a binary sex determination through name choice.

Countries that traditionally use patronymics or matronymics should allow the use of a sex-neutral patronymic or matronymic at birth registration. A patronymic or matronymic is a component of a person's name based on one's mother or father, and usually reflects whether the person is a son or a daughter. For example, in Iceland, families generally use patronymic or matronymic surnames, with the children of a couple either adopting the father or mother's name with the suffix of ‘-son’ for men and ‘-dóttir’ for women, meaning ‘son’ and ‘daughter’. So, a man by the name of Gunnar Egillson is the son of a man named Egill. If Gunnar named his daughter Helga, her full name would be Helga Gunnarsdóttir. Since June 2019, with the passage of the Gender Autonomy Act, Iceland now permits the suffix of ‘-bur’ meaning ‘child’ for nonbinary residents of the country. Patronymics common in many parts of the world, including Russia, eastern Slavic countries, Arabic countries (usually as a middle name), and some Southeast Asian countries (including some populations in Malaysia, Singapore and Brunei). Matronymic,

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<sup>32</sup> Malta Gender Identity, Gender Expression and Sex Characteristics Act, Section 7(4).

<sup>33</sup> The fundamental rights situation of intersex people, European Union Agency for Fundamental Rights, 2015, page 4.

<sup>34</sup> Malta Gender Identity, Gender Expression and Sex Characteristics Act, Section 7(4).

while less common, are in use some countries. The use of gender-based patronymics or matronymics can conflict with the practice of allowing birth registration with a sex-neutral marker. Therefore, countries that use gender-based patronymics or matronymics should consider allowing the use of a sex-neutral suffix at birth registration.

**f. Sex markers on initial birth certificates**

Lawmakers should consider removing sex markers from birth certificates or certified copies of extracts issued by the registrar. Alternatively, there should be an option to obtain a birth certificate or certified copy of an extract issued by the registrar without a sex marker.

While there is a legitimate government reason for tracking sex information for vital statistics, and therefore including “sex” in the birth register, there is less need to print “sex” on a birth certificate issued by the registrar. Birth certificates are required for numerous reasons – for example, obtaining a driving license or other ID card, opening a bank account, and voting. The right to benefit from these services are not dependent upon sex and therefore service providers do not need to know a person’s sex. When sex markers are contained in birth certificates, transgender, gender-diverse and intersex people are forced to “out” themselves every time their birth certificate is requested. This can cause confusion, raise privacy concerns, and potentially lead to discrimination and denial of services, as service-providers may question the identity of the certificate holder if the sex-marker does not match the person’s gender expression. Removal of sex markers from birth certificates alleviates these concerns. It may also relieve pressure on parents to choose a sex for an intersex child before the child is ready to self-identify their gender. There are few advantages for keeping the sex marker. “Sex” on a birth certificate does not help authenticate a person’s identity in the way that, for example, a biometric would because “sex” only narrows down the population by approximately half.

In Latvia, sex is not included on birth certificates and in Germany, it is possible to get a birth certificate issued without a sex marker.<sup>35</sup> Tasmania and the Canadian provinces of Ontario and Saskatchewan recently amended their laws to permit individuals to opt out of displaying a sex designation on their birth certificate.<sup>36</sup>

**Guidance:** Answer the questions below regarding assignment of a sex marker at birth registration and inclusion of sex markers on birth certificates. When looking for provisions regarding sex markers, be sure to review implementing regulations, forms and registrar instructions as well as legislation. In the comments section, discuss whether the legal framework aligns with best practice and any recommended amendments to the law.

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**a. Describe whether laws protect infants and children from medically unnecessary surgery intended to assign a sex at birth.**

Citation(s):

Comments:

**b. Describe the sex marker options at birth registration. If a third sex marker option is available, state what that is. State whether “sex” may be left blank at birth registration.**

Citation(s):

Comments:

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<sup>35</sup> The fundamental rights situation of intersex people, European Union Agency for Fundamental Rights, 2015, pages 4-5.

<sup>36</sup> See, The Conversation, Explainer: why removing sex from birth certificates matters to gender diverse people, at: <https://theconversation.com/explainer-why-removing-sex-from-birth-certificates-matters-to-gender-diverse-people-105571> and ABC News, Tasmania makes gender optional on birth certificates after Liberal crosses floor, at: <https://www.abc.net.au/news/2019-04-10/birth-certificate-gender-laws-pass-in-tasmania/10989170>

**c. Describe who determines the sex marker of the child.**

Citation(s):

Comments:

**d. Describe any time frames imposed for determination of sex of a child.**

Citation(s):

Comments:

**e. Describe any naming conventions that require names to be sex-specific.** Describe any actions that have been taken to address sex-specific naming conventions.

Citation(s):

Comments:

**f. Describe whether a sex marker is included on a birth certificate or certified copy of an extract issued by the registrar.** Note whether a person can opt-out of including a sex marker on a birth certificate or certified copy of an extract issued by the registrar.

Citation(s):

Comments:

### **3. Birth Registration: Right Of Parents To Be Recorded In The Birth Register With Their Self-Defined Gender Identity And Name**

**Best Practice:** The parent or parents of a child should have the right to be recorded in the birth register and on a birth certificate with their self-defined gender identity and name. Countries should not require one male parent and one female parent, but rather allow a parent or parents to register a child, regardless of the parents' sex, sexual orientation, or gender identity or expression.

This right is grounded in Yogyakarta Principle 24, The Right to Found a Family, which states: "Everyone has the right to found a family, regardless of sexual orientation or gender identity. Families exist in diverse forms. No family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members." To implement Principle 24, "States shall:

B. Ensure that laws and policies recognise the diversity of family forms, including those not defined by descent or marriage, and take all necessary legislative, administrative and other measures to ensure that no family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members . . . ;

E. Take all necessary legislative, administrative and other measures to ensure that in states that recognise same-sex marriages or registered partnerships, any entitlement, privilege, obligation or benefit available

to different-sex married or registered partners is equally available to same-sex married or registered partners;

F. Take all necessary legislative, administrative and other measures to ensure that any obligation, entitlement, privilege, or benefit available to different-sex unmarried partners is equally available to same-sex unmarried partners . . . ;

I. Issue birth certificates for children upon birth that reflect the self-defined gender identity of the parents;<sup>37</sup>

To actualize these rights, civil registration authorities will need to revise birth registration forms to replace the gendered categories “mother” and “father” with the gender-neutral term “parent(s)”. Alternatively, registration forms could offer each parent the option of choosing a parental designation of “mother”, “father” or simply “parent”, and whether they choose to have that designation reflected on the birth certificate.

Civil registration authorities may wish to capture additional parental data, for statistical purposes only, regarding gender identity and sexual orientation, as this might provide useful statistical information on diverse family structures. If capturing such data, it should be sent anonymized to the statistics agency and not entered into the register, to protect personal privacy. (See Section 12 on Vital Statistics). Alternatively, civil registration and statistics authorities may decide to dispense with the gender-identity of parents altogether, as is done in New Zealand.

In New Zealand, the *birth certificate* contains the following information on the baby’s parent(s):

- full name;
- date of birth;
- age at the time of the child’s birth;
- place of birth;
- full name at birth (if not the full name on initial registration of the birth); and
- full name as registered on the initial registration of the birth.

The certificate does not reference the gender of the parents.<sup>38</sup> In addition, the following statistical information regarding the baby’s parent(s) is collected:

- the usual occupation, profession, or job;
- the home address and contact details;
- whether a descendant of a New Zealand Maori (if known);
- the ethnic group or groups to which the parents belong;
- information to determine the parents’ citizenship or residency status;
- information about the type of relationship (if any) between the parents at the time of the child’s birth, and the date and place that the relationship was solemnized (if relevant); and
- the number of children (if any) born to the same parents.

Gender-identity of parent(s) is not collected for statistics purposes.

#### **a. Adoption and surrogacy**

These same gender-neutral forms should be used for registration of an adopted child or a child conceived through surrogacy. After a court approves an adoption, a new birth record reflecting the new parents’ birth facts is prepared and, in some jurisdictions, the original birth record is sealed and kept confidential. The place and date of birth of the child remain unchanged in the new birth record, as well any unique identification code; only the parental information is changed, as well as the name of the child (if the parents so desire).<sup>39</sup> If a child is adopted from a foreign country, most countries have a process by which the adoptive parents may apply for a domestic birth certificate. This generally involves providing to a court a certified copy of the final adoption decree from the

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<sup>37</sup> Subsection (I) was added to Yogyakarta Principle 24 through the Yogyakarta Principles Plus 10.

<sup>38</sup> New Zealand Births, Deaths, Marriages, and Relationships Registration (Prescribed Information) Regulations 1995, Regulation 6, available at: <https://www.legislation.govt.nz/regulation/public/1995/0183/latest/whole.html#DLM1811247>.

<sup>39</sup> *Handbook on Civil Registration and Vital Statistics Systems: Management, Operation, Maintenance, Revision 1*, United Nations, 2018, paragraph 157.

foreign country and a written request for a new birth certificate.<sup>40</sup> In keeping with Principle 24, the birth register entry and the new birth certificate issued after an adoption should contain the adoptive parent(s)' self-defined gender identity or no data field for gender identity, as discussed above.

Surrogacy is an arrangement whereby a woman agrees to carry a pregnancy for another person or persons who will become the newborn's parents after the birth. Country's laws regarding surrogacy vary greatly, from total banning of the practice, to allowing surrogacy with regulation, to allowing surrogacy de facto by virtue of having no laws on the subject. Detailing the complexities of surrogacy arrangements is beyond the scope of this document. However, generally, where legal, civil registration in surrogacy can be handled in one of two ways. In some countries, the intended parents are regarded as the legal parents from the moment of birth and are recorded in the birth register and on the birth certificate. In other countries, the gestational mother<sup>41</sup> is recorded as the legal parent at birth. Within a specified time after the birth, the intended parents seek a court parental decree, much like an adoption process.<sup>42</sup> In keeping with Principle 24 and the discussion above, registration of a child conceived by surrogacy, and the birth certificate after surrogacy procedures are complete, should contain the intended parent or parents' self-defined gender identity or no data field for gender identity.

**Guidance:** Answer the questions below regarding recording of parents' gender identity in the birth register and/or for statistical purposes. Note differences, if any, in the recording of parents' gender identity for birth registration of biological children and that of adoptive or surrogate children. In the comments section, discuss whether the legal framework aligns with best practice and any recommended amendments to the law.

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- a. Describe whether the parent(s) of a child have a right to be recorded in the birth register and on the birth certificate with their self-defined gender identity and name.** Address whether birth registration forms and birth certificates use the terms "mother" and "father" or the gender-neutral "parent(s)".

Citation(s):

Comment:

- b. If the register contains a data field with gender neutral term "parent(s)" (rather than "mother" and "father"), state whether information on the gender identity of the parent(s) is collected for statistical purposes.**

Citation(s):

Comment:

- c. Describe procedures for amendment of birth registration after adoption and surrogacy.** Address whether the relevant forms and any amended birth certificate use the terms "mother" and "father" or the gender-neutral "parent(s)". Address whether information on gender identity of the adoptive or intended parents (in the case of surrogacy) is collected for statistical purposes.

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<sup>40</sup> UN GOLF, para. 414.

<sup>41</sup> Surrogacy can be "traditional surrogacy" (also known as partial surrogacy), wherein the eggs of the surrogate are used in the conception of the child; or "gestational surrogacy" (also known as full surrogacy), wherein the child is conceived through in vitro fertilization using the egg and sperm of the intending parents or other persons. The "gestational mother" is the woman who gave birth to the child.

<sup>42</sup> Rutuja Pol, Proposing An International Instrument To Address Issues Arising Out Of International Surrogacy Arrangements, Georgetown Journal of International Law, pages 1311 – 1317, 1323.

Citation(s):

Comment:

## IDENTITY DOCUMENTS

### 4. Identity Documents: Gender Options On Identity Documents

**Best Practice:** States should consider eliminating the display of sex and gender markers on identity documents. If markers remain in use on identity documents, these markers should be gender markers, not sex markers. (As a reminder: Sex markers refer to markers that characterize a person's physical sex characteristics, whereas gender markers refer to a person's self-defined gender identity.) In addition, states should make available a multiplicity of gender marker options (at least three).

#### a. Elimination of sex and gender markers on ID documents

Everyone has the right to be recognized as a person before the law, as enshrined in Article 6 of the Universal Declaration on Human Rights and several other international human rights instruments. Legal identity is widely recognized to be fundamental to the exercise of human rights and to benefit from numerous government and private sector services.<sup>43</sup> However, if the sex-marker on an identity marker does not match a person's gender identity or gender expression, this can lead to discrimination and denial of services.

Recognizing that transgender and intersex persons often suffer due to the use of sex-markers on identity documents, Yogyakarta Principle 31, The Right to Legal Recognition, states: "Everyone has the right to legal recognition without reference to, or requiring assignment or disclosure of, sex, gender, sexual orientation, gender identity, gender expression or sex characteristics." To implement Principle 31, the Principles require States to "[e]nsure that official identity documents only include personal information that is relevant, reasonable and necessary as required by the law for a legitimate purpose, *and thereby end the registration of the sex and gender of the person in identity documents* such as birth certificates, identification cards, passports and driver licenses, and as part of their legal personality."<sup>44</sup> This aligns with the principles of proportionality and necessity contained in the UN *Personal Data and Privacy Principles* and the European Union General Data Protection Regulation (GDPR).

In keeping with this Principle, in recent years some countries have removed sex and gender markers from identity documents. For example, New Zealand<sup>45</sup>, Costa Rica<sup>46</sup> and France<sup>47</sup> have removed gender markers from driving licenses. The Netherlands will remove gender markers from national ID cards by 2025.<sup>48</sup>

#### b. Third gender option while gender markers continue in use

Under Principle 31, if or while markers continue to be used, those markers should be gender markers reflecting self-defined gender and not sex-markers reflecting sex assigned at birth and, states must make available a multiplicity of gender marker options.<sup>49</sup> This follows from Principle 3, the Right to Recognition Before the Law, which provides: "No one shall be subjected to pressure to conceal, suppress or deny their sexual orientation or gender identity." To implement Principle 3, states must "ensure that procedures exist whereby all state-issued

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<sup>43</sup> UN GOLF, paragraph 117.

<sup>44</sup> Yogyakarta Principles plus 10, Principle 31A.

<sup>45</sup> License To Be Yourself, Open Society Foundations, New York, 2014, page 20, available at <https://www.opensocietyfoundations.org/publications/license-be-yourself>.

<sup>46</sup> Article 2 of Decree No. 9-2016, modified by Article 3 of Decree No 7-2018, available at: <https://tse.go.cr/pdf/normativa/cedulanuevascaracteristicas.pdf>

<sup>47</sup> My ID, my identity? The impact of ID systems on transgender people in Argentina, France and the Philippines, Privacy International, 15 January 2021, available at: <https://privacyinternational.org/long-read/4372/my-id-my-identity-impact-id-systems-transgender-people-argentina-france-and-philippines>.

<sup>48</sup> Netherlands Sees No Role for Gender Marker on ID Documents, Amnesty International, July 2020, available at: <https://www.hrw.org/news/2020/07/08/netherlands-sees-no-role-gender-marker-id-documents#:~:text=The%20Dutch%20government%20will%20no,against%20whether%20there%20is%20any>

<sup>49</sup> Yogyakarta Principles plus 10, Principle 31C.

identity papers which indicate a person's gender/sex — including birth certificates, passports, electoral records and other documents — reflect the person's profound self-defined gender identity.”<sup>50</sup>

The International Civil Aviation Organization (ICAO), which sets global regulations for machine readable passports, allows for three gender categories: female, male, or “X” for unspecified.<sup>51</sup> In keeping with this, many countries currently allow for “Male”, “Female”, or “X” gender markers on their passports and other identity documents, including: Argentina, Austria, Australia, Canada, Colombia, Denmark, Germany, Iceland, Ireland, India, Malta, Nepal, The Netherlands, and New Zealand.<sup>52</sup> The X gender marker is the most common third gender option; but some countries provide for different third gender options. For example, Nepal provides the option of “O” for “other”, and India provides the option of “T” for Transgender on passports and “other” on voter ID cards.<sup>53</sup> However, the problem with non-binary gender markers other than “X” is that they are not internationally recognized by current ICAO guidelines. Other countries are therefore not required to accept travel documents with gender markers other than F, M or X.<sup>54</sup>

Some experts state that providing only a third gender option may be insufficient to encompass the full range of gender diversity, including specific regional and cultural identities. Therefore, a more inclusive approach would be to increase the options for people to self-define their gender identity.<sup>55</sup> For example, when surveying for statistical purposes, New Zealand includes the option “Another gender (please specify)”.<sup>56</sup> Accordingly, policy makers may wish to consider providing for more than three gender options on identity documents. If a country provides a multiplicity of gender marker options, ideally, the same options should be provided across identity documents in order to prevent confusion when a person presents multiple forms of identification. However, if a country provides options in addition to “M, F or X”, policy makers should consider how this aligns with ICAO standards and the ramifications for international travel.

**Guidance:** Answer the questions below regarding the use of sex or gender makers on national ID cards, passports, and driving licenses. The options might be found in legislation, implementing regulation or on the forms for registration/renewal. In the comments section, discuss whether the legal framework aligns with best practice and any recommended amendments to the law.

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**a. Mark whether the following identity documents include sex markers or gender markers, or neither:**

- |                       |                  |                     |               |
|-----------------------|------------------|---------------------|---------------|
| i. National ID card:  | _____ Sex marker | _____ Gender marker | _____ Neither |
| ii. Passport:         | _____ Sex marker | _____ Gender marker | _____ Neither |
| iii. Driving license: | _____ Sex marker | _____ Gender marker | _____ Neither |

Citation(s):

Comments:

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<sup>50</sup> Yogyakarta Principle 3C.

<sup>51</sup> International Civil Aviation Organization, Working Paper, TECHNICAL ADVISORY GROUP ON MACHINE READABLE TRAVEL DOCUMENTS (TAG/MRTD), TWENTY-SECOND MEETING, 2014, page 130, available at: [https://www.icao.int/Meetings/TAG-MRTD/TagMrtd22/TAG-MRTD-22\\_WP03-rev.pdf](https://www.icao.int/Meetings/TAG-MRTD/TagMrtd22/TAG-MRTD-22_WP03-rev.pdf).

<sup>52</sup> How the letter X is changing the game for travelers — and what that could mean for the US, CNN, 17 March 2021, available at: <https://www.cnn.com/travel/article/countries-with-third-gender-x-passports/index.html>.

<sup>53</sup> ILGA Europe, Non-Binary Gender Registration Models In Europe, September 2018, at p. 17, available at: <https://www.ilga-europe.org/resources/ilga-europe-reports-and-other-materials>

<sup>54</sup> ILGA Europe, Non-Binary Gender Registration Models In Europe, September 2018, at p. 17.

<sup>55</sup> License To Be Yourself, Open Society Foundations, page 21, available at <https://www.opensocietyfoundations.org/publications/license-be-yourself>

<sup>56</sup> Stats NZ, Statistical standard for gender, sex, and variations of sex characteristics, available at: <https://www.stats.govt.nz/methods/statistical-standard-for-gender-sex-and-variations-of-sex-characteristics>

- b. If sex markers or gender markers are contained in identity documents, describe the sex markers or gender marker options available for use in each type of identity document (address national ID cards, passports, and driving licenses):

Citation(s):

Comments:

## 5. Identity Documents: Process For Amending One's Gender And Name On ID Documents (Including Birth Registration)

**Best Practice:** Under Principle 31, The Right to Legal Recognition, everyone should have the right to change gendered information in identity documents, including gender marker and name, if gendered information is included in such documents. A person should be able to change their gender and name, including to a gender-neutral name, on identity documents through a simple, quick, and low-cost administrative process. Specifically, states must:

- i. Ensure a quick, transparent, and accessible mechanism that legally recognizes and affirms each person's self-defined gender identity;
- ii. Make available a multiplicity of gender marker options;
- iii. Ensure that no eligibility criteria, such as medical or psychological interventions, a psycho-medical diagnosis, minimum or maximum age, economic status, health, marital or parental status, or any other third party opinion, shall be a prerequisite to change one's name, legal sex or gender;
- iv. Ensure that a person's criminal record, immigration status or other status is not used to prevent a change of name, legal sex or gender."<sup>57</sup>

### a. Quick, transparent and accessible:

To achieve a quick and accessible process, ideally, local civil and identity registrars should be authorized to amend the sex/gender marker on a government-issued identity document, including a birth certificate. A person should not be required to first obtain a court order before applying to the registrar, as court processes are time-consuming, burdensome and costly.<sup>58</sup> In many countries and jurisdictions, a cis-gender person need only apply to the registrar to change their name on a birth certificate and other identity documents. In keeping with principles of equality, in recent years, many countries and jurisdictions have repealed requirements to seek a court order in order to change one's name and gender, including Argentina, Australia, Bolivia, Brazil, the US state of California, Chile, Costa Rica, Denmark, Malta, New Zealand, and Uruguay among others. However, if a country must retain a court process due to constraints in their legal system, the court process should be quick, transparent, and accessible.

In addition, the cost of applying for a gender and name change should be low cost and equivalent to the cost charged to a cisgender person to change their name, and should not require the assistance of a lawyer or other costly legal expenses, regardless of whether an administrative or court process is used.

The registration process should be transparent and non-discretionary. The law should clearly present the legal requirements and documents to be presented to the registrar (or the court). There should be a timeframe for the registrar (or court) to approve the request if the stated legal requirements are met or, if not met, to request the

<sup>57</sup> Yogyakarta Principles, Principle 31.B and 31.C.

<sup>58</sup> UN GOLF, at paragraph 202.



needed information. If all requirements are met, the registrar (or court) should be required to approve the request. The registrar (or court) must not have discretion to deny a request when legal requirements are fulfilled.<sup>59</sup>

The time period needed to effectuate an amendment to name and gender on identity documents for a transgender person should be equal to the time period needed to amend a name on identity documents for a cisgender person. Long waiting periods before the amendment is effectuated should be repealed. For example, in Denmark, a person can change their name and gender at the civil registrar by providing a declaration, but the registration is amended only after a 6-month waiting period, which is purportedly meant to ensure that the application is not based on impulse and to protect against potential abuse or fraud.<sup>60</sup> Forcing a person to maintain a legal identity that is incongruous with their self-determined gender-identity any longer than necessary violates the Yogyakarta principles.

#### **b. No required medical or psychological interventions or diagnosis**

Principle 3, The Right to Recognition Before the Law, makes clear: “No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity.” Principle 18, The Right to Protection from Medical Abuse, further states that “a person’s sexual orientation and gender identity are not, in and of themselves, medical conditions and are not to be treated, cured or suppressed.” In keeping with these principles and Principle 31, laws should not require a person to undergo any medical or psychological interventions in order to change their gender identity. Countries and jurisdictions that permit a person to self-define their gender identity without any medical or psychological intervention or diagnosis include, among others, Argentina (all ID documents), Costa Rica (all ID documents), Denmark (all ID documents), Malta (all ID documents), New Zealand (passports), the US states of California (driving license, social security card, and birth certificate) and New York (birth certificate), and the United States (passports).

#### **c. No minimum or maximum age**

There should be no minimum or maximum age requirements to change one’s gender on identity documents. According to experts, gender identity begins to take shape as early as three years old.<sup>61</sup> As reflected in the Yogyakarta Principles, “in all actions concerning children the best interests of the child shall be a primary consideration and a child who is capable of forming personal views has the right to express those views freely, such views being given due weight in accordance with the age and maturity of the child.”<sup>62</sup> Therefore, a minor who is capable of making an informed decision regarding changing their gender should be permitted to do so. As with other legal actions taken by a minor, states may require the consent of a guardian. However, there should be a process by which a minor (as defined by the country’s laws) can object to the unreasonable withholding of consent by a guardian. For example, Argentina’s Gender Identity Law permits a minor to seek a court order where consent is withheld.<sup>63</sup>

#### **d. No discrimination, including based on marital or parental status**

A person must not be prohibited from changing their gender identity because they are married or have children. In some countries, the law requires a person to divorce if they wish to change their gender and may prohibit the person from changing their gender if they have children. This violates Principle 31, as set out above. It also violates Principle 24, the Right to Found a Family, which recognizes that “families exist in diverse forms”.

#### **e. Privacy/confidentiality**

Yogyakarta Principle 6, The Right to Privacy, includes the right to choose to disclose or not to disclose information relating to one’s sexual orientation or gender identity. States are therefore obligated to “protect all persons from

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<sup>59</sup> License to Be Yourself, Open Society Foundation, 2014, page 24.

<sup>60</sup> License to Be Yourself, Open Society Foundation, 2014, page 17.

<sup>61</sup> Mayo Clinic, Children and gender identity: Supporting your child, available at: <https://www.mayoclinic.org/healthy-lifestyle/childrens-health/in-depth/children-and-gender-identity/art-20266811>

<sup>62</sup> Yogyakarta Principles, Preamble; see also Principle 24.D.

<sup>63</sup> Argentina Gender Identity Law, Article 5, available at: <https://tgeu.org/argentina-gender-identity-law/>

arbitrary or unwanted disclosure, or threat of disclosure of such information by others.”<sup>64</sup> In furtherance of this obligation, States must “(e)nsure that changes of the name or gender marker, as long as the latter exists, is not disclosed without the prior, free, and informed consent of the person concerned, unless ordered by a court.”<sup>65</sup> To protect privacy, States should not require the publication of a gender and name change even if, ordinarily, a name change request without gender change would be published.

Argentina and the United Kingdom provide examples of good privacy practices. Under Argentina’s Gender Identity Law, after a person’s gender and name is changed on their birth certificate, no other person can access the original record without authorization by the person concerned or judicial authorization. In addition, while name changes are ordinarily published in newspapers, publication is not required in the case of a gender change.<sup>66</sup>

Under the United Kingdom’s Gender Recognition Act 2004, it is an offense, punishable by the highest level fine, for a person who has acquired protected information about a trans person’s gender recognition application or previous gender to disclose that information to another person. The provisions cover protected information acquired in an official capacity by civil servants, current and prospective employers and those providing professional services. In addition, when applying for a job where vetting is required, there is an administrative procedure that enables transgender people to be security-vetted by the Criminal Records Bureau (CRB) without having to disclose previous names to an employer. The applicant can simply provide their prospective employer their current name and the CRB will search records under their current and previous name without ever disclosing the change of gender/name to the employer. There are only limited circumstances under which gender change information may be disclosed, including consent and court order.<sup>67</sup>

A change of gender marker should remain confidential even after a person’s death. Note, however, that laws regarding the confidentiality of autopsy reports might conflict with this goal. Some countries and jurisdictions make autopsy reports available to the public, as this allows the public to scrutinize health trends on unnatural deaths. Other countries treat autopsy reports as confidential health information, available only to those with a legitimate interest. Autopsy reports contain a great deal of information and might include the physical characteristics of the body and genitals, if relevant to the case or necessary to identify the deceased. Therefore, if a death is referred to the medicolegal death investigation system (MLDI) for autopsy, and the country or jurisdiction makes autopsies available to the public, a change of gender might inadvertently be revealed. (See the MLDI toolkit chapter for more on confidentiality of autopsy reports.)

#### **f. Criteria for changing gender and name is aligned across agencies**

The above requirements should apply equally to all government agencies that issue identity documents and the criteria for amending gender and name on various identity documents should be aligned across agencies.

Some countries have different criteria for amending gender and name on various identity documents. For example, there may be more stringent and onerous criteria for amending a birth certificate than a passport. As a result, transgender people may hold incongruous identity documents. This can cause confusion and potentially discrimination and refusal of services, as service providers may refuse to authenticate the identity of a holder of incongruous identity documents. Therefore, the processes across agencies should employ similar criteria.

**Guidance:** Answer the questions below regarding the process for changing one’s gender and name on identity documents, including birth certificate, national ID card (if one exists), passport, driving license, and any other notable government issued identity documents (if expressly addressed in the law). Note any difference in procedures for changing gender and name on these various identity documents. In the comments section, discuss whether the legal framework aligns with best practice and any recommended amendments to the law.

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#### **a. Describe whether a registrar (or other equivalent government administrative official) can approve a change of name and gender on identity documents. State specifically: 1) whether a person can request**

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<sup>64</sup> Yogyakarta Principle 6.F.

<sup>65</sup> Yogyakarta Principles plus 10, Principle 6.H., p.18.

<sup>66</sup> Argentina Gender Identity Law, Article 9, available at: <https://tgeu.org/argentina-gender-identity-law/>

<sup>67</sup> United Kingdom, Gender Recognition Act, Article 22, available at: <https://www.legislation.gov.uk/ukpga/2004/7/contents>

such a change from a registrar without a court order, 2) whether the registrar must approve an application that meets requirements or whether the registrar has discretion to reject an application, and 3) whether a registrar must seek higher-level approval before making the requested change. Specifically address the process for changing gender and name on the following identity documents, noting any different processes.

- i. Birth certificate:
- ii. National ID card:
- iii. Passport:
- iv. Driving license:
- v. Any other notable government-issued ID documents and processes (such as voting card, health card, etc.)

Citation(s):

Comments:

- b. Describe any waiting periods and fees (including legal fees) for changing gender and name on identity documents.** Specifically address waiting periods for the following identity documents, noting any differences in waiting periods.

- i. Birth certificate:
- ii. National ID card:
- iii. Passport:
- iv. Driving license:
- v. Any other notable government-issued ID documents and processes (such as voting card, health card, etc.)

Citation(s):

Comments:

- c. Are medical or psychological interventions required to change gender and name on identity documents?** Specifically address any required interventions for the following identity documents, noting any differences.

- i. Birth certificate:
- ii. National ID card:
- iii. Passport:
- iv. Driving license
- v. Any other notable government-issued ID documents and processes (such as voting card, health card, etc.)

Citation(s):

Comments:

**d. Describe any minimum or maximum age requirements for requesting a gender and name change on identity documents.** If parental or guardian consent is required for a minor, state whether withholding of consent can be challenged in court or administratively. Specifically address any age requirements for the following identity documents, noting any different requirements.

- i. Birth certificate:
- ii. National ID card:
- iii. Passport:
- iv. Driving license:
- v. Any other notable government-issued ID documents and processes (such as voting card, health card, etc.)

Citation(s):

Comments:

**e. Describe any restrictions or requirements based on marital or parental status.** Specifically address restrictions or requirements for the following identity documents, noting any differences.

- i. Birth certificate:
- ii. National ID card:
- iii. Passport:
- iv. Driving license:
- v. Any other notable government-issued ID documents and processes (such as voting card, health card, etc.)

Citation(s):

Comments:

**f. Are changes of gender and name on identity documents kept confidential?** Specifically address who may access the information regarding change of gender (and accompanying name change) in government databases. Also address whether the law prohibits disclosure of gender/name information to third parties without consent of the individual or a court order. Specifically address confidentiality rules for changes of gender/name in the following registers and databases, noting any differences in rules.

- i. Change of gender/name in the birth register:
- ii. Change of gender/name in the National ID card register:
- iii. Change of gender/name in the Passport database:
- iv. Change of gender/name in the Driving licenses database:
- v. Change of gender/name in any other notable government databases relating to ID documents (such as voting card, health card, etc.)
- vi. Autopsy reports:

Citation(s)

Comments:

## 6. Identity Documents: Process For Aligning Gender And Name Across All Civil Registration And Identity Documents

**Best Practice:** After a person amends their gender and name on one identity or civil registration document (such as a national ID card or a birth certificate), there should be a simple and quick process for aligning gender and name across all other civil registration documents (including marriage records) and government issued identity documents (such as driving license, passport, voter ID, national health card, etc.), regardless of whether those documents are issued at the national or sub-national level.

An amendment of a foundational document, such as a birth certificate or national ID card, should trigger a process for amendment of other identity documents, regardless of whether a paper-based or electronic system is in use. This is possible if the criteria for changing gender and name on various identity documents issue, as well as gender-marker options, are aligned across agencies, as discussed above.

The Argentina Gender Identity Law provides an example of good practice. There is a simple one-step process to request a change of gender and name by applying to the National Bureau of Vital Statistics, which informs the Civil Registrar to issue a new birth certificate and national identity card.<sup>68</sup> The National Bureau of Vital Statistics also informs the appropriate Electoral Registry, the National Registry of Criminal Records, and other government bodies of the change of gender and name so that these databases are updated accordingly. Note that this type of requirement – for one agency to inform other agencies – can be implemented in paper-based systems as well as electronic systems.

In countries that maintain an electronic population register, an amendment of gender and name on a birth certificate and/or a national ID card should be shared with the popular register, which can then share the information to all other databases to which it is linked. (For more on Populations Registers, see Toolkit Chapter 10).

**Guidance:** Answer the question below regarding aligning one's gender and name across all government-issued identity documents. In the comments section, discuss whether the legal framework aligns with best practice and any recommended amendments to the law.

- a. **Describe the process, if any, for aligning one's gender and name across all other government-issued identity documents after a change of gender and name in a foundational identity document, such as a birth certificate or a national ID card.** If your country maintains a population register, address whether the population register is used to align gender and name across government databases.

Citation(s):

Comments:

## 7. Identity Documents: Number Of Times One Can Change Gender/Name

<sup>68</sup> Argentina Gender Identity Law, Section 10, available at: <https://tgeu.org/argentina-gender-identity-law/>

**Best practice:** There is no established international best practice on the number of times a person can change one's gender and name on identity documents. (Similarly, there is no international best practice on name change alone. Country practices and restrictions vary greatly, from prohibiting name changes entirely, to regulating the number of name changes, to allowing unlimited name changes.)

Practices differ across countries regarding the number of times a person may change their gender and name. In Argentina, there is a simple administrative process to change one's gender and name for the first time. However, if a person wishes to change their name and gender a second time (or more) they must seek a judicial order.<sup>69</sup> In Malta, a person may change their gender on their birth certificate only once, unless the person was a minor when the first change was made.<sup>70</sup> In the State of Victoria, Australia, a person may not change their gender on their birth registration more than once in a 12-month period.<sup>71</sup>

**Guidance:** Answer the question below regarding the number of times a person may change their gender and name on identity documents. In the comments section, discuss whether the legal framework aligns with best practice and any recommended amendments to the law.

- 
- a. **Describe any limits on the number of times a person may change their gender and name on birth registration and state-issued identity documents.** Address birth certificates, national ID cards (if applicable), and passports.

Citation(s):

Comments:

## 8. Identity Documents: Unique Identity Codes/Numbers (UIC/UIN)

**Best Practice:** Unique Identity Codes (UICs) should not contain a character that identifies a person's sex.

A unique Identity code (UIC) is a numeric or alphanumeric character sequence assigned to an individual for life. Some countries refer to this unique character sequence as a Unique Identity Number (UIN), rather than a UIC. A person may have only one UIC/UIN, and each UIC/UIN is assigned to only one individual. Use of a UIC/UIN is a common way to share information across databases. In some countries, the number of the National ID card (NID) serves this function. For simplicity, we refer to this unique character sequence as a UIC.

The content of the alphanumeric characters in the UIC has important implications for security. When UICs were first introduced decades ago, character sequences were based on personal information, such as date and place of birth, and sometimes sex (e.g., 1 assigned for male and 0 assigned for female). However, character sequences based on personal information may be easily comprehended, allowing the information and/or the UIC to be used fraudulently or for discriminatory purposes (for example, if a person can be identified as a refugee based on the UIC).<sup>72</sup> Therefore, randomly generated unintelligible sequences are now preferred.

For countries that still include character sequences based on personal information in their UIC/UIN, it is particularly important that the sequence not contain a character that identifies a person's sex or gender. This can lead to discrimination against those whose gender expression does not match the sex or gender character in the sequence, or against those whose sex or gender character identifies them as trans, intersex or "other". (For more on the assignment, use, and retirement of UICs, see Toolkit Chapter 4 – Birth and Death Registration – Section 10).

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<sup>69</sup> Argentina, Law on Gender Identity, Article 8.

<sup>70</sup> Malta Gender Identity, Gender Expression and Sex Characteristics Act, Article 8(2).

<sup>71</sup> Victoria, Australia, Births, Deaths and Marriages Registration Act 1996, Sections 30A and 30B, available at: <https://www.legislation.vic.gov.au/in-force/acts/births-deaths-and-marriages-registration-act-1996/039>

<sup>72</sup> UN GOLF, para. 441.

**Guidance:** Answer the question below regarding UIC/UINs sequences. In the comments section, discuss whether the legal framework aligns with best practice and any recommended amendments to the law.

- 
- a. **Does the UIC (or other unique government-issued ID number in use in the country) have a character in the sequence that identifies a person's sex or gender?**

Citation(s):

Comments:

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## DEATH REGISTRATION

### 9. Death Registration: Gender Options At Death Registration

**Best Practice:** A decedent's self-defined gender identity should be recorded in the medical certificate of cause of death, death registration record and death certificate.

In many countries, the reported sex of a decedent is determined by the physician that completes the medical certificate of cause of death (MCCD), or the coroner, medical examiner or physician working with medicolegal death investigation authorities (See Chapter 12 for more on medicolegal death investigation). However, a decedent's physical characteristics may not correlate with the decedent's self-identified gender, as only a small percentage of self-identified transgender individuals undergo gender reassignment surgery. In addition, some of the decedent's identification documents may differ from that indicated at birth registration. In these circumstances, physicians face challenges in determining the appropriate sex to enter on the MCCD.

To address this situation, some jurisdictions, including the US state of California and the District of Columbia,<sup>73</sup> have adopted legislation that provides a process for ensuring that the decedent's gender identity is reflected in the MCCD, death registration record, and death certificate. The California law requires the certifying physician to record the decedent's sex to reflect the decedent's gender identity (as female, male, or nonbinary) as reported by the informant (e.g., a family member or anyone who can supply the necessary information, including funeral director or health facility). However, if the physician is presented with certain specified legal documents (such as birth certificate, driver's license, or passport) showing a different gender identity, the physician must record the gender reflected in those documents. Alternatively, if the specified documents are not presented, the physician should reflect the gender indicated by the person or a majority of persons with control over the disposition of the remains.<sup>74</sup>

The District of Columbia law takes a different approach. That law allows an individual to pre-designate their gender identity or expression with the Registrar before the individual's death. If the decedent did not pre-designate their gender identity, the law allows any person to file a petition in court seeking an order to amend the gender on the MCCD and death certificate based on evidence presented, such as testimony, documentation that memorializes the decedent's gender transition, or any other evidence of the decedent's gender identity or expression. If a court rules in favor of the petitioner seeking to amend the gender on the MCCD and death certificate, the original MCCD and death certificate shall be sealed and made available only upon a court order, in order to protect the privacy of the deceased and their family.<sup>75</sup>

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<sup>73</sup> See D.C. Law 21-258. Death Certificate Gender Identity Recognition Amendment Act of 2016, available at: <https://code.dccouncil.us/dc/council/laws/21-258.html>

<sup>74</sup> See California Assembly Bill No. 1577 (as amended by Bill No. 439), available at: [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220AB439](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB439)

<sup>75</sup> See D.C. Law 21-258. Death Certificate Gender Identity Recognition Amendment Act of 2016, Sec. 2(b) (Amending Sec. 12(4)(A)).

**Guidance:** Answer the question below regarding registration of sex or gender at death registration. In the comments section, discuss whether the legal framework aligns with best practice and any recommended amendments to the law.

- 
- a. **Does the law provide a process to ensure that a decedent's MCCD, death registration record and death certificate reflect the decedent's self-determined gender identity or gender expression?**

Citation(s):

Comments:

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## REGISTRATION OF MARRIAGE AND DIVORCE

### 10. Registration of Marriage and Civil Union

**Best Practice:** The United Nations has stated unequivocally: "States have a positive obligation to provide legal recognition to couples, regardless of sexual orientation, gender identity and sex characteristics, as well as to their children. Legal recognition may take various forms, ranging from civil unions and civil partnerships to marriage."<sup>76</sup> The UN position is echoed in Yogyakarta Principle 24, The Right to Found a Family, which states that: "Everyone has the right to found a family, regardless of sexual orientation or gender identity. Families exist in diverse forms. No family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members." To implement these obligations, the UN has called on countries to "repeal any existing laws that regulate marriage and civil unions based upon sexual orientation, gender identity and sex characteristics."<sup>77</sup>

To actualize these rights, civil registration authorities will need to revise marriage registration forms to replace the gendered categories "bride" and "groom" with a gender-neutral term such as "spouse" or "partner" or other term that is gender neutral in the language of the country. Alternatively, registration forms could offer each spouse or partner the option of choosing a designation of "bride", "groom" or simply "spouse/partner" or other gender neutral term, and whether they choose to have that designation reflected on the marriage certificate.

Civil registration authorities may wish to capture additional data regarding the gender identity of each spouse/partner, as this might provide useful statistical information on diverse family structures. If capturing such data, gender information should reflect the self-defined gender identity of each of the spouses/partners and allow for at least three gender options. Further, gender identity data should be sent anonymized to the statistics agency and not entered into the register, to protect personal privacy. Alternatively, the civil registration and statistics authorities may decide to dispense with collection of gender-identity of spouses and partners altogether.

**Guidance:** Answer the question below regarding registration of marriage/civil union and recording of spouses' or partners' gender information upon registration of a marriage or civil union. In the comments section, discuss whether the legal framework aligns with best practice and any recommended amendments to the law.

- 
- a. **Does the law provide legal recognition to couples regardless of sexual orientation, gender identity and sex characteristics?** Describe whether legal recognition is through marriage, civil union, or other legal partnership.

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<sup>76</sup> Born Free and Equal, United Nations Human Rights Office of the High Commissioner, 2019 (Second Edition), page 73, available at: <https://www.ohchr.org/en/issues/discrimination/pages/bornfreeequalbooklet.aspx>

<sup>77</sup> Born Free and Equal, United Nations Human Rights Office of the High Commissioner, 2019 (Second Edition), page 73, available at: <https://www.ohchr.org/en/issues/discrimination/pages/bornfreeequalbooklet.aspx>



Citation(s):

Comments:

- b. Describe the terms used in the marriage/civil union register and on the marriage/civil union certificate for the spouses/partners.**

Citation(s):

Comments:

- c. Describe whether information on gender is collected during registration.** If yes, describe whether the information reflects the self-defined gender identity of each of the parties. Also state whether the information is anonymized and used for statistical purposes only, or whether the information is entered into the register.

Citation(s):

Comments:

## 11. Registration Of Divorce And Dissolution Of Civil Union

**Best Practice:** Under Yogyakarta Principle 24, states that recognize same-sex marriages or registered partnerships should ensure that “any entitlement, privilege, obligation or benefit available to different-sex married or registered partners is equally available to same-sex married or registered partners.” Accordingly, when same-sex married or registered partners divorce or dissolve their civil union, they should have a right to the same entitlements, privileges, obligations, and benefits available to different-sex married or registered partners.

For registration purposes, a divorce or dissolution of a registered partnership of a same-sex couple, or a couple where one or more partners is gender non-binary, should be registered in the same manner as a divorce or dissolution of partnership of a different-sex couple. Specifically, the court that issues the divorce or dissolution order should submit the information about the couple and order to the registrar, so that the information to be matched against the marriage or registered partnership register. (See Toolkit Chapter 7 for more on registration of marriage and divorce).

As with marriage, either the gendered terms “bride” and “groom” should be replaced with a gender-neutral term, or the spouses or partners should be offered the option of choosing “bride”, “groom” or a gender-neutral term, to be used in the register and in the divorce decree or divorce certificate.

If gender information is collected during registration of the divorce or dissolution, the information should reflect the self-defined gender identity of each of the parties and allow for third gender options. This information should be sent anonymized to the statistics agency to protect privacy and not entered into the register in order to protect privacy.

**Guidance:** Answer the question below regarding registration of divorce/dissolution of civil union and recording of spouses’ or partners’ gender information upon registration of a divorce or dissolution of civil union. In the

comments section, discuss whether the legal framework aligns with best practice and any recommended amendments to the law.

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- a. **Describe how divorce or dissolution of a registered partnership of a same-sex couple is registered.**  
Address whether registration of the divorce or dissolution is registered in the same manner as different-sex couples.

Citation(s):

Comments:

- b. **Describe the terms used for the spouses/partners on the divorce decree or certificate.**

Citation(s):

Comments:

- c. **If information on gender is collected during registration, state whether the information must reflect the self-defined gender identity of each of the parties and allow for third gender options.** Also state whether the information is sent anonymized to the statistics agency or entered in the register.

Citation(s):

Comments:

## VITAL STATISTICS

### 12. Vital Statistics

**Best Practice:** Sex and/or gender information should be collected for vital statistics when relevant and the compilation and generation of vital statistics should reflect and be inclusive of the multiplicity of sex and gender markers in use.

Traditionally, “sex” has been an important data field for many types of vital events. For example, a newborn’s “sex” is recorded at birth registration and a decedent’s “sex” is recorded at death registration. Information on “sex” is indirectly collected at marriage registration, with collection of information on “bride” and “groom”. Similarly, information on the “sex” of a newborn’s parents is indirectly collected through collection of information on “mother” and “father”. In keeping with the Yogyakarta principles, countries should record a person’s self-defined gender identity, instead of “sex”, when collection of “gender” is the relevant legal and/or statistical topic, as discussed in the above sections. However, in some instances, such as birth registration and collection of information regarding “sex assigned at birth”, “sex” remains a relevant statistical topic and should be collected.

The collection of information on sex, and sexual orientation and gender identity (SO/GI) can provide valuable information for governments. There is mounting evidence of LGBTQI health inequities driven by stigma,

discrimination, and violence; yet many aspects of LGBTQI health and their determinants are understudied.<sup>78</sup> The collection of SO/GI data through civil registration can help fill these research gaps. For example, some experts recommend SO/GI information should be systematically recorded at death registration because current lack of data on SO/GI limits identification of mortality disparities in LGBTI people.<sup>79</sup> Therefore, where sex and SO/GI data are useful and relevant for vital statistics and other research, such data should be collected.

However, the collection of sex and SO/GI information may not always be necessary. Therefore, civil registration and statistics agencies should provide guidance on when the collection of sex and/or gender information is relevant and necessary. An example of such guidance can be found on the [Statistics New Zealand website](#).<sup>80</sup>

Finally, the sex/gender terms used in the collection of data at birth, marriage and death registration should align with the terms used in the generation of vital statistics. In addition, if SO/GI information is collected through civil registration, the information need not be recorded in the register, in keeping with privacy principles. Rather, the data should be anonymized and sent to the national statistics agency for vital statistics tabulation. Tabulation tables should be revised to include tabulation by SO/GI where relevant. (For more on Vital Statistics, see Toolkit Chapter 8.)

**Guidance:** Answer the questions below regarding recording of sex and SO/GI information for purpose of vital statistics and the tabulation of vital statistics. In the comments section, discuss whether the legal framework aligns with best practice and any recommended amendments to the law.

- 
- a. **Describe any guidance developed by the statistics agency on whether and when to collect sex and SO/GI information for purposes of vital statistics.**

Citation(s):

Comments:

- b. **Describe whether vital statistics tabulation tables include tabulation by gender instead of, or in addition to, sex where relevant.**

Citation(s):

Comments:

## OTHER TOPICS

### 13. Coordination And Integration Of Different Systems

**Best Practice:** Governments should establish a Technical Working Group (TWG) on Gender Identity under their broader CRVSID Coordination Committee, to help standardize terminology, processes and criteria across systems. (See Chapter 2, Enabling Environment, for more on coordination mechanisms).

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<sup>78</sup> Advancing LGBTQI Health Research, The Lancet, Vol. 397, May 29, 2021, pp 2031- 233, available at: [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(21\)01057-6/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(21)01057-6/fulltext)

<sup>79</sup> Ann P. Haas, Andrew Lane, and on behalf of the Working Group for Postmortem Identification of SO/GI, Collecting Sexual Orientation and Gender Identity Data in Suicide and Other Violent Deaths: A Step Towards Identifying and Addressing LGBT Mortality Disparities, LGBT Health, March 2015, pp. 84-87, available at: <https://www.liebertpub.com/doi/10.1089/lgbt.2014.0083>

<sup>80</sup> Stats NZ, Statistical standard for gender, sex, and variations of sex characteristics, available at: <https://www.stats.govt.nz/methods/statistical-standard-for-gender-sex-and-variations-of-sex-characteristics>

All aspects of the civil registration and national identity management system should be aligned so that: 1) gendered terminology across databases and platforms contains the same gendered options, and 2) the process and criteria for changing one's gender and name across agencies and systems is the same. The first point is important for interoperability of systems. If various agencies and systems use different gendered terminology, it will be difficult for agencies to send and receive gender-based information to update their records. The second point is important because it enables a person to align their gender and name across all their documents, as discussed above in Section 6. A TWG on Gender Identity, with gender diverse representatives from the various relevant agencies, will help achieve these goals.

**Guidance:** Answer the questions below regarding any TWG or other mechanism to help set policy and coordinate processes on gender identity and CRVSID. In the comments section, discuss whether the legal framework aligns with best practice and any recommended amendments to the law.

- 
- a. **Is there a coordination committee or other mechanism for aligning CRVSID terminology, criteria, and processes across agencies and systems?** If yes, does it include gender diverse representation? Describe the committee.

Citation(s):

Comments:

#### 14. Accountability and Enforcement

**Best Practice:** Civil registrars, identity registrars, and other government officials, as public servants, must faithfully carry out the law, treat all people with respect, and perform their duties with non-discrimination and good faith efforts. Where a civil registrar, statistician, or identity management official fails to carry out duties or abuses their authority, the law should explicitly provide for penalties.<sup>81</sup> There should be clear disciplinary procedures and penalties for instances of deliberate misconduct, such as failure to register a change of gender in accordance with law and inappropriate disclosures,<sup>82</sup> as well as for abuse of powers and discretion. In criminal cases, the head of the civil registration, statistics and/or identity management agency should be accountable to the competent law enforcement authorities.<sup>83</sup>

**Guidance:** Answer the questions below regarding any penalties or sanctions imposed upon registrars and other government officials for failure to comply with CRVSID laws. In the comments section, discuss whether the legal framework aligns with best practice and any recommended amendments to the law.

- 
- a. **Describe any penalties or sanctions imposed upon civil registrars for failure to comply with civil registration laws.** Note if there are any penalties specific to a civil registrar's refusal to change a person's gender in civil registration records or disclosure of a change in gender.

Citation:

Comments:

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<sup>81</sup> *Principles and Recommendations for a Vital Statistics System, Revision 3*, United Nations Publication, Sales No.E.13.XVII.10, United Nations, 2014, paragraph 338 - 339.

<sup>82</sup> *Principles and Recommendations for a Vital Statistics System, Revision 3*, United Nations Publication, Sales No.E.13.XVII.10, United Nations, 2014, paragraph 326.

<sup>83</sup> UN GOLF, para 531.

- b. **Describe any penalties or sanctions imposed upon identity registration officials for failure to comply with identity registration laws.** Note if there are any penalties specific to an identity registrar's refusal to change a person's gender in national identity records or disclosure of a change in gender.

Citation:

Comments:

- c. Are there penalties for improper disclosure of confidential information?

Citation:

Comments:

## Resources

### Yogyakarta Principles

- Yogyakarta Principles and Yogyakarta Principles Plus 10, available at: <https://yogyakartaprinciples.org/>

### United Nations and Related Organizations Publications:

- International Organization for Migration, Full Glossary of Terms to describe sexual orientation, gender identity, gender expression and sex characteristics, updated November 2020, available at: <http://www.unglobe.org/resources>
- Guidelines on a Legislative Framework for Civil Registration, Vital Statistics, and Identity Management, United Nations, 2019, available at: <https://unstats.un.org/unsd/demographic-social/standards-and-methods/?topics=Civil%20Registration%20and%20Vital%20Statistics>
- Born Free and Equal, United Nations Human Rights Office of the High Commissioner, 2019 (Second Edition), available at: <https://www.ohchr.org/en/issues/discrimination/pages/bornfreeequalbooklet.aspx>
- Fact Sheet: Intersex, United Nations Free and Equal, available at: <https://www.unfe.org/learn-more/>

### Other Publications:

- The fundamental rights situation of intersex people, European Union Agency for Fundamental Rights, 2015, available at: <http://fra.europa.eu/en/publication/2015/fundamental-rights-situation-intersex-people>
- ILGA Europe, Non-Binary Gender Registration Models In Europe, September 2018, available at: <https://www.ilga-europe.org/resources/ilga-europe-reports-and-other-materials>
- License To Be Yourself, Open Society Foundations, New York, 2014, available at: <https://www.opensocietyfoundations.org/publications/license-be-yourself>
- My ID, my identity? The impact of ID systems on transgender people in Argentina, France and the Philippines, Privacy International, 15 January 2021, available at: <https://privacyinternational.org/long-read/4372/my-id-my-identity-impact-id-systems-transgender-people-argentina-france-and>
- How Common is Intersex? Intersex Society of North America, available at: <https://isna.org/faq/frequency/>
- Stat NZ, Statistical standard for gender, sex, and variations of sex characteristics, April 2021, p.23, available at: <https://www.stats.govt.nz/methods/statistical-standard-for-gender-sex-and-variations-of-sex-characteristics>

- Advancing LGBTQI Health Research, The Lancet, Vol. 397, May 29, 2021, pp 2031- 233, available at: [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(21\)01057-6/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(21)01057-6/fulltext)
- Ann P. Haas, Andrew Lane, and on behalf of the Working Group for Postmortem Identification of SO/GI, Collecting Sexual Orientation and Gender Identity Data in Suicide and Other Violent Deaths: A Step Towards Identifying and Addressing LGBT Mortality Disparities, LGBT Health, March 2015, pp. 84-87, available at: <https://www.liebertpub.com/doi/10.1089/lgbt.2014.0083>

#### **Selected Laws:**

- Argentina Gender Identity Law, available at: <https://tgeu.org/argentina-gender-identity-law/>
- California Assembly Bill No. 1577 (as amended by Bill No. 439), available at: [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220AB439](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB439)
- District of Columbia Law 21-258, Death Certificate Gender Identity Recognition Amendment Act of 2016, available at: <https://code.dccouncil.us/dc/council/laws/21-258.html>
- Malta Gender Identity, Gender Expression and Sex Characteristics Act, available at: <https://tgeu.org/gender-identity-gender-expression-sex-characteristics-act-malta-2015/>

#### **International Court Cases**

*Inter-American Court Of Human Rights, Advisory Opinion OC-24/17, Of November 24, 2017, Requested by the Republic of Costa Rica: Gender identity, and equality and non-discrimination of same-sex couples*  
 State obligations concerning change of name, gender identity, and rights derived from a relationship between same-sex couples (Interpretation and scope of articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to article 1, of the American Convention on Human Rights); available at: [https://www.corteidh.or.cr/docs/opiniones/seriea\\_24\\_eng.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_24_eng.pdf)

#### **Websites:**

- United Nations Free and Equal: <https://www.unfe.org/>
- ILGA World: The International Lesbian, Gay, Bisexual, Trans And Intersex Association: <https://ilga.org/>
- Human Rights Campaign: <https://www.hrc.org/>